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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 900

Certifying the Use of a Merit Personnel System as Required by the Intergovernmental Personnel Act of 1970

AGENCY: Office of Personnel Management.

ACTION: Guidance.

SUMMARY: The Office of Personnel Management (OPM) is revising guidance issued on April 19, 2019, regarding the available range of staffing options for federally funded and state-administered low-income programs that are required to comply with the Intergovernmental Personnel Act of 1970 (IPA) and its implementing regulations.

DATES: Effective June 10, 2024.

FOR FURTHER INFORMATION CONTACT: For questions, please contact Latonia Page, Deputy Associate Director, Workforce Policy and Innovation, Talent Acquisition, Classification, and Veterans Programs at *employ@opm.gov* or 202–936–3459.

SUPPLEMENTARY INFORMATION: Pursuant to 5 CFR 900.604(b)(3), OPM is tasked with responding to requests for guidance regarding compliance with the Intergovernmental Personnel Act of 1970 (IPA) and its implementing regulations. When a federally funded program requires state and local agencies to establish a merit personnel system in order to receive funds, the IPA and the regulations in 5 CFR part 900, subpart F, are applicable. These regulations establish the standards that must be included in a merit personnel system when it is certified by a state or local agency. OPM's current guidance issued at 84 FR 16381 (April 19, 2019) states that ''[t]he IPA and the regulations do not prescribe the use of a particular staffing method such as utilizing state or contract employees. In the absence of any other statutory or regulatory requirement to use a specific staffing method, the state or local agency has the discretion to determine the most appropriate staffing method. Regardless of the staffing method chosen, the state or local agency must certify that it is using a merit personnel system that meets the standards outlined in 5 CFR 900.603.''

OPM has reviewed its 2019 guidance and is updating it in accordance with the recent recommendations of the White House Task Force on Worker Organizing and Empowerment, established by E.O. 14025 titled, ''Executive Order on Worker Organizing and Empowerment.'' The White House Task Force recommended that state and local government agencies that receive Federal grants be limited to utilizing state and local government personnel in the administration of the grant-aided program. OPM agrees with implementing this recommendation and is therefore revising its guidance accordingly. To the extent that any state or local governments relied upon OPM's 2019 guidance on this matter and began utilizing contract employees to administer federally funded programs, these states should take steps to transition to utilizing state or local government employees to administer such programs at the earliest opportunity when it is feasible to do so. Until this happens, state and local governments must continue to certify they are using a merit personnel system that meets the standards outlined in section 5 CFR 900.603, regardless of the staffing model they are using to administer federally funded programs.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–12656 Filed 6–7–24; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Parts 1302 and 1303

RIN 0348–AB87

Privacy Act and Freedom of Information Act Regulations

AGENCY: Office of Management and Budget.

ACTION: Final rule.

SUMMARY: The Office of Management and Budget (''OMB'') is issuing a final rule revising its regulations implementing the Privacy Act and the Freedom of Information Act (''FOIA''). These revisions update OMB's regulations to reflect changes in OMB's current organizational structure and best practices. The revisions also ensure consistency between the access to records procedures in OMB's Privacy Act regulations and OMB's FOIA regulations, and with applicable law and policies that were enacted after OMB originally issued its Privacy Act regulations in 1976. Finally, the revisions align OMB's regulations with those of other agencies.

DATES: This rule is effective July 10, 2024.

FOR FURTHER INFORMATION CONTACT: Timothy Ziese, 202–395–8693, *OMBPA@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 20, 2023, the Office of Management and Budget (''OMB'') published a proposed rule in the **Federal Register** to revise its regulations at 5 CFR part 1302 governing requests and responses under the Privacy Act of 1974, as amended, 5 U.S.C. 552a (''Privacy Act''), and corresponding changes at 5 CFR part 1303 governing requests and responses under the Freedom of Information Act, as amended, 5 U.S.C. 552 (''FOIA''). 88 FR 87960 (Dec. 20, 2023). OMB received one comment in response to its proposed rule, specifically regarding the proposed revisions to OMB's FOIA regulations at 5 CFR part 1303. As described below, in this final rule OMB has made certain revisions, including in light of the helpful comment.

II. Response to Comment

The commenter addressed three topics: (1) fees charged to ''all other requesters'' under proposed § 1303.92(d); (2) FOIA's presumption of openness; and (3) FOIA's foreseeable harm standard.

First, OMB proposed revisions to 5 CFR 1303.92 to track the FOIA statute with respect to the fees OMB charges requesters. *See* 5 U.S.C. 552(a)(4)(A)(ii); *see also id.* 552(a)(4)(iv). The statute specifies different categories of fees for different categories of requesters: commercial use requesters are to be

charged ''for document search, duplication, and review,'' *id.* 552(a)(4)(A)(ii)(I); certain educational or noncommercial scientific institutions and representatives of the news media are to be charged ''for document duplication,'' *id.* 552(a)(4)(A)(ii)(II); and all other requesters are to be charged ''for document search and duplication,'' *id.* 552(a)(4)(A)(ii)(III). Consistent with the statutory standard, and as relevant here, OMB proposed that commercial use requesters be charged fees ''that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought'' (proposed § 1303.92(a)); that certain educational and noncommercial scientific institution requesters and representatives of the media be charged ''the cost of duplication alone'' (proposed § 1303.92(b), (c)); and that all other requesters be charged ''the full reasonable direct cost of searching for and producing records'' (proposed § 1303.92(d)).

The commenter pointed out that fees for document review are not to be charged under the statute's third category—all other requesters—and suggested that OMB make that explicit, asserting that some other agencies improperly charge review fees to such requesters.

OMB agrees that the category of all other requesters, *see* 5 U.S.C. 552(a)(4)(A)(ii)(III), should not be charged fees for document review, and as proposed and finalized § 1303.92(d) of OMB's regulations reflects that approach, intentionally omitting reference to review fees. The commenter's observation and suggestion have prompted OMB to clarify the language in § 1303.92 in certain respects. Proposed paragraphs (a) through (c) used the term ''duplicating'' or ''duplication,'' whereas proposed paragraph (d) used the term ''producing,'' to refer to the same process. Additionally, proposed paragraphs (b) and (c) stated that OMB would provide records ''for the cost of duplication alone,'' and the term ''alone'' or a similar term did not appear in proposed paragraph (d) in a parallel way. OMB has therefore revised § 1303.92 to eliminate any ambiguities and ensure consistency, including with the statutory language in 5 U.S.C. 552(a)(4)(A). OMB has also made a few other clarifying revisions to § 1303.92.

Second, the commenter observed that a ''presumption of openness is a principle that guides the administration of FOIA'' and ''an integral part of the statute,'' and suggested that OMB include a statement about the presumption in its rules. Third, and relatedly, the commenter observed that the FOIA authorizes certain withholdings only when ''the agency reasonably foresees that disclosure would harm an interest protected by'' a FOIA exemption, 5 U.S.C. 552(a)(8)(A)(i), and suggested that OMB include a statement about this foreseeable harm standard in its rules. OMB acknowledges the importance of the presumption of openness, *see, e.g.,* Department of Justice, Freedom of Information Act Guidelines at 1–2 (Mar. 15, 2022), *https://www.justice.gov/ag/file/1208711-0/dl?inline,* and the foreseeable harm standard, *see* 5 U.S.C. 552(a)(8)(A)(i), and will continue to apply both as OMB implements the FOIA. Because OMB's FOIA ''rules'' prescribe ''the time, place, fees (if any), and procedures to be followed'' with respect to FOIA requests, consistent with the statute, 5 U.S.C. 552(a)(3)(A), and are not intended to address other topics, OMB declines the commenter's suggestion to further revise its rules.

III. Additional Revisions

OMB's proposed rule specifically requested comments regarding OMB's proposal, with respect to its Privacy Act regulations, to require verification of identity through approved OMB processes that will be described on OMB's privacy program web page. 88 FR 87962. While OMB received no comments on this issue, OMB has given further consideration to it generally and, in order to better protect personal identifiable information, has modified §§ 1302.2 and 1302.5 to specify that Privacy Act requests should be submitted consistent with instructions on OMB's now operational web page for the agency's privacy program, *www.whitehouse.gov/omb/privacy.*

IV. Regulatory Certifications

This rule is not a significant rule for purposes of Executive Order 12866, as amended by Executive Order 14094. The Director of OMB, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and certifies that it will not have a significant economic impact on a substantial number of small entities. This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no written statement is necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

List of Subjects in 5 CFR Parts 1302 and 1303

Administrative practices and procedures, Archives and records, Freedom of information, Privacy.

For the reasons set forth in the preamble, the Office of Management and Budget amends parts 1302 and 1303 of title 5 of the Code of Federal Regulations as follows:

■ 1. Revise part 1302 to read as follows:

PART 1302—PRIVACY ACT PROCEDURES

Sec.

Authority: 5 U.S.C. 552a.

§ 1302.1 General provisions.

(a) *Purpose and scope.* This part implements the rules that the Office of Management and Budget (OMB) follows under the Privacy Act of 1974, codified as amended at 5 U.S.C. 552a (Privacy Act). This part applies to all records in systems of records maintained by OMB that are retrieved by an individual's name or personal identifier. This part describes the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by OMB.

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

Request for access to a record means a request made under 5 U.S.C. 552a(d)(1).

Request for amendment or correction of a record means a request made under 5 U.S.C. 552a(d)(2).

Request for an accounting means a request made under 5 U.S.C. 552a(c)(3).

Requester means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act. An *individual* is a citizen of the United States or an alien lawfully admitted for permanent residence.

System manager means the OMB official identified in a system of records notice as the manager of a system of records; and for Government-wide systems of records, the individual designated by the agency to act on behalf of the system manager.

(c) *Providing written consent to disclose records protected under the*

Privacy Act. OMB may disclose any record contained in a system of records by any means of communication to any person, or to another agency, pursuant to a written request by, or with the prior written consent of, the individual about whom the record pertains. An individual must verify the individual's identity in the same manner as required by § 1302.2(d) when providing written consent to disclose a record protected under the Privacy Act and pertaining to the individual.

§ 1302.2 Requirements for making requests for access.

(a) *How made and addressed.* You may make a Privacy Act request for access to an OMB record by mail or delivery service, to Privacy Officer, Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503 or by electronic means as described on OMB's privacy program web page: *www.whitehouse.gov/omb/privacy.*

(b) *Description of the records sought.* In making a request for access, you must describe the records that you want in enough detail to enable OMB to locate the system of records containing them with a reasonable amount of effort. Your access request should name the system of records or contain a concise description of such system of records. OMB publishes notices of OMB systems of records subject to the Privacy Act in the **Federal Register**.

(c) *Information about yourself.* Your access request should also contain sufficient information to identify yourself in order to allow OMB to determine if there is a record pertaining to you in a particular system of records.

(d) *Verification of identity.* To ensure that information about you is disclosed only to you or your authorized representative, you are required to verify your identity when making a Privacy Act request for access, as detailed in paragraphs (d)(1) through (3) of this section. If OMB cannot verify your identity, disclosure will be limited to information that would be required to be made available if requested under 5 U.S.C. 552 by any person.

(1) You must state your name, current address, and date and place of birth and provide either a notarized statement of identity or a signed submission under 28 U.S.C. 1746; or

(2) When available, verify your identity through remote identity-proofing and authentication using digital processes.

(3) OMB may require you to supply additional information as necessary in order to verify your identity.

(e) *Verification of guardianship.* When making a request for access as the parent or guardian of a minor or as the guardian of someone determined by a court of competent jurisdiction to be incompetent, for access to records about that individual, you must establish the criteria listed in paragraphs (e)(1) through (4) of this section. If OMB cannot verify your identity, disclosure will be limited to information that would be required to be made available if requested under 5 U.S.C. 552 by any person.

(1) The identity of the individual who is the subject of the record, by stating the name, current address, and date and place of birth;

(2) Your own identity, as required in this paragraph (e);

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

(f) *Submit identifying information only using approved OMB processes.* In order to safeguard information you submit in making a request for access for purposes of verifying your identity or verifying guardianship, or any information about yourself that may assist in the rapid identification of the record to which you are requesting access (*e.g.,* prior names, dates of employment, etc.) as well as any other identifying information contained in an OMB system of records, you must use one of OMB's approved processes as described on OMB's privacy program web page. Failure to submit identifying information through an OMB approved process may result in the failure to expunge your information in accordance with approved OMB records schedules after your access request has been processed.

(g) *Subsequent requests for access.* If your request for access follows a prior request under this section, and you already provided appropriate verifications with that prior request, you do not need to include the same verification or identifying information in the subsequent request for access if you reference that prior request or attach a copy of the OMB response to that request.

§ 1302.3 Responsibility for responding to requests.

(a) *Acknowledgment of requests.* OMB will acknowledge your request for access in writing and provide an individualized tracking number. Upon request, OMB will make information available to you about the status of your request using the assigned tracking number.

(b) *Timing of responses to a Privacy Act request for access.* OMB will respond to Privacy Act requests for access to records according to the order in which OMB receives the requests. Consistent with OMB's FOIA procedures at 5 CFR 1303.40(b), OMB may designate multiple processing tracks that distinguish between simple and more complex Privacy Act requests for access, based on the estimated amount of work or time needed to process the request.

(c) *Additional information.* If, after receiving a request, OMB determines that your request does not reasonably describe the records sought, OMB will inform you what additional information is needed and why the request is otherwise insufficient. If a request does not reasonably describe the records sought, OMB's response to the request may be delayed.

(d) *Grant of request for access.* Once OMB makes a determination to grant a request for access, OMB will provide you a written response, which may include the following:

(1) A statement as to whether OMB will grant access by providing a copy of the record through electronic means or the mail; and

(2) The amount of fees charged, if any (see § 1302.7). (Fees are applicable only to requests for duplicates.)

(e) *Adverse determination of request for access.* OMB will notify you of an adverse determination denying a request for access in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; or a denial of a request for expedited treatment. OMB's notification letter to you will include:

(1) The decision of OMB whether to grant in whole, or deny any part of the request;

(2) The reasons for the determination for any portion of the request that is denied; and

(3) A description of the procedure by which the OMB decision to deny your request may be appealed, including the name and address of the official with whom you may lodge such an appeal.

§ 1302.4 Requests for an accounting.

You may request an accounting of disclosures by the same rules governing requests for access, outlined in § 1302.2.

§ 1302.5 Requests for an amendment or correction.

(a) *Requirement for written requests.* If you want to amend a record that pertains to you in a system of records maintained by OMB, you must submit your request in writing following the procedures established in this section unless the system manager waives the requirements in this section. OMB is not required to amend records that are not subject to the Privacy Act of 1974. However, individuals who believe that such records are inaccurate may bring this to the attention of OMB.

(b) *Procedures.* (1) You should address your request to amend a record in a system of records to the system manager. You should include the name of the system and a brief description of the record proposed for amendment. If the request to amend the record is the result of you gaining access to the record in accordance with the provisions concerning access to records as set forth in § 1302.2, you may attach a copy of previous correspondence between you and OMB instead of providing a separate description of the record.

(2) If a requester cannot determine where within OMB to send the Privacy Act request to amend a record, the requester may send by mail or delivery to Privacy Officer, Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503 or by electronic means as described on OMB's privacy program web page: *www.whitehouse.gov/omb/privacy.* OMB will forward the request to the component(s) it believes most likely to have the relevant records. For the quickest possible handling, the requester should specify ''Privacy Act Record Amendment Request'' on the letter.

(3) You must validate your identity as described in § 1302.2(e). If OMB has previously verified your identity pursuant to § 1302.2(e), further verification of identity is not required as long as the communication does not suggest that a need for verification is present.

(4) You should clearly indicate the exact portion of the record you seek to have amended. If possible, you should also propose alternative language, or at a minimum, identify the facts that you believe are not accurate, relevant, timely, or complete, with such particularity as to permit OMB not only to understand the basis for your request, but also to make an appropriate amendment to the record.

(5) Your request must also state why you believe your record is not accurate, relevant, timely, or complete. The burden of persuading OMB to amend a record will be upon you. You must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(6) OMB will not categorically reject incomplete or inaccurate requests. OMB will ask you to clarify the request as needed.

(c) *OMB action on the request.* (1) OMB will acknowledge, in writing, receipt of a request to amend a record within 10 business days (*i.e.,* excluding Saturdays, Sundays, and legal Federal holidays) of OMB's receipt.

(2) OMB will promptly respond to a Privacy Act request for amendment or correction. OMB ordinarily will respond to Privacy Act requests for amendment or correction according to their order of receipt. Consistent with OMB's FOIA procedures at 5 CFR 1303.40(b), OMB may designate multiple processing tracks that distinguish between simple and more complex Privacy Act requests for amendment or correction, based on the estimated amount of work or time needed to process the request. The response reflecting the decision upon a request for amendment will include the following:

(i) The decision of OMB whether to grant in whole, or deny any part of, the request to amend the record;

(ii) The reasons for the determination for any portion of the request which is denied; and

(iii) A description of the procedure by which the OMB decision to deny your request may be appealed, including the name and address of the official with whom you may lodge such an appeal.

§ 1302.6 Appeals.

(a) If you wish to appeal a decision by OMB with regard to your request to access or amend a record in accordance with the provisions of §§ 1302.2 and 1302.5, you should submit the appeal in writing and, to the extent possible, include the information specified in paragraph (b) of this section.

(b) Your appeal should contain a brief description of the record involved or copies of the correspondence from OMB in which the request to access or to amend was denied and also the reasons why you believe that access should be granted or the information amended, as relevant. Your appeal should refer to the information you furnished in support of your claim and the reasons set forth by OMB in its decision denying access or amendment, as required by §§ 1302.2 and 1302.5. In order to make the appeal process as meaningful as possible, you should set forth your disagreement in an understandable manner. In order to avoid the unnecessary retention of personal information, OMB reserves the right to dispose of the material concerning the request to access or amend a record if OMB receives no appeal in accordance with this section within 180 days of the sending by OMB of its decision upon an initial request. OMB may treat an appeal received after the 180-day period as an initial request to access or amend a record.

(c) You may send your appeal by mail or delivery to the Senior Agency Official for Privacy, Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503 or by electronic means as described on OMB's privacy program web page: *www.whitehouse.gov/omb/privacy.* For the quickest possible handling, the requester should specify ''Privacy Act Record Appeal'' on the letter.

(d) The Senior Agency Official for Privacy will review a refusal to amend a record within 30 business days (excluding Saturdays, Sundays, and legal Federal holidays) from the date on which the individual requests such review, unless the OMB Director extends the 30-day period for good cause. If the Senior Agency Official for Privacy's decision does not grant in full the request, the notice of the decision will describe the steps you may take to obtain judicial review of such a decision.

§ 1302.7 Fees.

(a) *Prohibitions against charging fees for Privacy Act requests.* OMB will not charge you for:

(1) The search and review of requests for records subject to this part;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access; or

(3) Any copies of the requested record when OMB determines that the only way you can access the record is by providing a copy to you through the mail.

(b) *Waiver.* OMB may at no charge provide copies of a record if it is determined the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* OMB will charge fees as provided in paragraphs (c)(1) through (5) of this section except as provided in paragraphs (a) and (b) of this section.

(1) OMB will duplicate records at a rate of $.10 per page for all copying of

4 pages or more. There is no charge for duplication 3 or fewer pages.

(2) Where OMB anticipates that the fees chargeable under this section will amount to more than $25.00, OMB shall promptly notify you of the amount of the anticipated fee or such portion thereof as can readily be estimated. If the estimated fees will greatly exceed $25.00, OMB may require an advance deposit. OMB's request for an advance deposit shall extend an offer to the requester to consult with OMB personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) You should pay fees in full before the requested copies are issued. If the requester is in arrears for previous requests, OMB will not provide copies for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Assistant Director for Management and Operations, Office of Management and Budget, Washington, DC 20503.

(5) OMB will provide a receipt for fees paid upon request.

PART 1303—PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT

■ 2. The authority citation for part 1303 continues to read as follows:

Authority: 5 U.S.C. 301 and 5 U.S.C. 552, unless otherwise noted.

■ 3. Amend § 1303.3 by revising paragraph (a)(5) to read as follows:

§ 1303.3 Organization.

(a) * * *

(5) Statutory offices include the Office of Federal Financial Management; Office of Federal Procurement Policy; Office of E-government and Information Technology; Made in America Office; and Office of Information and Regulatory Affairs.

* * * * *

■ 4. Revise § 1303.20 to read as follows:

§ 1303.20 Where to send requests.

The FOIA Officer is responsible for acting on all initial requests. Individuals wishing to file a request under the FOIA should address their request in writing to FOIA Officer, Office of Management and Budget, 725 17th Street NW, Room 9272, Washington, DC 20503, via fax to (202) 395–3504, by email at *OMBFOIA@omb.eop.gov,* or the Government-wide FOIA.gov portal. Requesters must provide contact information sufficient to enable OMB to communicate with the requester. Additionally, OMB's FOIA Public Liaison is available to assist requesters who have questions and can be reached at (202) 395–FOIA or in writing at the address provided in this section.

■ 5. Revise § 1303.21 to read as follows:

§ 1303.21 Requesters making requests about themselves or on behalf of others.

In order to obtain greater access to records, a requester who is making a request for records about the requester or on behalf of another individual must comply with the verification of identity requirements as determined by OMB pursuant to OMB's requirements for making requests for access in 5 CFR part 1302. OMB may require a requester to supply additional information as necessary in order to verify the identity of the requester or to verify that a particular individual has consented to disclosure.

■ 6. Amend § 1303.30 by revising paragraphs (c)(2)(i) and (ii) to read as follows:

§ 1303.30 Responsibility for responding to requests.

* * * * *

(c) * * *

(2) * * *

(i) When OMB believes that a different agency is best able to determine whether to disclose the record, OMB will refer the responsibility for responding to the request regarding that record to that agency, will notify the requester, and will inform them of the agency which will be processing the record, including that agency's FOIA contact information. Ordinarily, the agency that originated the record is best situated to make the disclosure determination. However, if OMB and the originating agency jointly agree that OMB is in the best position to respond regarding the record, then OMB may respond to the requester.

(ii) When OMB believes that a different agency is best able to determine whether to disclose the record, but also believes that disclosure of the identity of the different agency could harm an interest protected by an applicable FOIA exemption, such as the exemptions that protect personal privacy or national security interests, OMB will coordinate with the originating agency to seek its views on the disclosability of the record and convey the release determination for the record that is the subject of the coordination to the requester. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms.

■ 7. Amend § 1303.40 by revising paragraphs (e)(1)(iv) and (e)(4) to read as follows:

§ 1303.40 Timing of responses to requests.

* * * * *

(e) * * *

(1) * * *

(iv) There are possible questions, in a matter of widespread and exceptional public interest, about the Government's integrity which affect public confidence.

* * * * *

(4) OMB will decide whether to grant a request for expedited processing and will notify the requester within 10 calendar days after the date of the request. If a request for expedited treatment is granted, OMB will prioritize the underlying FOIA request, place the request in the processing track for expedited requests, and process the request as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

■ 8. Amend § 1303.50 by revising paragraphs (a), (c) introductory text, and (c)(4) to read as follows:

§ 1303.50 Responses to requests.

(a) *Acknowledgments of requests.* OMB will assign an individualized tracking number to each request received that will take longer than ten days to process; and acknowledge each request, informing the requester of their tracking number if applicable; and, upon request, make available information about the status of a request to the requester using the assigned tracking number, including—

(1) The date on which OMB originally received the request; and

(2) An estimated date on which OMB will complete action on the request.

* * * * *

(c) *Adverse determinations of requests.* Adverse determinations, or denials of requests, include decisions that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing. In the case of an adverse determination, the FOIA Officer will immediately notify the requester of—

* * * * *

(4) OMB's estimate of the volume of any requested records OMB is withholding, unless providing such estimate would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the withholding is being made.

■ 9. Amend § 1303.60 by revising paragraphs (a)(2) and (e)(2) to read as follows:

§ 1303.60 Notification procedures for confidential commercial information.

(a) * * *

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

* * * * *

(e) * * *

(2) If a submitter has any objections to disclosure, it should provide OMB a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential. OMB is not required to consider any information received after the date of any disclosure decision.

* * * * *

■ 10. Amend § 1303.70 by revising paragraph (a) to read as follows:

§ 1303.70 Appeals.

(a) A requester must appeal to the head of OMB in writing within 90 calendar days after the date of such adverse determination addressed to the FOIA Officer at the address specified in § 1303.20. The appeal must include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or their designee, within 20 working days. If on appeal the denial is upheld in whole or in part, the written determination will also contain a notification of the provisions for judicial review, the names of the persons who participated in the determination, and notice of the services offered by OGIS as a non-exclusive alternative to litigation.

* * * * *

■ 11. Amend § 1303.91 by revising the introductory text and paragraph (i) to read as follows:

§ 1303.91 Fees to be charged—general.

OMB will charge fees that recoup the full allowable direct costs it incurs. Moreover, it will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. Search should be distinguished, moreover, from review of material in order to determine whether the material is exempt from disclosure. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see 5 U.S.C. 552(a)(4)(A)(vi)), such as the National Technical Information Service, OMB will inform requesters of the steps necessary to obtain records from those sources.

* * * * *

(i) *No Fees under $25.* No fee will be charged when the total fee, after deducting the first 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than $25. If OMB estimates that the charges are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance their willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel to meet the requester's needs at a lower cost.

■ 12. Amend § 1303.92 by revising paragraphs (a) through (d) to read as follows:

§ 1303.92 Fees to be charged—categories of requesters.

* * * * *

(a) *Commercial use requesters.* When OMB receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of duplication of documents. OMB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 1303.93(b)).

(b) *Educational and noncommercial scientific institution requesters.* OMB will provide documents to educational and noncommercial scientific institution requesters that meet the criteria in § 1303.90(f) or (g) for the cost of duplication alone, excluding charges for the first 100 pages. OMB may seek evidence from the requester that the request is in furtherance of scholarly research and will advise requesters of their determination whether the requester has met the criteria in § 1303.90(f) or (g).

(c) *Requesters who are representatives of the news media.* OMB will provide documents to requesters who are representatives of the news media that meet the criteria in § 1303.90(h) and (i), and that do not make the request for commercial use, for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* OMB will charge requesters who do not fit into any of the categories described in paragraphs (a) through (c) of this section fees that recover only the full reasonable direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge. Moreover, requests for records about the requesters filed in OMB's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for producing copies of records

■ 13. Amend § 1303.93 by revising paragraph (a), the first sentence of paragraph (c), and paragraph (d)(1) to read as follows:

§ 1303.93 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* OMB may begin assessing interest charges on an unpaid bill starting on the 31st day after OMB sends the bill. If OMB receives the fee within the thirty-day grace period, interest will not accrue on the paid portion of the bill, even if the payment is unprocessed. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

* * * * *

(c) * * * When OMB reasonably believes that a requester, or a group of requesters acting in concert, is attempting to divide a single request into a series of requests for the purpose of avoiding fees, OMB may aggregate those requests and charge fees accordingly. * * *

(d) * * *

(1) OMB will not require a requester to make an advance payment, *i.e.,* payment before work is commenced or continued on a request, unless OMB estimates or determines that allowable charges that a requester may be required to pay will exceed $250 or the requester has previously failed to make a payment due within 30 days of billing.

* * * * *

Shraddha A. Upadhyaya,

Associate General Counsel, Office of Management and Budget.

[FR Doc. 2024–12667 Filed 6–7–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 223

[Docket No. FISCAL–2021–0006]

RIN 1530–AA20

Surety Companies Doing Business With the United States

AGENCY: Fiscal Service, Bureau of the Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Department of the Treasury, Bureau of the Fiscal Service (Treasury), regarding the corporate Federal surety bond program (the program). Treasury is amending its regulations to allow for recognition of additional companies as reinsurers. Treasury is also amending its regulations to incorporate requirements, previously published in supplemental guidance documents, for surety companies to submit information that Treasury uses to perform financial analysis of these companies. Treasury is also reorganizing the existing regulations to modernize and improve their structure.

DATES: This final rule is effective August 9, 2024.

FOR FURTHER INFORMATION CONTACT: Melvin Saunders at *melvin.saunders@fiscal.treasury.gov* or 304–480–5108; Bobbi McDonald at *bobbi.mcdonald@fiscal.treasury.gov* or 304–480–7098; or David Crowe at *david.crowe@fiscal.treasury.gov* or 304–480–8971.

SUPPLEMENTARY INFORMATION:

I. Background

Treasury administers the corporate Federal surety bond program, which issues certificates of authority to authorized surety companies, analyzes the financial statements of applicant and authorized companies to ensure compliance, and publishes lists of companies holding a certificate authority. Treasury also reviews applications by companies to become admitted reinsurers, *i.e.,* companies permitted by Treasury to provide reinsurance to certified sureties except on excess risks that run to the United States. Treasury administers the program pursuant to 31 CFR part 223 (part 223) and publishes supplemental guidance on its website.

Treasury published a request for information (RFI) on December 30, 2019.[1] The RFI sought public input on a variety of topics relating to Treasury's evaluation of surety companies, as well as the operations of the corporate Federal surety bond program. These topics included, among other things, Treasury's financial analysis methodology, its rules regarding credit for reinsurance, and the documentation it requires to perform its review of companies seeking designation and renewal as certified sureties or admitted reinsurers. The public comments informed, in part, Treasury's development of this rulemaking.

On March 3, 2022, Treasury published a notice of proposed rulemaking (NPRM) at 87 FR 12003 to propose amendments to part 223, which implements the provisions of 31 U.S.C. 9304–9308. The NPRM proposed two main amendments to part 223. First, the NPRM proposed to add two new categories of reinsurance companies that can receive recognition from Treasury: complementary reinsurers and alien reinsurers. The proposed amendments would allow Treasury-certified surety companies to receive credit for reinsurance ceded to these companies with reduced or zero collateral, and would also allow complementary or alien reinsurers to reinsure excess risks of certified surety companies not running to the United States. Second, Treasury proposed amending 31 CFR 223.9 to describe in greater detail the financial analysis it performs related to companies applying for a certificate of authority or renewal of a certificate of authority and to incorporate certain requirements previously published in the program's annual and supplemental guidance. Additionally, Treasury proposed various amendments to part 223 to reorganize and modernize the structure of the regulations.

Treasury received 13 comment letters from a cross-section of entities associated with the surety industry and other stakeholders. Seven of the comment letters were from surety companies or reinsurers, three were from surety or insurance trade associations, one was from a law firm that represents surety companies, one was from a coalition of environmental groups, and one was from an anonymous individual. Treasury has considered the comments and addresses them below.

II. Analysis of Comments

The public comments were generally supportive of the NPRM's proposed changes to add new categories of reinsurers eligible for Treasury recognition, to add more detailed information regarding Treasury's financial analysis, and to update and modernize the structure of the surety regulations. Treasury did not receive any comments expressing disagreement with the key objectives described above. Several of the favorable comments regarding Treasury's proposal to add new categories of reinsurers eligible for Treasury recognition noted that these changes would benefit the surety industry as a whole by lowering the regulatory burden on surety companies and increasing the reinsurance capacity available to Treasury-certified surety companies. Commenters also concurred with the NPRM that these changes would not increase the risk to the Federal Government of surety companies being unable to carry out their obligations.

A surety company commented that smaller and medium-sized surety companies, which typically have a lower underwriting limit than larger firms, might particularly benefit from greater access to international reinsurance without the posting of collateral under the proposal to recognize additional reinsurers. The same commenter also noted that these changes could lower the price of surety bonds in the marketplace, which could not only benefit smaller and medium-sized surety companies but also benefit smaller and minority-owned contractors who frequently obtain surety bonds from smaller or mid-sized surety companies. Thus, in the view of the commenter, the proposed changes could make it easier for small, minority-owned contractors to bid on construction projects for the Federal Government.

[1] 84 FR 72138.

Some commenters, while expressing support for the NPRM generally, suggested changes or clarifications, as discussed below.

A. Categories of Reinsurers

Two commenters suggested that the NPRM's definition of the two new categories of reinsurers—complementary reinsurers and alien reinsurers—should be expanded to include additional reinsurers that are recognized under state laws that are based on the National Association of Insurance Commissioners' (NAIC) Credit for Reinsurance Model Law (Model 785) and Model Regulation (Model 786). Under the NPRM, to be recognized as a complementary reinsurer, a company must be from a non-U.S. jurisdiction that is subject to an in-force Covered Agreement, among other requirements. A ''Covered Agreement'' is an agreement, as described in § 223.12(i), regarding prudential matters with respect to the business of insurance or reinsurance between the United States and one or more foreign authorities, entered into pursuant to 31 U.S.C. 313–314.

Per the NPRM, the company must also be recognized by at least one U.S. state as a Reciprocal Jurisdiction Reinsurer. A ''Reciprocal Jurisdiction'' is a jurisdiction that meets one of the following: (1) a non-U.S. jurisdiction that is subject to an in-force Covered Agreement with the United States, (2) a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program, or (3) a Qualified Jurisdiction, as defined by state law that is based on the NAIC Credit for Reinsurance Model Law (Model 785) and Model Regulation (Model 786), which meets certain additional requirements. A ''Reciprocal Jurisdiction Reinsurer'' is a reinsurer with its head office in or domicile in a Reciprocal Jurisdiction and which meets all capital and surplus, solvency, and market conduct requirements under state law based on the 2019 Amendments to the NAIC Credit for Reinsurance Model Law and Model Regulation.

To be recognized by Treasury as an alien reinsurer, the NPRM provided that a company must be from a non-U.S. jurisdiction that is recognized by state law and the NAIC as a Qualified Jurisdiction or as a Reciprocal Jurisdiction, provided the Reciprocal Jurisdiction is not party to an in-force Covered Agreement, among other requirements. A ''Qualified Jurisdiction'' is a jurisdiction determined by a state insurance supervisor to have appropriate and effective supervision of reinsurance and which meets other requirements defined in state law. The NAIC also publishes a list of Qualified Jurisdictions. The NPRM also required the company to be recognized by at least one state as a Certified Reinsurer or Reciprocal Jurisdiction Reinsurer. A ''Certified Reinsurer'' is a reinsurer from a Qualified Jurisdiction that meets the requirements of the state insurance laws and regulations based on the NAIC models.

The two commenters pointed out that these definitions of complementary reinsurer and alien reinsurer excluded some reinsurers eligible for recognition at the state level, namely reinsurers referred to as Accredited Reinsurers under the NAIC Credit for Reinsurance Model Law and Model Regulation. Under state law based on these models, an ''Accredited Reinsurer'' is a reinsurer meeting specific conditions, which allow it to receive accreditation from the state and to assume reinsurance from U.S. reinsurers. The commenters suggested that Treasury clarify whether the definitions of the new categories of reinsurers include Accredited Reinsurers and, if not, consider expanding the definitions to include such companies.

The NPRM's goal in expanding the types of reinsurers eligible for recognition was to ease the administrative burden on surety companies by allowing them to use additional reinsurers that meet Treasury's financial strength and market conduct requirements and that are from jurisdictions with sufficient regulatory regimes, as well as by incorporating greater harmony with state regulation. Treasury agrees with the commenters that allowing recognition of Accredited Reinsurers would further this goal, provided that they meet Treasury's other requirements. The final rule therefore includes revisions in § 223.12(d) and (j) to clarify that a company recognized as an Accredited Reinsurer by a U.S. state is eligible to be recognized by Treasury as an alien reinsurer. Note that under § 223.11(b)(2), that if a company, including an Accredited Reinsurer, seeking recognition as an alien reinsurer is required by its U.S. state of domicile to provide 100 percent collateral in order for its ceding insurers to obtain full credit for reinsurance, then that company is not eligible to reinsure a surety company's excess risk pursuant to § 223.11(b). Such a company may only be used by a surety company to receive credit for reinsurance pursuant to § 223.9(c) and must provide the same level of collateral as called for under state law. This change is being made to highlight and codify Treasury's existing policy that companies cannot rely on collateral for both credit for reinsurance and limitations of excess risks.

B. Admitted Assets

One commenter suggested that the NPRM adopt an approach towards ''admitted assets'' set forth in the NAIC's Accounting Practices and Procedures Manual, which all 50 states have adopted. However, Treasury does not intend to adopt the approach utilized by the NAIC. Adoption of that approach would limit Treasury's discretionary authority to reject an asset in the limited circumstances where it determines that such a rejection may be warranted. The NPRM codifies into the surety regulations, in 31 CFR 223.9, several provisions regarding Treasury's admissibility and valuation of assets that previously were only contained in the program's annual guidance, while also retaining the ability for Treasury to value a company's assets and liabilities in its discretion.

C. Letters of Credit

One commenter suggested that Treasury update the NPRM to allow for irrevocable, unconditional, evergreen letters of credit to be used to protect risks underwritten in excess of a surety company's underwriting limit. Treasury has had a longstanding policy, which the NPRM proposed to codify at § 223.9(e)(2), of allowing surety companies to use letters of credit to obtain credit for reinsurance, under certain circumstances. Treasury has reservations, however, about allowing letters of credit to be used to protect excess risks (*i.e.,* those risk that exceed the company's underwriting limit). Historically, companies attempting to rely on letters of credit for such a purpose have not been able to demonstrate to Treasury that the assets referred to in the letter of credit are set aside by the issuer solely for the exclusive use of protecting the particular excess risk. This means that Treasury has been unable to verify that the companies could actually rely on the assets referred to in the letter of credit if the companies need to pay a claim on the excess risk. Accordingly, Treasury declines to amend § 223.11 to allow for the blanket usage of irrevocable, unconditional, evergreen letters of credit to protect excess risks. However, Treasury may consider, on a case-by-case basis, allowing a surety company to use a letter of credit for such purpose if Treasury can verify that the assets referenced in the letter are

pledged exclusively to secure the excess risk—that is, if the assets references in the letter of credit cannot be drawn upon for any other purpose—and if the letter of credit meets other requirements Treasury might prescribe. A modification to § 223.11(c)(1) has been made reflecting this clarification.

D. Underwriting Limitation

Another commenter recommended that Treasury alter the way it calculates the underwriting limitation for certified surety companies. The commenter stated that Treasury's current method, which sets the limit at 10 percent of a company's surplus as determined by Treasury, is outdated and may adversely impact monoline surety companies. The letter proposes that Treasury adopt an approach that would set a surety company's underwriting limit based on its risk-based capital. The existing underwriting limitation is one of Treasury's most important tools in ensuring that the sureties it certifies are able to carry out their contracts, and Treasury's longstanding method of determining the underwriting limitation has worked well in accomplishing this goal. A national association of surety companies responded to the RFI that Treasury published on December 31, 2019, strongly encouraging Treasury not to change its method of calculating the underwriting limitation because of the strong safeguard it provides to the Federal Government. While the NPRM relies on certain risk-based approaches, Treasury believes the existing limitation is appropriate and beneficial.

E. Eligibility

One commenter requested that Treasury reconsider a provision of the NPRM regarding companies that only insure or reinsure risks of their parent, affiliated, or controlled unaffiliated business, or that are deemed by Treasury to be primarily engaged in self-insurance. Sections 223.1(c) and 223.12(e) of the proposed rules codified Treasury's longstanding policy that such companies are not eligible to obtain a certificate of authority, nor for recognition as a reinsurer. As noted in the NPRM, these types of companies cannot provide the documentation required by Treasury to evaluate them consistent with its standards. Treasury acknowledges the alternative view offered by this commenter, but continues to believe its existing policy is in the best interests of the surety program. Accordingly, Treasury is adopting these provisions of the rule as proposed.

F. Small Business Administration Surety Bond Guarantee Program

One commenter suggested that Treasury consider a surety's admission in the Small Business Administration's (SBA) Surety Bond Guarantee program to serve as an alternative to reinsurance under the program's requirements. SBA's Surety Bond Guarantee program is not intended to be akin to reinsurance for companies admitted into Treasury's surety bond program. Given the different purposes of the two programs, it would not be appropriate to treat the SBA Surety Bond Guarantee program as reinsurance for this purpose. Accordingly, Treasury declines to adopt the recommendation in this comment.

G. Risk Analysis

One comment letter suggested that Treasury make additional amendments unrelated to the substance of the changes proposed in the NPRM that would, in the view of the commenters, allow Treasury to better consider potential risk posed by ''the aggregate of all currently-issued bonds'' of a particular surety. The letter asserts that in certain sectors, a small number of surety companies have issued bonds that, in the aggregate, exceed each company's ability to pay, creating a risk that these surety companies will go bankrupt if the obligees on the bonds undertake forfeiture of the bonds. Accordingly, the letter asks that Treasury consider revisions to part 223 that would analyze a surety's aggregate risk when determining whether a surety qualifies for certification, and that Treasury impose an underwriting limitation on the aggregate risk of all bonds issued by a given surety. The letter also asks, should Treasury decline to make such changes, that Treasury clarify that it neither considers nor places limits on aggregate risk when evaluating sureties. The letter also addresses certain regulatory matters that are beyond the scope of the surety bond program.

The substance of these proposed changes is beyond the scope of those proposed by the NPRM. Accordingly, Treasury does not express an opinion on the letter's proposed amendments to the regulations. Nevertheless, for clarity, Treasury notes that there are multiple ways, in addition to its requirement that companies report bonds in excess of their underwriting limitation, by which Treasury ensures that a surety is not underwriting bonds in excess of its ability to pay. For example, Treasury's financial analysis, now codified in more detail in part 223 through this rulemaking, encompasses a robust review of a surety's financial statements. This review includes a detailed analysis by Treasury of the surety company's reinsurance portfolio via the Treasury Schedule F. And although a surety company reports excess risks to Treasury on a per-bond basis, the Schedule of Excess Risks form that each company submits gives Treasury insight into the overall risk profile of each company and the adequacy of protective measures taken by the company. Additionally, Treasury requires surety companies to report on a quarterly basis the penal sum of all Federal surety bonds (not just those bonds in excess of the companies' underwriting limits) written and outstanding as of the close of the reporting period, including identifying the types of surety bonds being written (*e.g.,* customs, reclamation, construction contract) and the agency obligee. All of these tools provide Treasury with the means to evaluate risks from a surety company, which could result in a deeper analysis of the company and potential non-renewal of its certificate of authority.

III. Additional Changes

In addition to the changes made in response to comments, discussed above, Treasury made a number of changes to the final rule text in §§ 223.2, 223.3, 223.5, 223.7, 223.8, 223.9, 223.10, 223.11, 223.12, 223.16, and 223.22 that were not specified in the NPRM. These changes are clarifying, technical, or nonsubstantive and are made in furtherance of the purposes described in the NPRM.

Treasury updated the application requirements in § 223.2(a)(5)(i) to clarify that when applying for a certificate of authority companies must also report significant changes in operations or corporate structure that might impact their financial statements. Treasury routinely asks for this information in the application process and is now codifying it with the other application requirements. Treasury added a similar requirement in § 223.12(h)(1)(ix) to apply to applications for recognition as an admitted reinsurer.

In § 223.3(a), Treasury removed the phrase ''at the company's expense'' from the provision that Treasury may require companies to submit additional information when making decisions to issue or renew certificates of authority. Treasury made this edit for consistency with other provisions of part 223 that state Treasury may require additional information but do not specify that doing so is at the company's expense. Treasury believes it is self-evident that companies are responsible for the expense of submitting any required

additional information, and therefore removed that clause from § 223.3 to avoid any confusion as to why the requirement was not mentioned elsewhere.

Treasury made edits in §§ 223.2(a) and (b) and 222.12(h) through (j), to remove ''receipt or proof of payment'' as part of the application requirements. In the time since Treasury published the NPRM, Treasury has updated its processes whereby it no longer requires applicant companies to submit a receipt or other proof of payment for Treasury to verify that the companies have paid the required fees.

In §§ 223.2(a) and (b), 223.8(a), and 223.12(h) Treasury added a requirement that companies provide the NAIC file upload when submitting their annual or quarterly financial statements. Companies have submitted their statements via the text file upload for many years, so Treasury wanted to clarify these sections to remove any doubt that the companies should continue to do so.

Treasury made an additional edit to the application requirements in § 223.2(b) to clarify that a Schedule of Excess Risks form is submitted as of the close of the preceding quarter, not the preceding year.

In §§ 223.2(b) and 223.8, Treasury corrected the name of the form utilized by companies to report Federal business written and outstanding.

Treasury also made edits to § 223.9(c)(2) to reflect its practice that companies must submit sufficient documentation before receiving credit for reinsurance to the extent of funds withheld, trust agreements, or letters of credit. Treasury also made an edit in this paragraph to conform with a similar statement previously published in supplemental guidance that Treasury's allowance of credit in these circumstances is discretionary.

Treasury removed language in § 223.11 describing the requirements for Miller Act bonds to improve the clarity of the section.

Treasury made edits to § 223.12(i) and (j) to clarify that Treasury will look to state law to determine whether a reinsurer applying to be a complementary reinsurer or alien reinsurer is recognized as a Reciprocal Jurisdiction Reinsurer, Accredited Reinsurer, or Certified Reinsurer, as appropriate. The NPRM stated that Treasury would look to the NAIC definition of those categories of reinsurer, but as Treasury requires reinsurers to submit proof that they have obtained recognition from at least one U.S. state, Treasury finds it more appropriate to reference state law that is based on the NAIC models. For similar reasons, Treasury made an edit in § 223.12(j) to clarify that an alien reinsurer must be domiciled in a non-U.S. jurisdiction that is recognized by a U.S. state as a Qualified Jurisdiction or Reciprocal Jurisdiction (provided that the Reciprocal Jurisdiction is not party to an in-force Covered Agreement as described in § 223.12(i)). Treasury removed the language contained in the NPRM that an alien reinsurer's jurisdiction must be recognized as Qualified or Reciprocal by the NAIC, but Treasury also made an edit in § 223.12(j) to clarify that Treasury may consider, if it deems appropriate, the NAIC lists of Qualified and Reciprocal Jurisdictions.

Treasury also removed the word ''independent'' where it appeared before the term ''qualified actuary'' in §§ 223.2(a) and (b) and 223.12(h). The application requirements in these sections require companies to submit reports by ''qualified actuary,'' as defined by the NAIC. Treasury removed the word ''independent'' to be clear the term ''qualified actuary'' in part 223 should be understood as having the same meaning as the term used by the NAIC.

Treasury updated the provision of § 223.9(c)(1)(ii) discussing amounts ceded to parents, subsidiaries, or affiliates to better align with Treasury's pre-existing guidance on these cessions.

IV. Procedural Analysis

Regulatory Planning and Review

The final rule does not meet the criteria for a ''significant'' regulatory action under Executive Order 12866, as amended. Therefore, the regulatory review procedures contained therein do not apply.

Administrative PAYGO

The Administrative Pay-As-You-Go Act of 2023 (Pub. L. 118–5) does not apply to this rule because it does not increase direct spending.

Regulatory Flexibility Act

It is hereby certified that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule adopts criteria for recognition for reinsurers outlined in the Covered Agreements and in the NAIC Credit for Reinsurance Model Law and Regulation. Accordingly, reinsurance companies from relevant non-U.S. jurisdictions seeking to assume business from U.S. ceding insurers are already complying with similar financial requirements. Additionally, adherence to these requirements is only required for companies seeking recognition by Treasury; participation in the program is voluntary. The final rule changes regarding Treasury's financial analysis mainly codify existing requirements and policies, of which Treasury-certified sureties were already aware. Therefore, this final rule will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to prepare budgetary impact statements before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. This final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million of more in any one year. Accordingly, Treasury has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Act) (codified at 44 U.S.C. 3507(d)) requires that collections of information prescribed in the proposed rules be submitted to the Office of Management and Budget (OMB) for review and approval. In accordance with that requirement, Treasury has submitted the collection of information contained in the notice of proposed rulemaking to OMB for approval under OMB Control Number 1530–0074. Under the Act, 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 collection of information is contained in § 223.12(i) and (j). The amendments require companies applying for initial recognition as a complementary reinsurer to submit to Treasury all information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the two most recently completed calendar years. For renewal of such recognition, companies will submit all semi-annual and annual filing

information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the most recently completed calendar year. Companies applying for initial recognition as an alien reinsurer will submit to Treasury all information provided to any U.S. state regulator in the two most recently completed calendar years. For renewal of such recognition, companies will submit all annual filing information provided to any U.S. state regulator in the most recently completed calendar year.

List of Subjects in 31 CFR Part 223

Financial analysis, Reinsurance, Surety bonds.

For the reasons set forth in the NPRM and in this preamble, Treasury amends 31 CFR part 223 as follows:

PART 223—SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 9304–9308.

■ 2. Revise § 223.1 to read as follows:

§ 223.1 Certificate of authority.

(a) The regulations in this part govern the issuance, renewal, and revocation by the Secretary of the Treasury, acting through the U.S. Department of the Treasury, Bureau of the Fiscal Service (Treasury), of certificates of authority to bonding companies to do business with the United States as sureties on, or reinsurers of, Federal surety bonds (hereinafter ''bonds'' or ''obligations'') under the authority of 31 U.S.C. 9304–9308 and this part, and the acceptance of such obligations.

(b) A company applying for authority to write surety bonds in favor of the United States must be engaged in the business of writing surety or fidelity contracts at the time of its application to Treasury, whether or not also making contracts in other classes of insurance, but shall not be engaged in any type or class of business not authorized by its charter or the laws of the state in which the company is incorporated. It must be the intention of the company to engage actively in the execution of surety bonds or fidelity contracts in favor of the United States.

(c) A company is not eligible for a certificate of authority if it only insures or reinsures risks of its parent, affiliated, or controlled unaffiliated business, or is deemed by Treasury to be primarily engaged in self-insurance.

■ 3. Revise § 223.2 to read as follows:

§ 223.2 Application for certificate of authority.

(a) *Application for issuance of certificate of authority.* Every company not currently holding a certificate of authority wishing to apply for a certificate of authority shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at *https://www.fiscal.treasury.gov/surety-bonds/*. The company shall file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(1) Payment of the application fee in accordance with the provisions of § 223.22;

(2) A written request for a certificate of authority, signed by an officer of the company. This request must indicate:

(i) Whether the company has previously applied for a certificate of authority from Treasury and, if so, the date and disposition of the previous application; and

(ii) Whether Treasury has ever previously issued the company a certificate of authority, the reason for termination of its certificate of authority, and the applicable dates;

(3) A certified copy of its charter or articles of incorporation showing that it is duly authorized to conduct the business referenced under 31 U.S.C. 9304(a)(2) and a statement from an officer of the company certifying that:

(i) The company is authorized to transact surety business; and

(ii) If granted a certificate of authority, there are no restrictions upon the company preventing it from being able to execute and guarantee bonds and undertakings in judicial proceedings, and guarantee contracts to which the United States is a party;

(4) A listing of the names of the company's current officers and directors as of the date of application, including a biographical affidavit of each officer and director per instructions online at *https://www.fiscal.treasury.gov/surety-bonds/*;

(5) A memorandum setting forth:

(i) A comprehensive statement of the company's method of operation, including, but not limited to, underwriting guidelines, claims adjustment procedures, reinsurance philosophy, control over collateral, and significant changes in operations or corporate structure that impact its financial statements;

(ii) The classes of business in which it engages;

(iii) Any special underwriting agreements, management agreements, or pooling agreements in force. Copies of such agreements must be included with the memorandum; and

(iv) Present plans of the company as to the types of Federal bonds it intends to write, the anticipated annual premium volume of the Federal bonds, and the geographical areas in which it intends to write the Federal bonds;

(6) A certified copy of a license from its state of incorporation and a completed Surety License Form (Form No. FS 2208);

(7) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(8) The National Association of Insurance Commissioners (NAIC) annual statement form with all Schedules and Exhibits completed, including copies of the NAIC File Upload, showing the last two full calendar years of the company's financial condition, including proof that the company has paid-up capital of at least $250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than $500,000 over and above all liabilities, in the case of a mutual insurance company. The annual financial statement's Jurat Page (only) is to be signed (facsimile or electronic signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(9) The Insurance Regulatory Information System (IRIS) ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC for the last two full calendar years preceding the date of application;

(10) A written statement signed by the Insurance Commissioner or other proper financial officer of any state attesting that the company maintains on deposit legal investments having a current market value of not less than $100,000 for the protection of claimants, including all of its policyholders in the U.S.;

(11) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) for the last two full calendar years preceding the date of application;

(12) Copies of all reinsurance treaties currently in force along with a completed Summary of Reinsurance Treaties, per instructions provided online at *https://www.fiscal.treasury.gov/surety-bonds/*;

(13) A completed Schedule of Excess Risks form (Form No. FS 285–A) as of the date of the application;

(14) A Statement of Actuarial Opinion as of the close of the last two full calendar years preceding the date of application provided by a qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC; and

(15) Such other evidence as Treasury may, in its discretion, request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Additionally, Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (a)(1) through (14) of this section.

(b) *Applications for renewal of certificate of authority.* Every company wishing to apply for the annual renewal of its certificate of authority shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at *https://www.fiscal.treasury.gov/surety-bonds/.* The company shall file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(1) Payment of the application fee in accordance with the provisions of § 223.22;

(2) A completed Surety License Form (Form No. FS 2208) and a certified copy of the licenses from any states indicated on the Surety License Form that were not indicated on the company's most recent form;

(3) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(4) A statement of its financial condition, as of the close of the preceding year, on the annual statement form of the NAIC with all Schedules and Exhibits completed, including copies of the NAIC File Upload, showing that it has paid-up capital of at least $250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than $500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile or electronic signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(5) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC, as of the close of the preceding year;

(6) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) as of the close of the preceding year;

(7) A completed Schedule of Excess Risks form (Form No. FS 285–A) as of the close of the preceding quarter;

(8) A Statement of Actuarial Opinion as of the close of the preceding year provided by a qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC;

(9) A listing of the names of the company's current officers and directors as of the close of the preceding year, including a biographical affidavit of any new officer and director for whom a biographical affidavit was not previously provided, per instructions online at *https://www.fiscal.treasury.gov/surety-bonds/*;

(10) A Report of Federal Business Written and/or Outstanding as of the close of the preceding year, per instructions provided online at *https://www.fiscal.treasury.gov/surety-bonds/*; and

(11) Such other evidence as Treasury may request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Additionally, Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (b)(1) through (10) of this section.

■ 4. Revise § 223.3 to read as follows:

§ 223.3 Issuance of certificates of authority.

(a) In determining whether to issue or renew a certificate of authority, Treasury will evaluate the whole application package under § 223.2, the financial condition of the company as determined under § 223.9, the history of the company, and any further evidence or information that Treasury may, in its discretion, require the company to submit.

(b) A certificate of authority will be effective for a term that expires on the last day of the next July. All statutory requirements and regulatory requirements under this part are continuing obligations, and any certificate issued is expressly subject to continuing compliance with such requirements. The certificate of authority will be renewed annually on the first day of August, *provided that* the company remains qualified under the law, the regulations in this part, and other relevant Treasury requirements, and the company submits the fee required under § 223.22 by March 1st of each year.

(c) If a company meets the requirements for a certificate of authority as an acceptable surety on Federal bonds in all respects except that it is limited to reinsurance business only, it may be issued a certificate of authority as a reinsuring company on Federal bonds. The fees for initial application and renewal of a certificate as a reinsuring company are the same as the fees for an initial application and renewal of a certificate of authority as an acceptable surety on Federal bonds.

§ 223.4 [Removed and Reserved]

■ 5. Remove and reserve § 223.4.

■ 6. Revise § 223.5 to read as follows:

§ 223.5 Business.

A company holding a certificate of authority, or its agent, may only execute (sign or otherwise validate) a surety bond in favor of the United States in a state where it is licensed to do surety business. It need not be licensed in the state or other area in which the principal resides or where the contract is to be performed. The term *other area* includes the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

§ 223.6 [Removed and Reserved]

■ 7. Remove and reserve § 223.6.

■ 8. Revise § 223.7 to read as follows:

§ 223.7 Notification of changes.

(a) Every company certified under this part or recognized as an admitted reinsurer pursuant to § 223.12(h) must notify Treasury of changes that have a significant impact on its financial statements or solvency during the term of such certification or admission. Paragraphs (a)(1) through (4) of this section are not intended to be an exhaustive list of all such changes that Treasury may require to be reported and may evaluate as part of its ongoing analysis of the company. Additionally, Treasury will publish supplemental guidance on additional information that may be required. Every company certified under this part or recognized as an admitted reinsurer pursuant to § 223.12(h) must notify Treasury of the following:

(1) *Capital changes.* Companies must forward to Treasury, when available, approvals by the insurance authorities of the company's state regulator when changes in paid-up capital or contributions or withdrawals to surplus have occurred;

(2) *Changes in stock ownership.* Stock insurance companies must provide a statement signed and sworn to by the Secretary or Assistant Secretary and by the Treasurer or Assistant Treasurer of the company each time any person (whether an individual, corporation, or organization of any kind) becomes owner of more than 5 percent of any class of outstanding stock issued by the company;

(3) *Mergers, transfer, assumption, and group/pool restructuring.* Companies must notify Treasury at least six months prior to any merger, consolidation, transfer, assumption, material group or pool restructuring, or name changes in which the reporting company is involved. The company must furnish to Treasury copies or agreements or documents pertaining to the same, as approved by the insurance authorities of the company's state regulator; and

(4) *Charters and bylaws amendments.* Whenever a company amends its charter or bylaws it must submit a certified copy of the amended charter or bylaws to Treasury.

(b) Noncompliance with this section may result in Treasury denying a company's application for its certificate of authority, its recognition as an admitted reinsurer, renewal of its certificate of authority, or renewal of its recognition as an admitted reinsurer; or in Treasury revoking a company's certificate of authority or recognition as an admitted reinsurer.

■ 9. Revise § 223.8 to read as follows:

§ 223.8 Quarterly financial reporting requirements.

Every company certified under this part is required to file the following each quarter with Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at *https://www.fiscal.treasury.gov/surety-bonds/*:

(a) A statement of its financial condition, as of the close of the preceding quarter, on the quarterly statement form of the NAIC with all Schedules and Exhibits completed, including copies of the NAIC File Upload, showing that it has paid-up capital of at least $250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than $500,000 over and above all liabilities, in the case of a mutual insurance company. The Quarterly Financial Statement's Jurat Page (only) is to be signed (facsimile or electronic signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(b) A completed Schedule of Excess Risks form (Form No. FS 285–A) as of the close of the preceding quarter;

(c) A Report of Federal Business Written and/or Outstanding as of the close of the preceding quarter, per instructions provided online at *https://www.fiscal.treasury.gov/surety-bonds/*;

(d) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(e) A listing of the names of the company's current officers and directors as of the close of the preceding quarter, including a biographical affidavit of each new officer and director per instructions online at *https://www.fiscal.treasury.gov/surety-bonds/*; and

(f) Such other evidence as Treasury may request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Additionally, Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (a) through (e) of this section along with the due dates for quarterly reporting.

■ 10. Revise § 223.9 to read as follows:

§ 223.9 Determination of financial condition and other required information.

In determining the financial condition of every company applying for a certificate of authority or renewal of a certificate of authority under this part, Treasury will generally compute the company's assets and liabilities in accordance with paragraphs (a) through (f) of this section, provided that Treasury may exercise discretion in valuing the assets and liabilities of such companies. While paragraphs (a) through (f) specify how Treasury will value certain classes of assets and liabilities and the analysis that Treasury will perform, they are not intended to be an exhaustive list of all assets and liabilities that Treasury may require to be reported and may evaluate as part of this analysis. Additionally, Treasury will annually publish supplemental guidance on the financial analysis performed by Treasury, including applicable ratios and acceptable ranges for ratios.

(a) *Assets*—(1) *General criteria for admissibility.* The cash capital and other funds included in the financial statement must be safely invested in accordance with the laws of the state in which the company is incorporated. Admissible assets must be reported in U.S. Dollars and are generally limited to investments in cash, cash equivalents, short term investments, mortgage loans (within certain limits), and real property necessary for the conduct of a company's business. In cases where an investment (other than U.S. Government securities and securities of affiliates or subsidiaries) exceeds 10 percent of the total admitted assets, Treasury may require additional supporting documentation as needed on a case-by-case basis in order for the asset to be admissible. Additionally, Treasury considers normal account balances (such as, but not limited to, investment income due and accrued, agents' balances and premiums receivables, reinsurance recoverables on paid losses, and funds held by or deposited with ceding reinsuring companies) to be admissible provided they meet Treasury's standards. In order to be admissible, normal account balances may be evaluated for transactional substance, quality, and liquidity. Some assets that may be admissible under codification and/or certain state permitted practices may require supporting documentation as needed on a case-by-case basis in order to be admissible under Treasury's criteria. Assets resulting from reinsurance transactions must meet the credit for reinsurance standards listed under paragraph (c) of this section.

(2) *Securities.* Bonds, unaffiliated common stocks, and unaffiliated preferred stocks must be valued and reported in accordance with the NAIC's Accounting Practices and Procedures Manual (as updated or amended from time to time) and the NAIC Securities Valuation Office (SVO). Those with an investment grade designation will be admissible and those with a non-investment grade designation will be considered on a case-by-case basis.

(i) *All other securities.* The value of all other securities should be valued as of December 31 and reported in U.S. Dollars. For securities that do not have a SVO designation or have a SVO non-investment grade designation and are significant for Treasury purposes, Treasury may consider, if it deems appropriate, other relevant data (*e.g.,* prospectus, marketability/liquidity information, internal investment strategies/philosophies) and perform an analysis to determine whether the securities meet Treasury's criteria for admissibility.

(ii) *Securities of controlled companies.* Investments in subsidiaries, controlled entities, and affiliated entities must be reported in accordance with the NAIC Accounting Practices and Procedures Manual (as updated or amended from time to time).

(A) *Other insurance companies.* Companies owning securities of other insurance companies, which are under the same direction and control as the reporting company, must furnish copies of the NAIC File Upload of the subsidiaries. The assets of these subsidiaries will be analyzed according to the criteria set forth in this section.

(B) *Non-insurance companies.* Companies owning securities of non-insurance companies, which are under the same direction and control as the reporting company, must furnish copies of independently audited financial statements of such companies as of the reporting date.

(3) *Real estate and mortgages.* Only real estate essential to the operating needs of the company for conducting its business, and conventional first mortgage loans on unencumbered, improved, or productive real estate located within the United States, are admissible. These must be reported in accordance with the NAIC's Accounting Practices and Procedures Manual (as updated or amended from time to time). The real estate and mortgaged property must be supported by an appraisal report that includes the information and computations normally used in arriving at a competent appraised value. In instances where the aggregate values exceed 20 percent of the policyholders' surplus, Treasury may, if it deems appropriate, require additional supporting documentation.

(b) *Minimum bail reserve requirements.* Companies transacting surety bail business must submit a schedule showing bail premiums in force, bail liability, and the amount of any associated unearned premium reserve.

(c) *Reinsurance.* (1) Companies are required to submit Treasury Schedule F (Treasury Form No. TFS 6314) reflecting information in the company's annual statements. Credit for reinsurance may be taken (to the extent specified in the referenced provisions of § 223.12) for reinsurance in all classes of risk provided that it is ceded to the following companies:

(i) Companies holding a current certificate of authority from Treasury;

(ii) U.S. domiciled non-Treasury certified or recognized parents, subsidiaries, and/or affiliates if Treasury determines that the parent, subsidiary, and/or affiliate is financially solvent;

(iii) Admitted reinsurers as defined under § 223.12(h);

(iv) Complementary reinsurers as defined under § 223.12(i);

(v) Alien reinsurers as defined under § 223.12(j), up to the extent credit is allowed for reinsurance ceded to the alien reinsurer by the ceding company's state of domicile (subject to paragraph (c)(3) of this section); and

(vi) An instrumentality or agency of the United States that is permitted by Federal law or regulation to execute reinsurance contracts.

(2) Treasury may give credit for reinsurance not covered in paragraph (c)(1) of this section, to the extent of funds withheld or letters of credit or trust agreements from such reinsurers, provided the company advises Treasury and provides sufficient documentation of the amount of funds held, letters of credit posted or funds secured in trust for each company. Treasury may also give credit for trust account assets associated with multi-beneficiary trust agreements established and maintained in the United States by overseas accredited or trusteed reinsurers listed online at *https://www.fiscal.treasury.gov/surety-bonds/,* to the extent the relevant ceded business is covered by these trust account assets.

(3) If, after its review of the financial documentation submitted by an alien reinsurer recognized pursuant to § 223.12(j) and of the financial documentation submitted by the ceding company, Treasury determines that either company may be unable to carry out its obligations, Treasury may require additional collateral for the ceding company to receive credit for reinsurance to the extent credit is given for reinsurance ceded to the alien reinsurer by the ceding company's state of domicile.

(d) *Risk based capital (RBC).* Treasury uses RBC in determining the financial solvency of companies, together with such companies' overall financial results, ratios, and trends. Companies must maintain RBC results that fall within acceptable ranges as established by the NAIC or provide a satisfactory explanation for results that do not.

(e) *Financial ratios.* Treasury uses the NAIC IRIS ratios to measure companies' solvency, profitability, and liquidity. Companies must maintain results for these ratios that fall within acceptable ranges as established by the NAIC or provide a satisfactory explanation for results that do not.

(f) *Financial results and trends.* Treasury analyzes financial results from annual and quarterly financial statements required under this part for evidence of negative financial results or trends. Treasury may require companies to submit additional documentation or explanation regarding financial statements with evidence of negative financial results or trends such as decreasing policyholders' surplus, large underwriting losses, negative cashflows, or unsatisfactory IRIS ratio results.

(g) *Noncompliance.* Noncompliance with paragraphs (a) through (f) of this section may result in Treasury denying a company's application for its certificate of authority, or renewal of its certificate, or in Treasury revoking a company's certificate.

■ 11. Revise § 223.10 to read as follows:

§ 223.10 Limitation of risk.

(a) Except as provided in § 223.11, no company holding a certificate of authority shall underwrite any single risk on any bond or policy on behalf of any individual, firm, association, or corporation, whether or not the United States is interested as a party thereto, the amount of which is greater than 10 percent of the paid-up capital and surplus of such company, as determined by Treasury. Such figure (*i.e.,* 10 percent of a company's paid-up capital and surplus as determined by Treasury) is hereinafter referred to as the underwriting limitation. For purposes of this part, *single risk* means the total risk under one bond or policy regardless of the number of individual risks under that bond or policy.

(b) In determining the underwriting limitation, the full penalty of any surety and fidelity obligation will be regarded as the liability, and no offset will be allowed on account of any estimate of risk that is less than such full penalty, except in the following cases:

(1) Appeal bonds; in which case the liability will be regarded as the amount of the judgment appealed from, plus 10 percent of said amount to cover interest and costs;

(2) Bonds of executors, administrators, trustees, guardians, and other fiduciaries, where the penalty of the bond or other obligation is fixed in excess of the estimated value of the estate; in which cases the estimated value of the estate, upon which the penalty of the bond was fixed, will be regarded as the liability;

(3) Indemnifying agreements executed by sole heirs or beneficiaries of an estate releasing the surety from liability;

(4) Contract bonds given in excess of the amount of the contract; in which cases the amount of the contract will be regarded as the liability; or

(5) Bonds for banks or trust companies as principals, conditioned to repay moneys on deposit, whereby pursuant to any law or decree of a court, the amount to be deposited shall be less than the penalty of the bond; in which cases the maximum amount on deposit at any one time will be regarded as the liability.

■ 12. Revise § 223.11 to read as follows:

§ 223.11 Limitation of risk: Protective methods.

In the case of risks otherwise in excess of a company's limitation of risk prescribed in § 223.10, compliance may be achieved by the following methods:

(a) *Coinsurance.* Two or more companies holding a certificate of authority may underwrite a single risk on any bond or policy, the amount of which does not exceed their aggregate underwriting limitations. Each company must limit its liability upon the face of the bond or policy to an amount which must be within its respective underwriting limitation.

(b) *Reinsurance*—(1) *Bonds running to the United States.* (i) With respect to all bonds running to the United States to the extent that its excess liability is not addressed through another protective method specified in this section, a company writing such bonds must reinsure liability in excess of the underwriting limitation with one or more companies holding a certificate of authority from Treasury within 45 days from the date of execution and delivery of the bond. Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company. Federal agencies may accept a bond from the direct writing company in satisfaction of the total bond requirement even though it may exceed the direct writing company's underwriting limitation. Within the 45-day period, the direct writing company shall furnish to the Federal agency any requested reinsurance agreements. However, a Federal agency may, in its discretion, require that the direct writing company obtain reinsurance within a lesser period than 45 days, and may require the direct writing company to provide completely executed reinsurance agreements before making a final determination that any bond is acceptable.

(ii) For bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 3131, as amended), in addition to complying with the requirements of paragraph (b)(1)(i) of this section, the direct writing company must execute the following reinsurance agreement forms: Standard Form 273 (Reinsurance Agreement for a Bonds Statute Performance Bond), Standard Form 274 (Reinsurance Agreement for a Bonds Statute Payment Bond), and Standard Form 275 (Reinsurance Agreement in Favor of the United States). These forms are available on the General Services Administration website at *www.gsa.gov.*

(2) *Bonds not running to the United States.* A company holding a certificate of authority from Treasury writing risks covered by bonds or policies not running to the United States, to the extent that its excess liability is not addressed through another protective method specified in this section, must reinsure liability in excess of its underwriting limitation within 45 days from the date of execution and delivery of the bond or policy with any of:

(i) One or more companies holding a certificate of authority from Treasury;

(ii) One or more companies recognized as a reinsurer in accordance with § 223.12, except for any reinsurer who is required by a U.S. state to post 100 percent collateral;

(iii) A pool, association, etc., to the extent that it is composed of such companies; or

(iv) An instrumentality or agency of the United States that is permitted by Federal law or regulation to execute reinsurance contracts.

(3) *Limitation.* No certificate-holding company may cede to a reinsuring company recognized under § 223.12 any single risk in excess of 10 percent of the latter company's paid-up capital and surplus.

(c) *Other methods.* With respect to all risks other than bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 3131, as amended), which must be either coinsured or reinsured in accordance with paragraph (a) or (b)(1)(ii) of this section respectively, the excess liability may be protected:

(1) By the deposit with the company in pledge, or by conveyance to it in trust for its protection, of assets admitted by Treasury, the current market value of which is at least equal to the liability in excess of its underwriting limitation. Treasury may, on a case-by-case basis, consider a letter of credit provided by a financial institution to be adequate security under this paragraph (c) if Treasury can verify that the assets referenced in the letter of credit are pledged exclusively to secure the excess risk, and if the letter of credit meets other requirements Treasury might prescribe. Assets used to protect excess liability pursuant to this paragraph (c) cannot also be used to obtain credit for reinsurance pursuant to § 223.9(c).; or

(2) If such obligation was incurred on behalf of or on account of a fiduciary holding property in a trust capacity, by a joint control agreement providing that the whole or a sufficient portion of the property so held may not be disposed of or pledged in any way without the consent of the insuring company.

■ 13. Revise § 223.12 to read as follows:

§ 223.12 Recognition as reinsurer.

(a) *Use of recognized reinsurers.* Companies holding a certificate of authority may:

(1) Receive credit for reinsurance ceded to a reinsurer recognized pursuant to this section, as described in § 223.9(c); and

(2) Protect liability in excess of their underwriting limit on risks not running to the United States by reinsuring excess liability with a reinsurer recognized pursuant to this section.

(b) *Application.* Every company applying for recognition by Treasury as one of the categories of reinsurers in paragraphs (c) through (j) of this section, or annual renewal of such recognition, shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at *https://www.fiscal.treasury.gov/surety-bonds/.* The applicant company must submit the documentation and must meet the requirements as outlined in this section and in supplemental guidance published by Treasury on its website.

(c) *Treasury recognition.* Recognition by Treasury will be effective for a term that expires on the last day of the following October. A list of reinsuring companies so recognized by Treasury will be published online at *https://www.fiscal.treasury.gov/surety-bonds/.*

(d) *Notice to Treasury.* Each company recognized pursuant to this section shall immediately notify Treasury if a U.S. state takes action to suspend or revoke the company's license or its status or eligibility as an Accredited Reinsurer, Certified Reinsurer, or Reciprocal Jurisdiction Reinsurer, or if the company notifies a U.S. state that a supervisory authority in its domiciliary jurisdiction takes regulatory action against it for serious noncompliance with applicable law (as determined by the supervisory authority in its domiciliary jurisdiction).

(e) *Eligibility.* A company is not eligible for recognition under this section if it only insures or reinsures risks of its parent, affiliated, or controlled unaffiliated business, or is deemed by Treasury to be primarily engaged in self-insurance.

(f) *Guidance.* Treasury may issue supplemental guidance regarding the timing, form, content, and its analysis of the submissions required pursuant to this section. Such guidance will be posted on its website.

(g) *Noncompliance.* Noncompliance with the requirements of this section may result in a company's application for recognition, or for renewal of its recognition, being denied.

(h) *Admitted reinsurers*—(1) *Application for recognition by U.S. company.* Any company organized under the laws of the United States or of any state thereof, wishing to apply for recognition as an admitted reinsurer of surety companies doing business with the United States, shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at *https://www.fiscal.treasury.gov/surety-bonds/.* The company shall file the following data with Treasury and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) Payment of the application fee in accordance with the provisions of § 223.22;

(ii) A written request for recognition as an admitted reinsurer, signed by an officer of the company. This request must indicate:

(A) The reason for applying for recognition;

(B) Whether the company has ever previously applied for recognition as an admitted reinsurer, whether Treasury approved the application, and the applicable dates; and

(C) If Treasury previously approved the company for recognition as an admitted reinsurer, the reason for termination of its recognition and the applicable date;

(iii) A certified copy of its charter or articles of incorporation with all amendments as of the date of application showing the legal name of the company and that it is authorized to write reinsurance;

(iv) A listing of the names of the company's current officers and directors as of the date of application, including a biographical affidavit of each officer and director per instructions online at *https://www.fiscal.treasury.gov/surety-bonds/;*

(v) A certified copy of a license from any one state in which it has been authorized to do business showing its authority to write reinsurance and/or other lines of insurance;

(vi) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(vii) Annual statements of its financial condition, as of the close of the last two full years preceding the date of application, on the annual statement form of the NAIC with all Schedules and Exhibits completed, including copies of the NAIC File Upload, showing that it has paid-up capital of at least $250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than $500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(viii) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC for the last two years preceding the date of application;

(ix) A memorandum setting forth the company's method of operation, including lines of business written, the company's underwriting and claims philosophy, and significant changes in the company's operations or corporate structure that impact its financial statements;

(x) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) for two years preceding the date of application;

(xi) A Statement of Actuarial Opinion as of the close of the last two years preceding the date of application provided by a qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC; and

(xii) Such other evidence as Treasury may request to establish that the company is solvent and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (h)(1)(i) through (xi) of this section.

(2) *Application by a U.S. branch.* A U.S. branch of a non-U.S. company applying for recognition as an admitted reinsurer must file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) The submissions listed in paragraphs (h)(1)(i) through (xii) of this section, except that the financial statement of such branch shall show that it has net assets of not less than $250,000 over and above all liabilities; and

(ii) Evidence satisfactory to Treasury to establish that it has on deposit in the United States not less than $250,000 available to its policyholders and creditors in the United States.

(3) *Application for renewal of recognition as an admitted reinsurer.* Any company recognized pursuant to paragraph (h)(1) or (2) of this section wishing to apply for renewal of its recognition shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at *https://www.fiscal.treasury.gov/surety-bonds/.* The company must file the following data with Treasury and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) Payment of the application fee in accordance with the provisions of § 223.22;

(ii) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(iii) Annual statements of its financial condition, as of the close of the preceding year, on the annual statement form of the NAIC with all Schedules and Exhibits completed, including copies of the NAIC File Upload, showing that it has paid-up capital of at least $250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than $500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(iv) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC as of the close of the preceding year;

(v) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) as of the close of the preceding year;

(vi) A Statement of Actuarial Opinion as of the close of the preceding year provided by a qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC;

(vii) A listing of the names of the company's current officers and directors as of the close of the preceding year, including a biographical affidavit of each new officer and director per instructions online at *https://www.fiscal.treasury.gov/surety-bonds/;* and

(viii) Such other evidence as Treasury may request to establish that the company is solvent and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (h)(3)(i) through (vii) of this section.

(i) *Complementary reinsurers.* Any company may apply for recognition as a complementary reinsurer or annual renewal of such recognition provided the company is licensed to write reinsurance by and has its head office in (or is domiciled in) a non-U.S. jurisdiction that is subject to an in-force Covered Agreement entered into with the United States pursuant to 31 U.S.C. 313–314, which Covered Agreement addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in a U.S. state or for allowing the ceding insurer to recognize credit for reinsurance. To obtain recognition as a complementary reinsurer, the company must submit to Treasury the fee in accordance with the provisions of § 223.22 and must:

(1) Meet and maintain all capital and surplus, solvency, and market conduct requirements under the applicable Covered Agreement;

(2) Be recognized by at least one U.S. state as a Reciprocal Jurisdiction Reinsurer, as defined by the state's credit for reinsurance law or regulation based on the NAIC's Credit for Reinsurance Model Law and Regulation, and submit proof of such recognition; and

(3) Submit to Treasury:

(i) For initial applications for recognition, all information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the two most recently completed calendar years.

(ii) For applications for renewal of recognition, all semi-annual and annual filing information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the most recently completed calendar year.

(iii) Payment of the application fee in accordance with the provisions of § 223.22.

(j) *Alien reinsurers.* Any company may apply for recognition or annual renewal of such recognition as an alien reinsurer, provided it is licensed to write reinsurance by, and has its head office or domicile in, a non-U.S. jurisdiction that is recognized by a U.S. state as a Qualified Jurisdiction or as a Reciprocal Jurisdiction, provided that the Reciprocal Jurisdiction is not party to an in-force Covered Agreement as described in paragraph (i) of this section. Treasury may also consider, if it deems appropriate, the lists of Qualified and Reciprocal Jurisdictions most recently published through the relevant NAIC committee when determining a company's eligibility for recognition pursuant to this paragraph (j). To obtain such recognition, the company must submit to Treasury the fee in accordance with the provisions of § 223.22 and must:

(1) Be recognized by at least one U.S. state as an ''Accredited Reinsurer,'' ''Certified Reinsurer,'' or a ''Reciprocal Jurisdiction Reinsurer,'' as defined by the state's credit for reinsurance law or regulation based on the NAIC's Credit for Reinsurance Model Law and Regulation, and submit proof of such recognition;

(2) Meet and maintain all capital and surplus, market conduct, and other requirements for eligibility as an ''Accredited Reinsurer,'' ''Certified Reinsurer,'' or ''Reciprocal Jurisdiction Reinsurer'' in accordance with the law and regulation of all U.S. states granting it such recognition; and

(3) Submit to Treasury:

(i) For initial applications for recognition, all information provided to any U.S. state regulator in the two most recently completed calendar years.

(ii) For applications for renewal of such recognition, all annual filing information provided to any U.S. state regulator in the most recently completed calendar year.

(iii) Payment of the application fee in accordance with the provisions of § 223.22.

§ 223.13 [Removed and Reserved]

■ 14. Remove and reserve § 223.13.

§ 223.14 [Removed and Reserved]

■ 15. Remove and reserve § 223.14.

■ 16. Revise § 223.15 to read as follows:

§ 223.15 Paid-up capital and surplus for Treasury rating purposes; how determined.

Treasury determines the amount of paid-up capital and surplus of any company holding or seeking a certificate of authority or recognized (or seeking recognition) as an admitted reinsurer pursuant to § 223.12(h) on an insurance accounting basis under the regulations in this part, from the company's financial statements and other information, or by such examination of the company at its own expense as Treasury may deem appropriate.

■ 17. Amend § 223.16 by revising the first three sentences to read as follows:

§ 223.16 List of certificate holding companies.

A list of certificate holding companies is published annually as of August 1 in Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, with information as to underwriting limitations, areas in which listed sureties are licensed to transact surety business, and other details. If Treasury shall take any exceptions to the financial statements submitted by a company or other information pertinent to the company's financial solvency, before issuing Department Circular 570, Treasury shall give a company due notice of such exceptions. Copies of the Circular are available at *https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html,* or from the Surety Bonds Program, upon request. * * *

■ 18. Amend § 223.17 by revising paragraphs (b)(1)(iii) and (iv) to read as follows:

§ 223.17 Acceptance and non-acceptance of bonds.

* * * * *

(b) * * *

(1) * * *

(iii) Provide the company with an opportunity to rebut the stated reasons or cause; and

(iv) Provide the company with an opportunity to cure the stated reasons or cause.

* * * * *

■ 19. Amend § 223.18 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 223.18 Revocation.

(a) Treasury may initiate a revocation proceeding against a Treasury-certified company in one of two ways:

(1) Treasury, of its own accord, under § 223.19, may initiate revocation proceedings against the company when it has reason to believe that the company is not complying with 31 U.S.C. 9304–9308 and/or the regulations under this part; or

* * * * *

■ 20. Amend § 223.19 by revising the introductory text and paragraph (b)(2) to read as follows:

§ 223.19 Treasury-initiated revocation proceedings.

Whenever Treasury has reason to believe that a company is not complying with the requirements of 31 U.S.C. 9304–9308 and/or the regulations under this part, including but not limited to a failure to satisfy corporate and financial standards, Treasury shall:

* * * * *

(b) * * *

(2) The company responded, was provided an opportunity to demonstrate or achieve compliance, and failed to do so.

■ 21. Amend § 223.20 by revising paragraphs (b)(1) and (h)(8) and (9) to read as follows:

§ 223.20 Revocation proceedings initiated by Treasury upon receipt of an agency complaint.

* * * * *

(b) * * *

(1) The agency has determined, consistent with agency authorities, the principal is in default on the obligation covered by the bond. Alternatively, if the default has been litigated, documentation indicating a court of competent jurisdiction has determined the principal is in default;

* * * * *

(h) * * *

(8) The formal adjudication standards under the Administrative Procedure Act, 5 U.S.C. 554, 556, and 557, do not apply to the informal hearing or adjudication process.

(9) Treasury may promulgate additional procedural guidance governing the conduct of informal hearings.

* * * * *

■ 22. Revise § 223.21 to read as follows:

§ 223.21 Reinstatement.

If, after one year from the date that Treasury notifies the company of its decision to decline to renew or revoke the certificate of authority of a company under this part, the company can demonstrate that the basis for the non-renewal or revocation has been cured, as determined by Treasury in its discretion, and that it can comply with, and does meet, all continuing requirements for certification under 31 U.S.C. 9304–9308 and this part, the company may submit an application to Treasury for reinstatement or reissuance of a certificate of authority, which will be granted without prejudice if all such requirements are met. Treasury may waive the one year waiting period for good cause shown, as determined by Treasury in its sole discretion.

■ 23. Revise § 223.22 to read as follows:

§ 223.22 Fees for service of the Treasury Department.

(a) Fees shall be imposed and collected, for the services listed in paragraphs (a)(1) through (6) of this section that are performed by Treasury, regardless of whether the action requested is granted or denied. An online payment portal is provided at *https://www.fiscal.treasury.gov/surety-bonds/.* The amount of the fee will be based on which of the following categories of service is requested:

(1) Examination of a company's application for a certificate of authority as an acceptable surety on Federal bonds or for a certificate of authority as an acceptable reinsuring company on such bonds (see § 223.2(a));

(2) Examination of a company's application for recognition as an admitted reinsurer of surety companies doing business with the United States (see § 223.12(h));

(3) Examination of a company's application for recognition as a complementary reinsurer of surety companies doing business with the United States (see § 223.12(i));

(4) Examination of a company's application for recognition as an alien reinsurer of surety companies doing business with the United States (see § 223.12(j));

(5) Determination of a company's continuing qualifications for annual renewal of its certificate of authority (see § 223.2(b)); or

(6) Determination of a company's continuing qualifications for annual renewal of its recognition as an admitted reinsurer, complementary reinsurer, or alien reinsurer (see § 223.12).

(b) In a given year a uniform fee will be collected from every company requesting a particular category of service, *e.g.,* determination of a company's continuing qualifications for annual renewal of its certificate of authority. However, Treasury reserves the right to redetermine the amounts of fees annually. Fees are determined in accordance with Office of Management and Budget Circular A–25, as amended.

(c) Specific fee information may be obtained from the Surety Bonds Program, or online at *https://www.fiscal.treasury.gov/files/surety-bonds/user-fees.pdf.* In addition, a notice of the amount of a fee referred to in paragraphs (a)(1) through (6) of this section will be published in the **Federal Register** as each change in such fee is made.

By the Department of the Treasury.

David Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2024–12491 Filed 6–7–24; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 95, 96, and 97

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing three general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 95, 96, and 97, each of which was previously made available on OFAC's website.

DATES: GLs 94, 95, and 96 were issued on May 1, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On May 1, 2024, OFAC issued GLs 95, 96, and 97 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. GL 95 and GL 96 both have an expiration date of July 30, 2024; GL 97 has an expiration date of June 17, 2024. Each GL was made available on OFAC's website (*https://ofac.treasury.gov/*) at the time of publication. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 95

Authorizing Civil Aviation Safety and Wind Down Transactions Involving Limited Liability Company Aviakompaniya Pobeda

(a) Except as provided in paragraph (c), all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the provision, exportation, or reexportation of goods, technology, or services to ensure the safety of civil aviation involving Limited Liability Company Aviakompaniya Pobeda are authorized through 12:01 a.m. eastern daylight time, July 30, 2024, provided that the goods, technology, or services that are provided, exported, or reexported are for use on aircraft operated solely for civil aviation purposes.

(b) Except as provided in paragraph (c) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the wind down of any transaction involving Limited Liability Company Aviakompaniya Pobeda are authorized through 12:01 a.m. eastern daylight time, July 30, 2024, provided that any payment to Limited Liability Company Aviakompaniya Pobeda must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than Limited Liability Company Aviakompaniya Pobeda, unless separately authorized.

Note to General License 95. Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies, including export, reexport, and transfer (in-country) licensing requirements maintained by the Department of Commerce's Bureau of Industry and Security under the Export Administration Regulations, 15 CFR parts 730–774.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: May 1, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 96

Authorizing Limited Safety and Environmental Transactions Involving Certain Blocked Persons or Vessels

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to one of the following activities involving the blocked persons described in paragraph (b) are authorized through 12:01 a.m. eastern daylight time, July 30, 2024, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR):

(1) The safe docking and anchoring in port of any vessels in which any person listed in paragraph (b) of this general license has a property interest (the ''blocked vessels'');

(2) The preservation of the health or safety of the crew of any of the blocked vessels; or

(3) Emergency repairs of any of the blocked vessels or environmental mitigation or protection activities relating to any of the blocked vessels.

(b) The authorization in paragraph (a) of this general license applies to the following blocked persons listed on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List and any entity in which any of the following persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest:

(1) Red Box Energy Services PTE LTD;

(2) CFU Shipping Co Limited;

(3) Transstroy Limited Liability Company

(c) This general license does not authorize:

(1) The entry into any new commercial contracts involving the property or interests in property of any blocked persons, including the blocked entities described in paragraph (b) of this general license, except as authorized by paragraph (a);

(2) The offloading of any cargo onboard any of the blocked vessels, including the offloading of crude oil or petroleum products of Russian Federation origin, except for the offloading of cargo that is ordinarily incident and necessary to address vessel emergencies authorized pursuant to paragraph (a) of this general license;

(3) Any transactions related to the sale of crude oil or petroleum products of Russian Federation origin;

(4) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;

(5) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*; or

(6) Any transactions otherwise prohibited by the RuHSR, including transactions involving the property or interests in property of any person blocked pursuant to the RuHSR, other than transactions involving the blocked persons described in paragraph (b) of this general license, unless separately authorized.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: May 1, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 97

Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on May 1, 2024

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of any transaction involving one or more of the following blocked entities are authorized through 12:01 a.m. eastern daylight time, June 17, 2024, provided that any payment to a blocked person is made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR):

(1) LLC Sibcapital;

(2) Yantai Iray Technology Co Ltd; or

(3) Any entity in which one or more one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: May 1, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2024–12312 Filed 6–7–24; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 8I, 13I, and 94

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing three general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 8I, 13I, and 94, each of which was previously made available on OFAC's website.

DATES: GL 13I was issued on April 12, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On April 12, 2024, OFAC issued GL 13I to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR). GL 13I replaced and superseded GL 13H and has an expiration date of July 11, 2024. On April 19, 2024, OFAC issued GL 94, also authorizing certain transactions otherwise prohibited by the RuHSR. On April 29, 2024, OFAC issued GL 8I, also authorizing certain transactions otherwise prohibited by the RuHSR. GL 8I replaced and superseded GL 8H and has an expiration date of November 1, 2024. Each GL was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 8I

Authorizing Transactions Related to Energy

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 involving one or more of the following entities that are related to energy are authorized, through 12:01 a.m. eastern daylight time, November 1, 2024:

(1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(2) Public Joint Stock Company Bank Financial Corporation Otkritie;

(3) Sovcombank Open Joint Stock Company;

(4) Public Joint Stock Company Sberbank of Russia;

(5) VTB Bank Public Joint Stock Company;

(6) Joint Stock Company Alfa-Bank;

(7) Public Joint Stock Company Rosbank;

(8) Bank Zenit Public Joint Stock Company;

(9) Bank Saint-Petersburg Public Joint Stock Company;

(10) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest; or

(11) the Central Bank of the Russian Federation.

(b) For the purposes of this general license, the term ''related to energy'' means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 1A under E.O. 14024, *Prohibitions Related to Certain Sovereign Debt of the Russian Federation;*

(2) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(3) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation; or

(4) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(d) Effective April 29, 2024, General License No. 8H, dated October 25, 2023, is replaced and superseded in its entirety by this General License No. 8I.

Note to General License No. 8I. This authorization is valid until November 1, 2024, unless renewed.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: April 29, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 13I

Authorizing Certain Administrative Transactions Prohibited by Directive 4 Under Executive Order 14024

(a) Except as provided in paragraph (b) of this general license, U.S. persons, or entities owned or controlled, directly or indirectly, by a U.S. person, are authorized to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, certifications, or tax refunds to the extent such transactions are prohibited by Directive 4 under Executive Order 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation,* provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation of such U.S. persons or entities, through 12:01 a.m. eastern daylight time, July 11, 2024.

(b) This general license does not authorize:

(1) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(2) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

(c) Effective April 12, 2024, General License No. 13H, dated January 18, 2024, is replaced and superseded in its entirety by this General License No. 13I.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: April 12, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

Ukraine-/Russia-Related Sanctions Regulations

31 CFR Part 589

GENERAL LICENSE NO. 94

Authorizing Transactions Involving OWH SE i.L. (Formerly Known as VTB Bank Europe SE)

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR) or the Ukraine-/Russia-Related Sanctions Regulations, 31 CFR part 589 (URSR), involving OWH SE i.L. (formerly known as VTB Bank Europe SE), or any entity in which OWH SE i.L. owns, directly or indirectly, a 50 percent or greater interest (''OWH SE i.L. Entities''), are authorized.

(b) All property and interests in property of OWH SE i.L. Entities are unblocked.

(c) This general license does not authorize any transactions otherwise prohibited by the RuHSR or the URSR, including transactions involving any person blocked pursuant to the RuHSR or the URSR, other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: April 19, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2024–12308 Filed 6–7–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 594

Publication of Global Terrorism Sanctions Regulations Web General License 28

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Global Terrorism Sanctions Regulations: GL 28, which was previously made available on OFAC's website.

DATES: GL 28 was issued on February 16, 2024.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On February 16, 2024, OFAC issued GL 28 to authorize certain transactions otherwise prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594. GL 28 was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. The text of this GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

GENERAL LICENSE NO. 28

Authorizing Transactions for Third-Country Diplomatic and Consular Missions Involving Ansarallah

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, that are ordinarily incident and necessary to the official business of third-country diplomatic or consular missions to Yemen are authorized.

(b) This general license does not authorize:

(1) Financial transfers to any blocked person described in paragraph (a) of this general license, other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services; or

(2) Any transactions otherwise prohibited by the GTSR, including transactions involving any person blocked pursuant to the GTSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: February 16, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2024–12332 Filed 6–7–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 594 and 597

Publication of Global Terrorism Sanctions Regulations and Foreign Terrorist Organization Sanctions Regulations Web General Licenses 9, 10, 11, 12, and 13

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing five general licenses (GLs) issued pursuant to the Global Terrorism Sanctions Regulations and the Foreign Terrorist Organization Sanctions Regulations: GLs 9, 10, 11. 12, and 13, each of which was previously made available on OFAC's website.

DATES: GL 9 was issued on January 19, 2021. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On January 19, 2021, OFAC issued GLs 9, 10, 11, and 12 to authorize certain transactions otherwise prohibited by Global Terrorism Sanctions Regulations, 31 CFR part 594 (the GTSR), the Foreign Terrorist Organization Sanctions Regulations, 31 CFR part 597 (the FTOSR), and Executive Order (E.O.) 13224 of September 23, 2001 ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'' (66 FR 49079, September 25, 2001), as amended. On January 25, 2021, OFAC issued GL 13, also to authorize certain transactions otherwise prohibited by the GTSR, the FTOSR, and E.O. 13224, as amended. Each GL was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. Each of these GLs was revoked on February 16, 2021 upon the U.S. Department of State's revocation of the designation of Ansarallah. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

Foreign Terrorist Organizations Sanctions Regulations

31 CFR Part 597

Executive Order 13224 of September 23, 2001

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism, as Amended

GENERAL LICENSE NO. 9

Official Business of the United States Government

(a) Except as provided in paragraph (b) of this general license, all transactions and activities involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), the Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (FTOSR), or Executive Order (E.O.) 13224, as amended, that are for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof are authorized.

(b) This general license does not authorize any transactions or activities otherwise prohibited by the GTSR, the FTOSR, or any other part of 31 CFR chapter V, or E.O. 13224, as amended, or any transactions or activities with any blocked persons other than the blocked persons identified in paragraph (a) of this general license.

Dated: January 19, 2021.

Andrea Gacki,

Director, Office of Foreign Assets Control.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

Foreign Terrorist Organizations Sanctions Regulations

31 CFR Part 597

Executive Order 13224 of September 23, 2001

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism, as Amended

GENERAL LICENSE NO. 10

Official Activities of Certain International Organizations

(a) Except as provided in paragraph (b) of this general license, all transactions and activities involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), the Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (FTOSR), or Executive Order (E.O.) 13224, as amended, that are for the conduct of the official business of the United Nations and its Specialized Agencies, Programmes, Funds, and Related Organizations, the International Committee of the Red Cross, and the International Federation of Red Cross and Red Crescent Societies, by employees, contractors, or grantees thereof are authorized.

(b) This general license does not authorize:

(1) Any transactions or activities involving the Iranian Red Crescent Society; or

(2) Any transactions or activities otherwise prohibited by the GTSR, the FTOSR, or any other part of 31 CFR chapter V, or E.O. 13224, as amended, or any transactions or activities with any blocked persons other than the blocked persons identified in paragraph (a) of this general license.

Note to General License 10: For an organizational chart listing the Specialized Agencies, Programmes, Funds, and Related Organizations of the United Nations, see the following page on the United Nations website: *http://www.unsceb.org/directory.*

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: January 19, 2021.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

Foreign Terrorist Organizations Sanctions Regulations

31 CFR Part 597

Executive Order 13224 of September 23, 2001

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism, as Amended

GENERAL LICENSE NO. 11

Certain Transactions in Support of Nongovernmental Organizations' Activities in Yemen

(a) Except as provided in paragraph (c) of this general license, all transactions and activities involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), the Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (FTOSR), or Executive Order (E.O.) 13224, as amended, that are ordinarily incident and necessary to the activities described in paragraph (b) by nongovernmental organizations are authorized, including processing and transfer of funds, payment of taxes, fees, and import duties, and purchase or receipt of permits, licenses, or public utility services.

(b) The activities referenced in paragraph (a) of this general license are as follows:

(1) Activities to support humanitarian projects to meet basic human needs in Yemen, including drought and flood relief; food, nutrition, and medicine distribution; the provision of health services; assistance for vulnerable populations, including individuals with disabilities and the elderly; and environmental programs;

(2) Activities to support democracy building in Yemen, including activities to support rule of law, citizen participation, government accountability, universal human rights and fundamental freedoms, access to information, and civil society development projects;

(3) Activities to support education in Yemen, including combating illiteracy, increasing access to education, international exchanges, and assisting education reform projects;

(4) Activities to support non-commercial development projects directly benefiting the Yemeni people, including preventing infectious disease and promoting maternal/child health, sustainable agriculture, and clean water assistance; and

(5) Activities to support environmental protection in Yemen, including the preservation and protection of threatened or endangered species and the remediation of pollution or other environmental damage.

(c) This general license does not authorize any transactions or activities otherwise prohibited by the GTSR, the FTOSR, or any other part of 31 CFR chapter V, or E.O. 13224, as amended, or any transactions or activities with any blocked persons other than the blocked persons identified in paragraph (a) of this general license.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: January 19, 2021.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

Foreign Terrorist Organizations Sanctions Regulations

31 CFR Part 597

Executive Order 13224 of September 23, 2001

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism, as Amended

GENERAL LICENSE NO. 12

Transactions Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates

(a) Except as provided in paragraph (c) of this general license, all transactions and activities involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), the Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (FTOSR), or Executive Order (E.O.) 13224, as amended, and that are ordinarily incident and necessary to the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices to Yemen or to persons in third countries purchasing specifically for resale to Yemen, are authorized.

(b) *Covered items.* For the purposes of this general license, agricultural commodities, medicine, and medical devices are defined as follows:

(1) *Agricultural commodities.* For the purposes of this general license, agricultural commodities are:

(i) Products that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) That are intended for ultimate use in Yemen as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this general license, medicine is an item that falls within the definition of the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(3) *Medical devices.* For the purposes of this general license, a medical device is an item that falls within the definition of ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(c) This general license does not authorize any transactions or activities otherwise prohibited by the GTSR, the FTOSR, or any other part of 31 CFR chapter V, or E.O. 13224, as amended, or any transactions or activities with any blocked persons other than the blocked persons identified in paragraph (a) of this general license.

Note to General License 12: Nothing in this general license relieves any exporter from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: January 19, 2021.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

Foreign Terrorist Organizations Sanctions Regulations

31 CFR Part 597

Executive Order 13224 of September 23, 2001

Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism, as Amended

GENERAL LICENSE NO. 13

Authorizing Transactions Involving Ansarallah

(a) Except as provided in paragraph (b) of this general license, all transactions and activities involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), the Foreign Terrorist Organizations Sanctions Regulations, 31 CFR part 597 (FTOSR), or Executive Order (E.O.) 13224, as amended, are authorized through 12:01 a.m. eastern standard time, February 26, 2021.

(b) This general license does not authorize:

(1) The unblocking of any funds in accounts of the blocked persons identified in paragraph (a) of this general license that were blocked as of 12:01 a.m. eastern standard time, January 25, 2021.

(2) Any transactions or activities otherwise prohibited by the GTSR, the FTOSR, or any other part of 31 CFR chapter V, or E.O. 13224, as amended, or any transactions or activities with any blocked persons other than the blocked persons identified in paragraph (a) of this general license.

Bradley T. Smith,
Acting Director, Office of Foreign Assets Control.

Dated: January 25, 2021.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2024–12331 Filed 6–7–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0195]

RIN 1625–AA00

Safety Zone; Narragansett Bay, Newport, RI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the East Passage, Narragansett Bay, RI. This action is necessary to provide for the safety of life on these navigable waters near East Passage, Narragansett Bay, RI, during a sailboat race. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Southeastern New England or a designated representative.

DATES: This rule is effective from 10:30 a.m. on June 21, 2024, through 6:30 p.m. on June 22, 2024. The rule will only be subject to enforcement from 10:30 a.m. to 6:30 p.m. on June 21, 2024, unless the event time is changed because of weather conditions in which case it may be subject to enforcement those same hours on June 22, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0195 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MST2 Christopher Matthews, Waterways Management Division, Sector Southeastern New England, U.S. Coast Guard; telephone 571–610–4969, email *SENEWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On January 31, 2024, an organization notified the Coast Guard that it will be conducting a sailboat race from 10:30 a.m. to 6:30 p.m. on June 21, 2024, with a rain date of June 22, 2024. The sailboat race will launch from the East Passage in Narragansett Bay south of Rose Island.

After determining that establishment of a safety zone was necessary to provide for the safety of life, property, and the environment during the sailboat race, on April 2, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Narragansett Bay, Newport, RI'' 89 FR 22645. There we explained why we issued the NPRM and invited comments on our proposed regulatory action related to this sailboat race. During the comment period that ended May 2, 2024, we received two comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The comment period for the NPRM associated with the sailboat race ended on May 2, 2024, and the race is scheduled to begin June 22, 2024. Thus, there is insufficient time to allow for 30 days before the rule becomes effective. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the potential safety risks associated with the sailboat race.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Southeastern New England (COTP) has determined that there are potential hazards associated with the sailboat race on June 21, 2024. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published April 2, 2024. The comments did not pertain to the proposed rule. One comment was unrelated to our rule, referring to wind farms, while the other was an incomplete comment. There is one editorial change to the regulatory text of this rule from the proposed rule in the NPRM. Specifically, we corrected ''security zones'' to ''safety zones''.

This rule establishes a safety zone from 10:30 a.m. to 6:30 p.m. on June 21, 2024, with a rain date of June 22, 2024. The safety zone covers one of three possible locations depending on the weather. Safety Zone ''A'' will cover all navigable waters from an area just south of Rose Island near Fort Adams. Safety

Zone ''B'' for inclement weather will cover all navigable waters near Brenton Point. Safety Zone ''C'' will cover all navigable waters from an area south of Rose Island near Castle Hill, RI.

The location of the Safety Zone ''A'' is as follows:

Latitude	Longitude
41°29′08″ N	071°20′04″ W: thence to
41°28′27″ N	071°20′40″ W: thence to
41°28′38″ N	071°21′14″ W: thence to
41°29′25″ N	071°20′52″ W: and thence to the point of beginning.

If weather conditions prohibit a safe race start within the approach to Newport Harbor using Safety Zone ''A'' the race will begin offshore using Safety Zone ''B'' or Safety Zone ''C'':

The location of the Safety Zone ''B'' is as follows:

Latitude	Longitude
41°26′04″ N	071°22′16″ W: thence to
41°25′36″ N	071°21′58″ W: thence to
41°25′21″ N	071°22′38″ W: thence to
41°25′49″ N	071°22′56″ W: and thence to the point of beginning.

The location of the Safety Zone ''C'' is as follows:

Latitude	Longitude
41°27′57″ N	071°21′44″ W: thence to
41°27′16″ N	071°22′00″ W: thence to
41°27′27″ N	071°22′50″ W: thence to
41°28′08″ N	071°22′34″ W: and thence to the point of beginning.

The starting line will take place within one of the regulated areas and will be decided prior to the race pending current weather conditions. The starting line box will be the restricted part of the waterway within the regulated area and that exact location will be broadcasted prior to the race start. The duration of the safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled sailboat race. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or by phone at 866–819–9128. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative. The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule. The regulatory text appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time of day of the regulated area. We expect the adverse economic impact to this area to be minimal. Although this regulation may have adverse impact on the impact, the potential impact will be minimized for the following reasons: the safety zone will be in effect for a maximum of 8 hours during the day of the event; vessels will only be restricted from the area in the East Passage of the Narragansett Bay during those limited periods when the races are actually on going; there is an alternate route, the West Passage of Narragansett Bay, that does not add substantial transit time, is already routinely used by mariners, and will not be affected by this safety zone. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners (BNMs) via VHF–FM marine channel 16 about the area, and the rule will allow vessels to seek permission to enter the area.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 8 hours that would prohibit entry within the regulated area in Narragansett Bay near Newport, RI. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T01–0195 to read as follows:

§ 165.T01–0195 Safety Zone; Narragansett Bay, Newport, RI.

(a) *Location.* Only one safety zone will be enforced based on the local weather conditions the day of the race. We will make notice of exactly what safety zone will be enforced via Broadcast Notice to Mariners via marine channel 16 (VHF–FM).

The following areas are safety zones.

(1) Safety Zone ''A'' encompasses all navigable waters located within the following latitude and longitude points:

Latitude	Longitude
41°29′08″ N 41°28′27″ N 41°28′38″ N 41°29′25″ N	071°20′04″ W: thence to 071°20′40″ W: thence to 071°21′14″ W: thence to 071°20′52″ W: and thence to the point of beginning.

(2) Safety Zone ''B'' encompasses all navigable waters located within the following latitude and longitude points:

Latitude	Longitude
41°26′04″ N 41°25′36″ N 41°25′21″ N 41°25′49″ N	071°22′16″ W: thence to 071°21′58″ W: thence to 071°22′38″ W: thence to 071°22′56″ W: and thence to the point of beginning.

(3) Safety Zone ''C'' encompasses all navigable waters located within the following latitude and longitude points:

Latitude	Longitude
41°27′57″ N 41°27′16″ N 41°27′27″ N 41°28′08″ N	071°21′44″ W: thence to 071°22′00″ W: thence to 071°22′50″ W: thence to 071°22′34″ W: and thence to the point of beginning the point of beginning.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 16 or by telephone at 508–457–3211. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. to 6:30 p.m. on June 21, 2024, or June 22, 2024. To alleviate the effects of this rule on the public, the COTP may elect to temporarily suspend enforcement of these safety zones.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through local notice to mariners and Broadcast Notices to Mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

Clinton J. Prindle,

Captain, U.S. Coast Guard, Captain of the Port Sector Southeastern New England.

[FR Doc. 2024–12627 Filed 6–7–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0497]

RIN 1625–AA00

Safety Zone; Chesapeake Bay, Approaches to Baltimore Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 2,000-yard radius of the center span of the Francis Scott Key Bridge in Baltimore, MD. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with salvage work on the bridge, which partially collapsed when it was hit by the M/V DALI, and on the M/V DALI itself. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Maryland—National Capital Region.

DATES: This rule is effective without actual notice from June 10, 2024, through June 30, 2024. For the purposes of enforcement, actual notice will be

used from June 4, 2024, until June 10, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0497 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call, or email LCDR Kate Newkirk, Waterways Management Division, Sector Maryland—National Capital Region, U.S. Coast Guard; (410) 365–8141, *Kate.M.Newkirk@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

At approximately 2 a.m. local time on March 26, 2024, the COTP, Maryland—National Capital Region was notified that a container ship, the Singapore-flagged M/V DALI, had allided with the Francis Scott Key Bridge in the Chesapeake Bay, in position latitude 39°13′0.12″ N longitude 076°31′47.27″ W, causing partial collapse of the bridge. Due to the need for vessel control during a damage assessment and salvage operation, maritime traffic has been restricted by temporary rules to provide for the safety of transiting vessels. This rule continues these restrictions put in place by the prior temporary rule which is expiring.

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Immediate action is needed to respond to the potential safety hazards associated with damage assessment and salvage operations of the M/V DALI and the Francis Scott Key bridge that must occur within the federal navigation channel. Due to the nature of the event, it is impracticable to provide notice to ensure the safety of life and property.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with damage assessment and salvage operations of the M/V DALI to be conducted within the federal channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with damage assessment and salvage operations starting March 26, 2024, will be a safety concern for anyone within a 2,000-yard radius of the center navigation span of the Francis Scott Key bridge, in Baltimore, MD. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being repaired.

IV. Discussion of the Rule

This rule establishes a safety zone from June 04, 2024, through June 30, 2024. The safety zone will cover all navigable waters within 2,000 yards of the center navigation span of the Francis Scott Key Bridge in Baltimore MD. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the damage assessment and salvage operations are being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will not be able to transit in vicinity of the safety zone, which will impact vessel traffic required to transit certain navigation channels of the Chesapeake Bay for a total of no more than 14 days. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting 14 total days that will prohibit entry within 2,000 yards of the center navigation span of the Francis Scott Key Bridge. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0263 to read as follows:

§ 165.T05–0263 Safety Zone; Chesapeake Bay, Approaches to Baltimore Harbor, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Chesapeake Bay, within a 2,000-yard radius of the center span of the Francis Scott Key bridge during damage assessment and salvage operations.

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

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland—National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland—National Capital Region (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410–576–2525 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

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

(e) *Enforcement period.* This section will be enforced from June 4, 2024, through June 30, 2024.

Dated: June 4, 2024.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland—NCR.

[FR Doc. 2024–12619 Filed 6–7–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–0452]

Safety Zone; Washington Channel, Upper Potomac River, Washington, DC

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for a fireworks display at ''The Wharf DC,'' in Washington, DC, on June 14, 2024, with a rain date of June 19, 2024, to provide for the safety of life on navigable waterways during this event. Our regulations identify the precise location. During the enforcement period, vessels may not enter, remain in, or transit through the safety zone unless authorized to do so by the Captain of the Port (COTP) or his representative, and vessels in the vicinity must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation for the location identified in line no. 1 of table 2 to 33 CFR 165.506(h)(2) will be enforced from 8:30 p.m. until 10:30 p.m. on June 14, 2024. In the event of inclement weather, the regulation will be enforced from 8:30 p.m. until 10:30 p.m. on June 19, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this

notification of enforcement, call or email MST2 Hollie Givens, Sector Maryland—NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2596, email *MDNCRMarineEvents@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulation for a fireworks display at The Wharf DC from 8:30 p.m. to 10:30 p.m. on June 14, 2024. In the event of inclement weather, the regulation will be in effect from 8:30 p.m. until 10:30 p.m. on June 19, 2024. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation, ''Safety Zones; Fireworks Displays within the Fifth Coast Guard District,'' at 33 CFR 165.506, table 2 to paragraph (h)(2) specifies the location of the safety zone for the fireworks show, which encompasses portions of the Washington Channel in the Upper Potomac River. As reflected in 33 CFR 165.23, vessels in the vicinity of the safety zone, may not enter, remain in, or transit through the safety zone during the enforcement period unless authorized to do so by the COTP or his representative, and they must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

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

Dated: June 5, 2024.

David E. O'Connell,

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

[FR Doc. 2024–12642 Filed 6–7–24; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 89, No. 112
Monday, June 10, 2024

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 THE INTERIOR

National Park Service

36 CFR Parts 1 and 14

[NPS–WASO–PPFL–36986; PPWOPPFLL0; PPMPSPD1Y.YM0000]

RIN 1024–AE75

Rights of Way

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to revise regulations governing the application, processing, and issuance of right-of-way (ROW) permits for lands and waters administered by the NPS. A ROW permit authorizes the use of such lands and waters for the operation and maintenance of infrastructure associated with utilities such as fiber, water lines, power lines, and cellular antennas. The proposed changes would align NPS processes more closely with those of other Department of the Interior (DOI) bureaus by allowing for a pre-application meeting, identifying a common standard application form, and broadening methods the NPS can use to determine fair market value. The proposed rule would clarify the process for permitting construction related to a ROW permit, make updates that reflect current technology and standard practices, and integrate applicable laws that have been implemented since the regulations were first promulgated in 1980.

DATES: Comments on the proposed rule must be received by 11:59 p.m. ET August 9, 2024.

Information collection requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB (see ''Information Collection'' section below under **ADDRESSES**) by August 9, 2024.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024–AE75, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail to:* Kevin McKay, Branch Chief, Realty Management, National Park Service, WASO Land Resources Division, Park Planning, Facilities and Lands, 1849 C Street NW, 2nd Floor (MIB 2340), Washington, DC 20240.
- *Instructions:* Comments will not be accepted by fax, email, or in any way other than those specified above. Comments delivered on external electronic storage devices (flash drives, compact discs, etc.) will not be accepted. All submissions received must include the words ''National Park Service'' or ''NPS'' and must include the docket number or RIN (1024–AE75) for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read comments received, go to *https://www.regulations.gov* and search for ''1024–AE75.''

FOR FURTHER INFORMATION CONTACT: Kevin McKay, Branch Chief, Realty Management, National Park Service, Land Resources Division. Phone: (720) 576–0656; email: *Kevin_McKay@nps.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. In compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on *Regulations.gov* in the docket for this rulemaking.

SUPPLEMENTARY INFORMATION:

Background

Legal Authority for ROWs

The National Park System includes any area of land or water administered by the NPS. 54 U.S.C. 100501. The mission of the NPS is to preserve unimpaired the natural and cultural resources and values of the National Park System for the enjoyment of this and future generations. 54 U.S.C. 100101. Since it was created in 1916, the National Park System has expanded to 428 units covering more than 85 million acres in all 50 states, the District of Columbia, and U.S. territories. A general statutory authority, codified at 54 U.S.C. 100902, allows the Secretary of the Interior, acting through the NPS, to issue ROW permits for public utilities and communication facilities within System units. Specifically, this authority authorizes the NPS to issue ROW permits for:

- electrical plants, poles, and lines for the generation, transmission, and distribution of electrical power;
- telephone and telegraph purposes;
- canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits and water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses;
- poles and lines for communication purposes; and
- radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities.

The NPS may not issue a ROW permit for any purpose that is not identified in 54 U.S.C. 100902, unless the NPS is separately authorized to do so by law, such as through legislation specific to a System unit. In limited circumstances such as where authorized by legislation specific to a System unit, or where exclusively serving NPS facilities or authorized concessioner facilities, the NPS may issue ROW permits to utilities for the operation and maintenance of petroleum product pipelines.

Under the general authority in 54 U.S.C. 100902, a ROW shall be allowed within a National Park System unit only on the approval of the Secretary, acting through the NPS. The NPS may issue a ROW permit only on a finding that the ROW is not incompatible with the public interest. The statute establishes

duration and size limits for ROWs and authorizes the NPS to revoke ROWs. The Secretary, acting through the NPS, is authorized to implement the statute through regulations.

Before 1980, the NPS managed ROW permits under Bureau of Land Management (BLM) regulations at 43 CFR 2800. Those regulations no longer applied to System units after BLM revised them in 1980. That same year, the NPS promulgated its own regulations (45 FR 47092) that matched the provisions of 43 CFR 2800, with some editorial changes. The NPS regulations are codified at 36 CFR part 14 and have not been revised since, except for minor changes in 1995 (60 FR 55791) and 2018 (83 FR 2069). The NPS regulations are organized into eight subparts, with an Appendix, as follows:

Subpart of 36 CFR part 14	Sections
Subpart A—Rights-of-Way: General	14.1–14.2
Subpart B—Nature of Interest	14.5–14.10
Subpart C—Procedures	14.20–14.38
Subpart D—Under Title 23, U.S.C. (Interstate and Defense Highway System)	14.50–14.61
Subpart E—Power Transmission Lines, General	14.70–14.71
Subpart F—Principles and Procedures, Power Transmission Lines	14.75–14.78
Subpart G—Radio and Television Sites	14.90–14.91
Subpart H—Telephone and Telegraph Lines	14.95–14.96
Appendix A to Part 14	N/A

NPS Administration of ROWs

The NPS's authority to grant ROWs within System units is discretionary provided the allowed use is not incompatible with the public interest. When the NPS evaluates a request for a ROW permit, it considers whether the use will be consistent with applicable laws and policies that govern the administration of the System. Applicable laws include, but are not limited to, the NPS Organic Act and the National Historic Preservation Act (NPHA). Applicable policies include, but are not limited to, 2006 NPS Management Policies, Reference Manual 53B: Rights of Way, and guidance and planning documents for particular System units. ROW infrastructure proposed by permit applicants is not always compatible with the purposes for which the National Park System or the particular System unit was established, or with the protection of the resources and values of the System unit where it would be located. The NPS, to the greatest extent possible, seeks to minimize impacts to resources, visitors, and employees from the construction, installation, maintenance and operation of infrastructure in System units. For this reason, it only issues ROW permits when there is no practicable alternative to the use of lands and waters within a System unit.

After this evaluation process, the NPS may determine that the proposed use is not appropriate in the System unit and location requested and deny the request. When they are approved, ROW permits most commonly allow for the operation and maintenance of common utilities such as fiber, water, and power lines, as well as cellular antennas and associated equipment such as cell towers. The NPS issues ROW permits to Federal, State, and local governments, Tribes, citizens, and organizations of the United States, including corporations, associations, partnerships, and non-profit organizations. Power companies and broadband providers (including cellular companies) regularly request ROW permits from the NPS. Unlike a deeded easement or fee simple ownership, a ROW permit does not convey or imply any property interest in the lands and waters subject to the ROW. Permittees may use a ROW permit only for the allowed uses and subject to permit terms and conditions that protect System unit resources, values, and visitors.

Summary of the Proposed Rule

The NPS explains each of the proposed changes to NPS regulations below. In addition to the changes described in more detail below, the rule would simplify how the regulations are organized by replacing the eight existing subparts with sections that have clear and concise titles addressing ROW permitting for all types of use and infrastructure. Sections 14.5, 14.20, 14.27, 14.32, 14.35, 14.53, 14.75, and 14.77 of the existing regulations have no content. The rule would replace § 14.5 and remove the rest. The rule would remove Appendix A because the forms in this Appendix are outdated and no longer used by the NPS. The rule would remove an authority citation to 23 U.S.C. 317 from part 14. This authority addresses highway easement deeds, which are not authorized through ROW permits.

Many of the proposed changes would remove or update outdated provisions to reflect current policies and practices. The changes in this rule would improve ROW permitting processes and align them more closely with those of other DOI bureaus, to the extent practicable and consistent with applicable law. This rule would improve the NPS's ability to protect resources and values, public health and safety, and visitor experience from potential impacts from the use of lands and waters within System units under a ROW permit, including from the operation and maintenance of infrastructure. The revised regulations would be easier for prospective and current permittees to find and understand, which would improve the effectiveness of NPS ROW program. The NPS welcomes public comment and looks forward to receiving meaningful input on the changes proposed by this rule.

Section-by-Section Analysis of the Proposed Changes

§ 14.1 Purpose and Scope

Proposed regulation	Existing regulations
14.1 Purpose and scope.	14.1 Applicability.
N/A	1.2 Applicability and scope.

Existing regulations in § 14.1 state that the regulations in part 14 apply to all Federally owned or controlled lands administered by the NPS. This provision is unnecessary because the applicability and scope of NPS regulations in Title 36, Chapter I of the Code of Federal Regulations (36 CFR), which includes part 14, are defined in 36 CFR 1.2. This section states in paragraph (a)(1) that the regulations apply to all persons entering, using, visiting, or otherwise within the boundaries of federally owned lands and waters administered by the NPS.

New paragraph (a) in § 14.1 would state that regulations in part 14 establish procedures an entity must follow when applying for a ROW permit and provisions under which the NPS may authorize a ROW within a National Park System unit. New paragraph (b) would state that the regulations in part 14

ensure that the use of lands and waters, and operation and maintenance of infrastructure under a ROW permit will be (1) consistent with applicable statutory authorities, including the NPS Organic Act; (2) protect lands, waters, and resources of the System; and (3) protect visitor uses and experiences, as well as promote the health and safety of the public and NPS employees and volunteers.

The NPS proposes to revise 36 CFR 1.2(b) and (d) to add references to part 14. This would clarify that, under paragraph (b), the regulations in part 14 generally do not apply on non-federally owned lands and waters or on Indian tribal trust lands located within System boundaries; and that, under paragraph (d), the regulations in Part 14 do not prohibit administrative activities conducted by the NPS or its agents. These changes would reflect current NPS practice and would have no impact on the NPS's administration of ROWs in System units.

§ 14.2 Definitions for This Part

Proposed regulation	Existing regulations
14.2 Definitions for this part.	• 36 CFR 14.2 Definitions. • 36 CFR 14.6 In form of easement, license, or permit.

This rule would revise § 14.2 of the existing regulations, which defines terms used in part 14. The rule would remove the definition of ''Superintendent'' because it is already defined in 36 CFR 1.4. The rule would remove the definition of ''Park'' because it is superfluous with the definitions of ''park area'' and ''National Park System'' in 36 CFR 1.4. The rule would remove the definitions of ''Authorized Officer,'' ''Construction work,'' ''Director,'' and ''Secretary'' because those terms would not be used in the revised regulations. The rule would remove the definition of ''Project'' because that term would no longer be used the way it is currently defined. Removing unnecessary defined terms would make the regulations more concise. The rule would replace the term ''right-of-way'' with a new term ''right-of-way permit'' that is more specific and clearer about what may be authorized, as explained below. The NPS proposes to define nine new terms in § 14.2, which are explained below. Revised § 14.2 would list defined terms in alphabetical order without paragraph designations.

New Definitions

The NPS proposes to add the term ''Applicant'' to mean an entity that has applied for a special use permit for construction of infrastructure or a ROW permit for operation or maintenance of infrastructure. Adding this term would allow the NPS to distinguish applicants from permittees, who have been issued valid permits, in the regulations.

The NPS proposes to add the term ''Co-location'' to mean the placement of infrastructure on or in existing authorized infrastructure owned or controlled by another or within an area authorized for use by another. This common industry practice is important for applicants to consider when designing infrastructure proposals and for the NPS to consider when assessing potential impacts to resources, values, and visitors.

The NPS proposes to add the term ''Entity'' to mean a party including, but not limited to, Federal, State, and local governments, Tribes, citizens, and organizations of the United States, including corporations, associations, partnerships, and non-profit organizations.

The NPS proposes to add the term ''Infrastructure'' to mean equipment, facilities, installations, or uses that the NPS may authorize under a ROW permit pursuant to statutory authority, with specific reference to 54 U.S.C. 100902.

The NPS proposes to add the term ''Operation and maintenance'' to mean the use of infrastructure, the means of access, and associated service on a routine and on-going basis to ensure good order, safe conditions, and timely repair, all as specifically authorized in a ROW permit.

The NPS proposes to add the term ''Permitted area'' to mean the area authorized for construction under a special use permit, and use of lands and waters, and operation and maintenance of infrastructure under a ROW permit, including routes and means of access through a System unit.

The NPS proposes to add the term ''Permittee'' to mean an entity that holds a valid special use permit for construction or ROW permit for use of lands and waters, and operation and maintenance of infrastructure. Adding this term would help distinguish entities that have valid permits from those that have expired or invalid authorizations, and from applicants who have requested a permit but do not yet have one.

The NPS proposes to add a definition for ''Right-of-way permit'' to mean a discretionary and revocable special use permit, issued by the NPS to authorize the use of lands or waters within System units for the operation and maintenance of infrastructure. The definition would state that a ROW permit does not convey property interests in lands or waters. These statements in the new definition would make portions of § 14.6 of the existing regulations, which make similar statements, unnecessary.

The NPS proposes to add the term ''Special use permit for construction'' to mean a discretionary and revocable special use permit issued by the NPS to authorize construction of infrastructure and associated construction activities within System units. These permits can authorize initial construction of infrastructure, addition of infrastructure, removal of infrastructure, and maintenance and repair activities not included in the ROW permit. Adding this term would distinguish activities authorized under ROW permits form those authorized under special use permits for construction.

§ 14.3 Pre-Application Meeting

Proposed regulation	Existing regulation
14.3 Pre-application meeting.	N/A.

This section of the proposed rule would establish a new provision encouraging potential permit applicants to contact the superintendent of the System unit to schedule a pre-application meeting to discuss the proposed project and the permitting process. The U.S. Fish and Wildlife Service uses pre-application meetings for the same purpose. Although it would benefit the applicant and the NPS in most cases, the rule would not require a pre-application meeting because it may be unnecessary when the potential applicant and NPS staff are sufficiently familiar with the project and permitting process, such as with certain ROW permit renewals. The rule would state that through a pre-application meeting, the NPS may provide early notice to potential applicants about applicable law and policy, documentation requirements, an expected timeline, and potential costs.

The goal of a pre-application meeting is to improve the permitting process through increased regulatory certainty. Pre-application meetings make the permitting process more efficient and transparent. Permit processing is delayed when applicants provide incomplete information to the NPS. The amount and type of documentation the NPS requires to process an application varies depending on whether the request is for new infrastructure where environmental disturbance will occur, or existing infrastructure where limited additional use of the infrastructure may have minimal or no new environmental impacts. A pre-application meeting enables the NPS to understand the

scope of the request and advise potential applicants, early in the permitting process, about permitting considerations and procedures, such as: elements of a complete permit application, permit approval standards, natural and cultural resource concerns, visitor resource concerns, public health and safety concerns, park planning documents, land use restrictions (*e.g.,* wilderness), proposed location, proposed infrastructure, method and means of access, and potential fees. In addition, a pre-application meeting provides the applicant an opportunity to ask questions and receive comments from the NPS about the proposed ROW before submitting an application.

The NPS may charge fees to recover administrative costs incurred from pre-application meetings in certain circumstances. This may occur if there are multiple meetings requested by a potential applicant or where there are unusual demands made on NPS staff or leadership in terms of time or NPS resources on behalf of the potential applicant. Cost recovery would be collected in accordance with § 14.7 of the revised regulations (discussed below).

§ 14.4 Right-Of-Way Permit Application

This section of the rule would update procedures for submitting a ROW permit application. Under the existing regulations, application requirements are addressed in multiple subparts and sections in part 14. This rule would consolidate all of these requirements into a single section. This would make it easier for applicants to identify what is required to submit a complete ROW application. Complete and timely applications allow the NPS to evaluate a proposal's potential effects and to conduct its compliance responsibilities under applicable Federal statutes such as the National Environmental Policy Act (NEPA) and the NHPA. The table below identifies how this rule would reorganize all of the existing application process requirements into a new § 14.4.

Proposed regulations	Existing regulations
14.4(a) Complete application requirement	14.28 Incomplete application and reports.
14.4(b) Application form	14.21 Form.
14.4(c) Applicant documentation	14.23 Showing as to organizations required of corporations. 14.24 Showing as to citizenship required.
14.4(d) Maps	14.25(a) Maps.
14.4(e) Water rights	14.25(b) Evidence of water right.
14.4(f) Access	14.7 Right of ingress and egress to a primary right-of-way.
14.4(g) Co-location	N/A.
14.4(h) Financial assurance and liability insurance	14.22(a)(11) Reimbursement of costs.
14.4(i) Additional information	N/A.

The following paragraphs explain how each paragraph of the new § 14.4 would change existing regulations about the permit application process.

14.4(a) Complete Application Requirement

Existing regulations in § 14.28 state that when an application is incomplete or does not conform with law, the NPS may either provide an applicant with an opportunity to correct deficiencies in a ROW permit application or reject the application outright. New paragraph (a) of § 14.4 would state the NPS will not begin processing a ROW permit application until it has determined the applicant has complied with the requirements in part 14, including the submission of all required information. This change would reflect existing practice because the NPS does not reject incomplete applications. Instead, the NPS informs applicants that they must provide additional information to complete the application before the NPS will begin formal review and processing. This practice is consistent with how other DOI bureaus handle incomplete applications and prevents the NPS from expending limited staff resources on incomplete applications that do not have enough information to allow for a proper evaluation. Paragraph (a) would further state that making this determination does not guarantee the NPS will issue a ROW permit.

14.4(b) Application Form

Existing regulations in § 14.21 require the applicant to include some general information with an application (*e.g.,* a statement that the application is made pursuant to existing regulations, a citation to the statutory authority for the ROW, and a description of the purposes of the ROW), but do not require applications to be submitted on a specific form.

New paragraph (b) of § 14.4 would require applicants to use Standard Form 299 Application for Transportation and Utility Systems and Facilities on Federal Lands (SF–299) for all requests for ROW permits. Requiring the use of this form is consistent with Executive Order 13821, ''Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America,'' dated January 8, 2018, which requires all Federal property managing agencies to use the SF–299, or the applicable common form approved by the General Services Administration at the time of the application. The NPS and most Federal property managing agencies (*e.g.,* BLM, USFS, FWS) already use this form for applicants seeking to operate and maintain infrastructure on lands administered by those agencies.

Paragraph (b) also would require that applicants provide all materials required in the SF–299 and elsewhere in part 14. If materials have been provided in connection with a ROW permit previously issued by the NPS for the same System unit, then the NPS may decide that the applicant is not required to resubmit those materials, provided the previous date of filing, place of filing, and existing ROW permit number are included in the new application. This provision would reduce the regulatory burden on applicants by ensuring that NPS requests only the documentation that it requires to process an application. Finally, paragraph (b) would require applicants or their authorized representatives to sign the SF–299 and require applicants to submit the application charge pursuant to § 14.7.

14.4(c) Applicant Documentation

In proposed paragraph (c) of this section, the NPS would consolidate and update information requirements currently codified in § 14.23 for applicants that are corporations, and in § 14.24 for applicants that are individuals or associations of individuals. New paragraph (c)(1) would contain required information for corporations. These requirements would not be substantively different than what is currently required in § 14.23. New

paragraph (c)(2) would contain required information for partnerships, limited liability companies, and similar entities. These requirements would not be substantively different than what is currently required in § 14.24 for associations of individuals. For individuals, new paragraph (c)(3) would state applications must be accompanied by evidence of U.S. citizenship. The rule would omit outdated and extraneous language in existing § 14.24 about naturalization and marital status.

14.4(d) Maps

Existing regulations in § 14.25(a) contain detailed mapping requirements that are overly prescriptive and outdated. For example, the existing regulations require applicants to prepare maps on tracing linen, or on tracing paper having a 100 percent rag content. New paragraph (d) of § 14.4 would simply require maps to meet current NPS mapping standards. This would allow applicants to submit digital maps, which reflect current mapping technology. The NPS would retain discretion to require an official land survey, legal description, and digital information when helpful or necessary to adequately assess an application. Consistent with current practice, new paragraph (d) also would require that maps, at a minimum, include the area proposed to be included in the ROW, including the placement of infrastructure, proposed access point and routes (including use of existing roads), and other areas associated with the ROW.

14.4(e) Water Rights

Existing paragraph (b) of § 14.25 allows the NPS to conditionally grant a ROW permit if doing so is a prerequisite for obtaining evidence of a water right from a State official. This provision has not been used by the NPS ROW Program and puts the NPS in the position of expending resources on speculative projects. Similar to the existing regulations, new paragraph (e) of § 14.4 would require, unless otherwise required by Federal law, that applicants requesting authorization to operate and maintain infrastructure to support the storage, diversion, conveyance, or use of water, include proof of a valid water right from the appropriate state official or state law as part of a complete application. This would ensure that, for such projects, the NPS only issues ROW permits to applicants that hold valid water rights.

14.4(f) Access

Existing regulations in § 14.7 allow the NPS to grant to a ROW holder an additional ROW for ingress and egress to the primary ROW. The additional ROW must be reasonably necessary to facilitate the use of the primary ROW, and may include the right to construct, operate, and maintain facilities necessary for ingress and egress. The regulations require the ROW holder to apply for the additional ROW in a similar manner that it applied for the primary ROW.

The proposed rule would create an efficiency by removing the need to apply for an additional ROW for routes of access. As part of a complete ROW permit application, new paragraph (f) would require the applicant include a description of proposed access routes and means of access. The rule would state that access routes and means of access will be limited to existing roads, or existing or NPS-approved routes, trails, or access points. The NPS has no general legal authority to authorize other entities to establish new roads in a System unit, including for purposes of accessing ROWs. For this reason, the rule would state that ROW permits will not authorize the construction of new roads, unless specifically authorized by statute. Lastly, new paragraph (f) would state that ROW permits do not grant a right of access and that agreed-upon access routes and means of access are discretionary and revocable. This statement will preclude requests that rights of access be expressly established in ROW permits, or that that they are implied by ROW permits that have been issued.

14.4(g) Co-Location

The NPS is proposing a new regulatory provision to encourage the co-location of infrastructure in System units. The co-location of equipment can consolidate infrastructure in a geographic location and, at the same time, influence the footprint and dimensions of infrastructure at a particular site. For example, the location and design of a cell tower that would accommodate multiple cell antennae will be larger than a single user tower but may prevent towers in multiple locations. While there are cases where the installation of new or additional uses on existing infrastructure is not technologically possible or needs to be accomplished in a certain manner to avoid technical interference or conflict between the uses, whenever possible and visually acceptable, all utilities should share a common corridor. Consistent with this goal, new paragraph (g) would require applicants to design new infrastructure to accommodate future co-location to the greatest extent possible considering the potential impacts to System unit resources, values, public health and safety, and visitor experience. This paragraph also would require the applicant to demonstrate that they have evaluated all options for co-location with existing infrastructure prior to proposing a new or undisturbed location for infrastructure. Finally, the paragraph would state that entities proposing to co-locate infrastructure must obtain a separate ROW permit.

14.4(h) Financial Assurance and Liability Insurance

Financial assurance ensures that in the event an operator becomes insolvent or defaults on its financial obligations under a ROW permit, in particular obligations to reclaim and restore the permitted area, adequate funds will be available for reclamation. The requirement for liability insurance ensures that the Federal government does not assume any liability associated with the permittee's activities and that the permittee is covered for injuries to persons or property caused by permittee's activities.

Existing paragraphs (a)(11)–(14) of § 14.22 authorize the NPS to require an applicant to furnish security in an amount acceptable to the NPS for costs incurred to administer the ROW permit, including application costs, compliance costs, monitoring costs, and costs for protection and rehabilitation, and make certain permittees liable for such costs. These provisions are unnecessarily complicated and inconsistent with current practice because the NPS does not require financial assurance for administrative costs. Instead, the NPS proposes a new paragraph (h) of § 14.4 that would state that the NPS may require applicants to provide proof of acceptable financial assurance and liability insurance, as appropriate to the proposed project. This statement is more consistent with how the NPS and other agencies address financial assurance and liability insurance.

14.4(i) Additional Information

The NPS evaluates each application on a case-by-case basis depending on the scope, location, and nature of the proposed activity. The NPS proposes a new provision in paragraph (i) that would specifically state that the NPS may require additional relevant information from an applicant before the superintendent will consider the application complete.

§ 14.5 Review of Complete Right-of-Way Permit Applications

Proposed regulation	Existing regulation
14.5 Review of complete right-of-way permit applications.	N/A.

Section 14.5 of the proposed rule would explain how the NPS evaluates complete ROW permit applications. Paragraph (a) would establish standards that each ROW permit application must meet in order for the NPS to issue ROW permits. Subparagraph (a)(1) would state that the NPS will only issue a ROW permit if the applicant's proposal is not incompatible with the public interest and is consistent with applicable laws, including the laws governing administration of the National Park System, regulations, policy, and NPS planning documents. In part, this provision would ensure that the NPS meets its responsibility under the NPS Organic Act to conserve resources in the National Park System in such manner that will leave them unimpaired for the enjoyment of this and future generations. 54 U.S.C. 100101. Subparagraph (a)(2) would require the applicant to demonstrate that there is no practicable alternative to location of the infrastructure within the National Park System. This provision is consistent with question 13 of the SF–299 which requires applicants to explain whether alternative locations exist and, if so, why they were not chosen, and why it is necessary to occupy Federal lands.

Paragraph (b) would state that the NPS, after completing review of an application at the System unit, will notify the applicant in writing that the ROW application is conditionally approved, or denied with an explanation. If a ROW permit is conditionally approved, the NPS will send the applicant a final version of the ROW permit for signature.

Paragraph (c) would require the applicant to sign a conditionally approved ROW permit prior to its execution by the NPS. These requirements would also apply to amended ROW permit, including transfers which are documented by an amendment. This would be stated in paragraph (c) in § 14.13 and paragraph (e) of § 14.14 of the rule. Paragraph (c)(2) would clarify that no ROW permit is valid until it has been executed by the NPS, which may not occur, in some cases, if further review by the NPS results in a determination that the ROW would not meet the standards identified in paragraph (a). Execution by the NPS represents final approval of a ROW permit.

Paragraph (d) would allow the NPS, in its discretion, to suspend or terminate the application process at any time prior to execution of a ROW permit by the NPS if the applicant (1) is delinquent in paying any cost recovery, use and occupancy fees, or other debts to the Federal government; (2) has an unresolved criminal or civil violation with the Federal government; (3) has been notified that it is liable for damages under the System Unit Resource Protection Act (SURPA), 54 U.S.C. 100721–100725, for injuries to System resources, or has not resolved or fully paid response costs and damages under SURPA; or (4) has caused unpermitted resource damage, impacts to visitors, management problems, or the applicant has violated the terms and conditions of any permit issued by a Federal agency, including the NPS. This behavior and conduct provision is consistent with regulations for other Federal agencies. See, for example, 43 CFR 2804.25(b) and 2808.12 (BLM); and 36 CFR 251.54(e) (USFS). It gives fair notice to applicants that they must resolve the issues of behavior and conduct identified in paragraph (d) prior to applying for a ROW permit from the NPS.

§ 14.6 Application Withdrawal

Proposed regulation	Existing regulation
14.6 Application withdrawal.	N/A.

The rule would add a new provision in § 14.6 that would clarify application withdrawal procedures. Paragraph (a) would allow an applicant to withdraw an application at any time during the application process. Paragraph (b) would create a presumption, without further notice to the applicant, that the applicant has withdrawn its application if at any time during the permitting process an applicant fails to respond to a written communication from the NPS for a period of 90 days or longer. The NPS has experienced situations where an applicant demonstrates interest in seeking a ROW permit, engages NPS staff, begins an application process, and then abandons the proposal without notifying the NPS. Superintendents and other System unit staff have competing responsibilities and new applications for ROW permits are added to already developed workplans and workloads. This provision would help superintendents and other NPS staff prioritize active projects and devote limited resources toward serious and timely proposals. Paragraph (c) would clarify that once a permit application is withdrawn or presumed withdrawn, the permitting process is terminated. If the applicant wishes to restart the application process, it must submit a new SF–299 (or other approved common form).

§ 14.7 Cost Recovery

Proposed regulation	Existing regulations
14.7 Cost recovery	• 14.22 Reimbursement of costs. • 14.37 Reimbursement of costs.

The NPS has authority to recover actual costs it incurs to administer special use permits, including ROW permits and special use permits for construction, under 54 U.S.C. 103104. Existing sections 14.22 and 14.37 address the reimbursement of administrative costs to the NPS incurred both before and after the ROW permit is issued. These provisions are outdated because they were written before the NPS received its current statutory authorization to recover costs under 54 U.S.C. 103104.

The NPS proposes to replace sections 14.22 and 14.37 with a new § 14.7 that would address how the NPS recovers administrative costs from ROW permit applicants and permittees. Paragraph (a) would state that the NPS will recover all costs from applicants and permittees under 54 U.S.C. 1030104 according to NPS cost recovery policy. The rule would state that this can include administrative costs for withdrawn or denied applications and suspended or terminated ROW permits. Paragraph (b) would require applicants to pay an initial application charge, unless waived by the NPS pursuant to NPS cost recovery policy, and would describe how the NPS calculates a minimum application charge based upon a reasonable estimate of the least amount of employee time needed to process applications. Paragraph (b) also would clarify that the minimum application charge addresses the costs incurred by the NPS in initially discussing and reviewing an application for completeness and does not represent the entirety of costs that may be recovered.

§ 14.8 Use and Occupancy Fee

Proposed regulation	Existing regulation
14.8 Use and occupancy fee.	14.26 Payment required; exceptions; default; revision of charges.

A use and occupancy fee is owed to the United States in an amount equal to the fair market value for the use and

occupancy of federally owned lands and waters within the National Park System under a ROW permit. Existing § 14.26 is outdated and overly prescriptive, particularly in setting a valuation method. The existing regulations require an appraisal in every case to make a fair market value determination. Appraisals can be costly and time consuming and in some circumstances are not necessary to determine fair market value.

This rule would replace existing § 14.26 with a new § 14.8. Paragraph (a) would establish the requirement that, subject to the exemptions in paragraph (e), all permittees must pay a use and occupancy fee to the NPS. Paragraph (b) would state that the use and occupancy fee will be the fair market value of the use and occupancy of federally owned lands and waters under the ROW permit, as determined by the NPS. Subparagraph (b)(1) would allow the NPS to adopt any DOI-approved method to determine the use and occupancy fee. This approach is consistent with a current rulemaking action by the FWS.[1] It would reduce the time and cost necessary to determine the fair market value of many ROWs in System units and therefore make the application process faster and less expensive for applicants. Paragraph (b)(2), would state that costs for administration of the ROW program will be collected by the NPS in accordance with OMB Circular A–25, Memorandum for Heads of Executive Departments and Establishments: User Charges at the current indirect cost rate, and will be retained from the use and occupancy fees collected on ROW permits. Paragraph (b)(3) would give the NPS discretion to consider exempt and non-exempt uses and users in determining the use and occupancy fee. When there is a mix of potentially exempt and non-exempt uses or users served by infrastructure, the potentially exempt uses or users may be eligible for a use and occupancy fee exemption on sufficiently discrete identifiable portions of the infrastructure that exclusively serve the exempt uses or users.

Market conditions that affect the value of the use and occupancy of Federal lands and waters in System units can, and often do, change during the term of a ROW permit. Paragraph (c) would allow the NPS to re-evaluate the use and occupancy fee at any time during the term of the ROW permit, but at a minimum every 10 years, so that the American taxpayer receives fair market value for the use and occupancy of the Federal lands and waters subject to the ROW. Paragraph (d) would state that the use and occupancy fee will be re-evaluated during permit renewal and when a subsequent ROW permit is issued for infrastructure that was authorized under an expired ROW permit that was not renewed in a timely manner.

Paragraph (e) would update the exemptions from paying a use and occupancy fee. Exemptions would be discretionary and infrastructure must be used exclusively for one or more of the qualifying criteria. The rule would largely maintain the exemptions in existing paragraph (c) of § 14.26, but clarify circumstances where exemptions may be available. The rule would remove the exemption for irrigation projects because it is not a common use within System units. Similarly, the rule replaces exemptions for non-profit and Rural Electrification Administration projects with a discretionary exemption for projects that clearly support the public interest and the mission and values of the System unit.

§ 14.9 Resource Impact Considerations

Proposed regulation	Existing regulation
14.9 Resource impact considerations.	14.6 In form of easement, license, or permit. 14.9(b), (c), (e), and (g) Terms and conditions.

Existing regulations at § 14.6 allow permittees to use materials removed during construction elsewhere along the same ROW in the construction of the same project. Existing regulations in § 14.9 require ROW permittees to agree to specific terms and conditions that prescriptively address mitigation for various types of impacts to System unit resources during construction and maintenance operations. Paragraph (b) addresses the disposition of vegetative and other material cut, uprooted, or otherwise accumulated during construction and maintenance. Paragraph (c) addresses soil and resource conservation and protection measures, such as weed control. Paragraph (e) addresses roads, fences, and trails that are destroyed or injured from construction work. Paragraph (g) addresses reimbursement for merchantable timber that is cut, removed, or destroyed in the construction and maintenance of the project.

Because potential mitigation actions will vary among System units, and even within a System unit, based on the nature and scope of each permitted activity, this rule would replace the special allowance in § 14.6 and the prescriptive requirements referenced above for a new § 14.9 that would make general statements about disposition, mitigation, and compensation resulting from resource damage. This section would state that the NPS may direct the use and disposition of all disturbed resources and may require a permittee to mitigate or compensate for impacts to resources and lost uses from permitted activities. Although not stated in the rule, compensation collected by the NPS may be retained under 54 U.S.C. 100724(a) and used for mitigation actions taken by the NPS on behalf of the permittee.

§ 14.10 Terms and Conditions

Proposed regulation	Existing regulation
14.10 Terms and conditions.	14.9 Terms and conditions. 14.31 Deviation from approved right-of-way.

Existing § 14.9 contains a list of terms and conditions that every permittee must agree to comply with in a ROW permit, except for those that are waived by the Secretary in a particular case. Some of the terms and conditions in this list are outdated or unnecessarily specific and are therefore no longer necessary. For example, an existing term and condition in paragraph (d) directs permittees to prevent and suppress fires. This is no longer consistent with NPS practice and policy regarding fire prevention and suppression.

This rule would replace existing § 14.9 with new § 14.10. Paragraph (a) would state that the ROW permit will authorize specific operation and maintenance activities and that any such activities not specifically authorized in the ROW permit will require an additional written authorization or amended ROW permit. This is necessary to allow the NPS to evaluate potential new impacts to System unit resources, values, and visitors, including impacts to public health and safety and the visitor experience. This statement is consistent with § 14.31 of the existing regulations, which requires written approval for deviations. This rule would replace existing § 14.31 with paragraph (a) of new § 14.10 and with new § 14.14 (Right-of-way permit amendment) discussed below.

Paragraph (b) would state that the NPS will issue a ROW permit for a term that is consistent with applicable law and policy and may be up to 50 years when determined appropriate by the NPS. Paragraph (c) would require permittees to agree to a smaller set of minimum terms and conditions in every approved ROW permit. Some of these

[1] To view the FWS rulemaking action, search for ''FWS–HQ–NWRS–2019–0017'' on *www.regulations.gov.*

terms and conditions would be similar to those in existing § 14.9, but would more clearly reflect current NPS general practices and policies. Because the NPS evaluates each request for a ROW permit on a case-by-case basis, the rule would allow the NPS to require additional terms and conditions, or make modifications to the terms and conditions in the regulation, that could be used to address resource, management, or public health and safety concerns that are specific to the particular project and System unit.

§ 14.11 Special Use Permit for Construction

Proposed regulation	Existing regulation
14.11 Special use permit for construction.	14.29 Timely construction.

Existing § 14.29 requires permittees to complete construction of infrastructure under a ROW permit in no more than five years or ten years for good cause. The rule would remove these requirements because they are no longer meaningful to current NPS practice regarding the construction of infrastructure operated and maintained under a ROW permit. As noted in previous sections, a ROW permit authorizes the and the operation and maintenance of specific infrastructure within a System unit. Construction activities have a shorter duration and have potential impacts to System unit resources, values, public health and safety, and visitor experience that are different than those posed by operation and maintenance. Construction activities can include activities associated with the addition, adjustment, exchange, or removal of infrastructure. Construction of infrastructure is an integral step in and can occur at different stages after a ROW permit is issued. For these reasons, the NPS authorizes the construction of infrastructure under a separate special use permit.

This rule would create a new § 14.11 that addresses the application process for obtaining a special use permit for construction. Paragraphs (a)–(c) would require a separate special use permit before a ROW permittee initiates construction activities, require the special use permit applicant to use the current special use permit application form, and require the special use permit applicant to submit a complete application to the NPS before the NPS will process the application. Paragraph (d) would state that the NPS will only issue a special use permit for construction either simultaneously with the execution of a ROW permit, or after a ROW permit has been executed. This would ensure that the NPS permits construction activities only when the use of the lands or waters is authorized and for infrastructure that has been separately approved for operation and maintenance. Paragraph (e) would identify information that must be submitted on an application for a special use permit for construction, including construction drawings, an equipment list, a construction schedule, maps, and a restoration plan (as applicable). During the pre-application meeting and the initial processing of the permit, the NPS may request additional information from the applicant related to construction activities. The NPS cost recovery authority 54 U.S.C. 103104 applies to special use permits for construction and the NPS will recover costs consistent with NPS policy.

The NPS has issued special use permits for construction of infrastructure that is part of a larger project occurring outside of the System unit, and then the permittee has been unable to secure the remaining permits and rights to complete the larger project. This has resulted in unnecessary impacts to System unit resources. To help avoid these outcomes, paragraph (f) would allow the NPS to require an applicant for a special use permit for construction to provide an affidavit stating that all other required land rights, water rights, permits, certifications, approvals, and authorizations necessary for a viable project have been secured.

§ 14.12 Right-Of-Way Permit Renewal

Proposed regulation	Existing regulation
14.12 Right-of-way permit renewal.	N/A.

Section 14.12 of the proposed rule would establish procedures that permittees must follow prior to the expiration of an existing ROW permit to obtain a new ROW permit in time for associated infrastructure to remain where it is in the System unit. Paragraph (a) would explain that, in practice, a ROW permit renewal is actually the issuance of a new, separate ROW permit that is approved before the expiration of an existing ROW permit for the use of lands and waters, and the operation and maintenance of the same infrastructure, and that the new ROW permit may contain new terms and conditions, as applicable. These new terms and conditions could change the use and occupancy fee and requirements for financial assurance and liability insurance. Subparagraphs (b)(1) and (b)(2) would encourage permittees to submit complete applications for new ROW permits, following the procedures in § 14.4, at least six months prior to the expiration of an existing ROW permit in order to complete a timely renewal. Paragraph (b)(3) would state that the term a ROW permit may only be re-established for a new and continuous term through timely renewal. Paragraph (b)(4) would state that the decision to renew a ROW permit is at the discretion of the NPS. Paragraph (c) would clarify that if a ROW permit expires prior to the issuance of a renewal, the infrastructure that had been authorized under the ROW permit will, upon expiration, be considered in trespass under § 14.15.

§ 14.13 Right-Of-Way Permit Transfer

Proposed regulation	Existing regulations
14.13 Right-of-way permit transfer.	• 14.36 Method of filing. • 14.37 Reimbursement of costs.

ROW permit transfers are necessary if a current permittee intends to convey ownership or control of and responsibility for associated infrastructure to a new entity. The NPS proposes to replace existing § 14.36 with a new § 14.13 that reflects current procedures used by the NPS for the transfer of a ROW permit. The new section is substantively similar to existing § 14.36. Paragraph (a) would explain when ROW permit transfers are necessary. Subparagraphs (b)(1) and (b)(2) would require the existing permittee to submit a written transfer request and the new permittee to submit a notice of acceptance and agreement to comply with the terms and conditions of the ROW permit, plus information that must be submitted by the existing and new permittees. Paragraph (c) would clarify that the existing permittee will remain responsible for compliance with the terms and conditions of the ROW permit, including all financial obligations, unless and until a transfer is approved in writing by the NPS. The NPS proposes to remove existing § 14.37, which requires a nonrefundable payment of $25 for all filings for permit transfers as a form of cost recovery. The NPS no longer charges this fee, which would not come close to offsetting the administrative costs of transferring a permit, and instead charges a cost recovery fee commensurate with actual administrative costs under 54 U.S.C. 103104.

§ 14.14 Right-Of-Way Permit Amendment

Proposed regulation	Existing regulation
14.14 Right-of-way permit amendment.	14.31 Deviation from approved right-of-way.

The NPS proposes to establish procedures for amending an existing ROW permit in a new § 14.14. Paragraph (a) would allow a permittee to request or the NPS to initiate an amendment to a ROW permit. This paragraph also would state that if the NPS initiates an amendment, it will provide notice to the permittee. Paragraph (b) would state that an amendment could address infrastructure, location, access, operation and maintenance activities, the use and occupancy fee, a new permittee as a result of an approved transfer, or other terms and conditions. Subparagraphs (b)(1) and (b)(2) would state that amendments to authorized uses, including infrastructure, or to authorized locations will require the permittee to submit some or all of the materials that are required for new applications under § 14.4, and if the amendments are significant, the submission of a completely new application under § 14.4. An example of a significant amendment would be a request to add new infrastructure outside of the approved permitted area. These provisions are consistent with existing § 14.31, which requires an amended application for substantial deviations, that would be replaced by these new subparagraphs of § 14.14 and by new paragraph (a) of new § 14.9 (Terms and conditions) discussed above.

As explained above, section 14.12 of the proposed rule states that the full term of a ROW permit can only be reset if the permit is renewed in a timely manner. The NPS recognizes, however, that there may be barriers that arise that prevent timely renewal. For this reason, paragraph (c) of § 14.14 would allow the NPS to extend the term of an existing ROW permit by amendment, for up to one year, if there is a reasonable delay or ongoing good faith negotiations regarding the renewal of an expiring ROW permit. Paragraph (d) would require the permittee to submit amendment requests in writing with information necessary for the NPS to evaluate the request. In paragraph (d)(7), the rule would allow the NPS to require additional informational necessary to properly evaluate a requested amendment. Paragraph (e) would state that decisions to approve amendments are at the discretion of the NPS, and that any approved amendment is deemed part of the original ROW permit.

§ 14.15 Right-Of-Way Permit Suspension and Termination

Proposed regulation	Existing regulations
14.15 Right-of-way permit suspension and termination.	• 14.30 Nonconstruction, abandonment or nonuse. • 14.33 Order of cancellation.

Section 14.30 of the existing regulations allows the NPS to cancel ROW permits for failure to construct within the period allow and for abandonment or nonuse. Section 14.33 of the existing regulations allows the NPS to cancel ROW permits for any violation of the regulations or permit terms and conditions. The NPS proposes to replace these provisions with a new § 14.15 that addresses termination of a ROW permit by either the NPS or the permittee, suspension of a ROW permit by the NPS, and for the first time in regulations creates an opportunity for permittees to cure the cause of the suspension or termination. Paragraph (a) would state that at any time upon written notice provided to the permittee, the NPS may suspend or terminate all or any part of the permit without liability or expense to the United States. If the NPS intends to suspend or terminate all or part of a ROW permit, paragraph (b) would allow the NPS to provide the permittee with an opportunity to cure the cause of the suspension or termination prior to it taking effect. Paragraph (c) would list the most common, specific reasons for suspension and termination of a ROW permit, and also state that the NPS may suspend or terminate a ROW permit at its discretion. If a permittee seeks to terminate a ROW permit, paragraph (d) would require the permittee to provide written notice to the NPS and identify the desired date of termination. Paragraph (e) would state that, upon suspension, the permittee remains responsible for fulfilling all obligations under the permit, including payment of any use and occupancy fees and cost recovery due. Paragraph (f) would state that, upon termination, the permittee remains responsible for fulfilling all permit obligations, including required payments, restoration and reclamation activities. The ongoing duties and responsibilities are meant to protect the American taxpayer from incurring the permittee's liabilities and financial responsibilities.

§ 14.16 Trespass

Proposed regulation	Existing regulation
14.16 Trespass	14.8 Unauthorized occupancy.

Section 14.8 of the existing regulations states that occupancy and use of Federal lands without authority will result in prosecution and liability for trespass. This rule would replace this section with more comprehensive regulations about trespass in a new § 14.16. Paragraph (a) would expressly prohibit any uses, activities, or infrastructure not specifically authorized under a valid ROW permit or other legal authorization and state that such uses are considered a trespass against the United States. Paragraph (b) would allow the NPS to require an entity in trespass to immediately remove the infrastructure and cease the uses or associated activities, and to pursue additional legal remedies, penalties, and fees. Paragraph (c) would allow the NPS to continue to enforce the terms and conditions of an expired ROW permit, including the collection of cost recovery and use and occupancy fees. Paragraph (d) would allow the NPS to require an entity to apply for a permit that authorizes maintenance activities on infrastructure in trespass. This permit would not cure the trespass and be considered only to maintain the safety of the infrastructure, and to protect public health and safety, visitor experience, or the resources and values of the System unit.

§ 14.17 Penalties

Proposed regulation	Existing regulation
14.17 Penalties	N/A.
N/A	1.3 Penalties.

The NPS proposes to add a new provision in § 14.17 and make a corresponding revision to § 1.3 so that a violation of any regulation in part 14 or any term and conditions of a ROW permit may result in criminal penalties provided under 18 U.S.C. 1865, including fine, imprisonment, or both.

§ 14.18 Restoration and Reclamation

Proposed regulation	Existing regulation
14.18 Restoration and reclamation.	14.38 Disposal of property on termination of right-of-way.

Existing § 14.38 gives permittees at least six months to remove property and improvements from the ROW before they become the property of the United States. This provision would be replaced by subparagraph (c)(7) of § 14.10 of the rule, which requires as a standard term and condition of each ROW permit that the permittee remove all infrastructure from the permitted area within at least six months of the expiration or termination of the ROW permit.

New § 14.18 of the rule would establish procedures and requirements for site restoration and reclamation in addition to those included in the terms and conditions of a ROW permit. Paragraph (a) would require the permittee, after the expiration or termination of the ROW permit, to restore or reclaim the permitted area to NPS standards directed and approved by the NPS. If the required reclamation and restoration activities are not addressed in the approved ROW permit, the NPS may require the permittee to apply for and obtain a separate special use permit authorizing those activities, with appropriate terms and conditions. The special use permit will establish a reasonable schedule for completion of all reclamation and restoration activities under the permit. If those activities are not completed within a reasonable period of time, or according to the schedule established in the special use permit, paragraph (b) would make the permittee liable to the NPS for all costs associated with reclamation or restoration of the permitted area undertaken by the NPS, or its contractor, to the satisfaction of the NPS. Paragraph (b) also would state that the permittee's liability for such costs survives the expiration or termination of the ROW permit.

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563 and 14094)

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that the proposed rule is not significant.

Executive Order 14094 amends Executive Order 12866 and reaffirms the principles of Executive Order 12866 and Executive Order 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The proposed rule would benefit small businesses by streamlining NPS regulations for permitting ROWs and thereby reducing the amount of time that NPS requires to issue many ROW permits. The proposed rule would suggest optional pre-application meetings to provide small businesses with information early in the process about the NPS's estimated time and cost to evaluate and process a ROW permit application, increasing regulatory certainty. The NPS reviewed the Small Business Size standards for the affected industries and determined that a large share of the entities in the affected industries are small businesses as defined by the Small Business Act. The NPS believes, however, that the impact on the small entities is not significant because the proposed rule would impact a small number of small entities, and those effects would not be economically significant. In summary, the NPS has considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities. The NPS certifies that, if made final, this proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Congressional Review Act

This proposed rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on Tribal, State, or local governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on Tribal, State, or local governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This proposed rule would not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule would only affect use of federally-administered lands and waters. It would have no outside effects on other areas. The rule would affect the NPS's administration of the ROW Program and have no substantial, direct effects on the States, on the relationships between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes and ANCSA Corporations (Executive Order 13175 and Department Policy)

The DOI strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The NPS has evaluated this proposed rule under the criteria in Executive Order 13175 and under the DOI's Tribal consultation policy and has determined that tribal consultation is not required because the proposed rule would not have a substantial direct effect on federally recognized Indian Tribes. This proposed rule has no impact on Tribal lands, as it applies only to ROW permits issued by the NPS for the use and occupancy of lands and waters, and interests in lands and waters, administered by the NPS within System units. Indian tribes have jurisdiction over their own lands, subject to the Secretary's trust responsibility. There will be opportunities for consultation with Tribes on individual ROW permitting decisions. Paragraph (a)(1) of § 14.5 of the proposed rule would state that the NPS will issue a ROW permit only if the proposed operation and maintenance of infrastructure are consistent with applicable laws and policies, including statutes governing administration of the National Park System, regulations, and NPS planning documents. This evaluation will include consideration of whether issuing the ROW permit would cause a significant impact to one or more Tribes and, if so, the NPS will consult with potentially affected Tribes prior to issuing the permit under Executive Order 13175.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with the NPS's use of Common Form SF–299 and assigned OMB Control Number 0596–0249 (currently under OMB review); and the currently approved NPS form 10–930, assigned OMB Control Number 1024–0026 (currently under OMB review). You may view the information collection request(s) at *http://www.reginfo.gov/public/do/PRAMain.* 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.

National Environmental Policy Act

This proposed rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because the rule is covered by a categorical exclusion. NPS NEPA Handbook (2015) Section 3.3.A.8 allows for the following to be categorically excluded: ''Modifications or revisions to existing regulations or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions, or new regulations do not:

a. Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it,

b. Introduce noncompatible uses that might compromise the nature and characteristics of the area or cause physical damage to it,

c. Conflict with adjacent ownerships or land uses, or

d. Cause a nuisance to adjacent owners or occupants.''

Alternatively, this rule is covered by the categorical exclusion in Section 3.2.H, which allows for the following to be categorically excluded: ''policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature, or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' The NPS has determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. The proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of Office of Information and Regulatory Affairs as a significant energy action. A Statement of Energy Effects is not required.

Clarity of This Rule

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that the NPS has not met these requirements, send the NPS comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the rule, your comments should be as specific as possible. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

It is the policy of the DOI, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public Availability of Comments

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 the NPS in your comment to withhold your personal identifying information from public review, the NPS cannot guarantee that it will be able to do so.

List of Subjects

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, and Signs and symbols.

36 CFR Part 14

Electric power, Highways and roads, Public lands-rights-of-way.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR parts 1 and 14, as set forth below:

PART 1—GENERAL PROVISIONS

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

■ 1. Authority: 54 U.S.C. 100101, 100751, 320102.

§ 1.2 [Amended]

■ 2. In § 1.2(b) and (d), remove the word ''and'' after ''part 7,'' and add the words '', and part 14'' after ''part 13''.

§ 1.3 [Amended]

■ 3. In § 1.3(a), remove the word ''and'' after ''12,'' and add in its place a comma; and add the words '', and 14'' after ''13''.

■ 4. Revise part 14 to read as follows:

PART 14—RIGHTS-OF-WAY

Sec.

Authority: 54 U.S.C. 100902; 54 U.S.C. 100751; 54 U.S.C. 103104; 31 U.S.C. 9701

§ 14.1 Purpose and scope.

(a) The regulations in this part establish procedures an entity must follow when applying for a right-of-way permit and provisions under which the NPS may authorize a right-of-way within a National Park System unit under applicable current or future statutory authority, whether the statutory authority is System-wide or specific to a System unit.

(b) The regulations in this part ensure that use of lands and waters, and the operation and maintenance of infrastructure under a right-of-way permit will:

(1) Comply with all applicable statutory authorities, including the NPS Organic Act (54 U.S.C. 100101 *et seq.*);

(2) Protect lands, waters, and resources of the National Park System; and

(3) Protect visitor uses and experiences within the National Park System, as well as promote the health and safety of the public and NPS employees and volunteers.

§ 14.2 Definitions for this part.

Applicant means an entity that has submitted an application for a right-of-way permit or an application for a special use permit for construction.

Co-location means the placement of infrastructure on or in authorized infrastructure owned or controlled by another or within an area authorized for use by another.

Entity means a party including, but not limited to, Federal, state, and local governments, Tribes, citizens, and organizations of the United States, including corporations, associations, partnerships, and non-profit organizations.

Infrastructure means public utilities and power and communications facilities, as described in 54 U.S.C. 100902, and any other equipment, facility, installation or use that the NPS may authorize under a right-of-way permit.

Operation and maintenance means the use of infrastructure for purposes specifically authorized in a right-of-way permit, including means of access and actions associated with its service on a routine and on-going basis to ensure good order, safe conditions, and timely repair.

Permitted area means the land or water mapped, described, and authorized for use of lands and waters, and operation and maintenance in a right-of-way permit or for construction in a special use permit for construction, and may include routes and means of access.

Permittee means an entity that holds a current, fully executed right-of-way permit or a special use permit for construction.

Right-of-way permit means a discretionary and revocable special use permit issued by the NPS to authorize the use of lands and waters, and operation and maintenance. A right-of-way permit does not grant, convey, or imply transfer of title to any interest in, including a leasehold or easement interest in, the lands or waters authorized for use.

Special use permit for construction means a discretionary and revocable special use permit issued by the NPS to authorize the construction of infrastructure, or construction activities associated with infrastructure, within the National Park System.

§ 14.3 Pre-application meeting.

Prior to submitting an application for a right-of-way permit, the potential applicant should contact the superintendent of the System unit that would be affected by the project to schedule a pre-application meeting to discuss the project and the permitting process along with applicable law and policy. Through a pre-application meeting, the NPS may inform the potential applicant about documentation needed to make an application complete, and provide the potential applicant with an expected timeline and potential costs the NPS will incur to review and process the application.

§ 14.4 Right-of-way permit application.

(a) *Complete application requirement.* The NPS will not begin processing a right-of-way permit application until it has determined the applicant has complied with the requirements in this part, including the submission of all required information. Making this determination does not guarantee the NPS will issue a right-of-way permit.

(b) *Application form.*

(1) To request a right-of-way permit, applicants must submit a complete Standard Form 299, Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property (SF–299), or the applicable common form approved by the General Services Administration at the time of the application, including all materials required in the SF–299 and this part, to the superintendent of the System unit. If materials required in this part were previously filed with the superintendent for the issuance of another right-of-way permit for the same System unit, the NPS may decide the applicant is not required to resubmit these materials, provided the previous date of filing, place of filing, and existing right-of-way permit number are included in the new application.

(2) The SF–299 must be signed by the applicant or applicant's authorized representative.

(3) The applicant must submit the application charge pursuant to § 14.7 of this part.

(c) *Applicant documentation.* Only citizens, corporations, partnerships, and associations of the United States are eligible to apply for a right-of-way permit.

(1) *Corporations.* An application by a corporation must include:

(i) A copy of its charter or articles of incorporation, duly certified by the

proper official of the state where the corporation was organized.

(ii) A copy of the law under which the corporation was formed and proof of organization and good standing under the same.

(iii) If a corporation is operating in a state other than its state of incorporation, a certificate of good standing from the proper official of the state where it is operating that it has complied with the laws of that state governing foreign corporations operating in such state.

(iv) An affidavit from the appropriate individual at the corporation certifying:

(A) The corporation's ability to do business in the state or states where the affected park area is located;

(B) The corporation's ability to file an application for the stated purpose; and

(C) The ability of the individual filing the application to bind and sign for the corporation for purposes of the application.

(2) *Partnerships, limited liability companies, and similar entities.* An application by an association of individuals with legal standing must be accompanied by:

(i) A certified copy of articles of association or other current governing documents, if any, indicating appropriate signature authority and authority to file the application. If these articles or documents do not exist, all members must sign the application.

(ii) Evidence of U.S. citizenship for each individual member of the association.

(3) *Individuals.* An application by an individual must be accompanied by evidence of U.S. citizenship.

(d) *Maps.* (1) Applicants must provide a map that meets current NPS mapping standards, showing at a minimum:

(i) The area proposed to be included in the right-of-way permit, including the placement of proposed infrastructure; and

(ii) Proposed access points and routes (including uses of existing roads), and other areas associated with the right-of-way permit.

(2) The NPS may require an official land survey, legal description, and digital information.

(e) *Water Rights.* Unless otherwise required by Federal law, applications requesting authorization to operate and maintain infrastructure to support the storage, diversion, conveyance, or use of water, must include proof of the applicant's valid water right from the appropriate state official or state law.

(f) *Access.* (1) The applicant must include a description of proposed access routes and means of access.

(2) Access routes and means of access will be limited to existing roads, or existing or NPS-approved routes, trails, or access points.

(3) Unless otherwise provided by law, the NPS will not authorize new roads by a right-of-way permit.

(4) No right of access is granted under a right-of-way permit. Access routes and means of access identified in a right-of-way permit are revocable at the discretion of the NPS.

(g) *Co-location.* (1) The applicant must design infrastructure to accommodate co-location to the greatest extent possible after consideration of potential impacts to park area resources, values, public health and safety, and visitor experience.

(2) Before proposing a new or undisturbed location for infrastructure, the applicant must demonstrate that they have evaluated all options for co-location with existing infrastructure.

(3) Each entity seeking to co-locate will be required to have a separate right-of-way permit.

(h) *Financial assurance and liability insurance.* As appropriate to the proposed project, the NPS may require proof of acceptable financial assurance and liability insurance.

(i) *Additional Information.* The NPS may require in writing that applicants submit additional information before an application is considered complete.

§ 14.5 Review of a complete right-of-way permit application.

(a) *Standards of review.* (1) The NPS will issue a right-of-way permit only if the proposed use of lands and waters, and operation and maintenance are not incompatible with the public interest and consistent with applicable laws and policies, including statutes governing administration of the National Park System, regulations, and NPS planning documents.

(2) Except where Federal law provides otherwise, the NPS will issue a right-of-way permit only if the applicant has demonstrated that there is no practicable alternative to locating the infrastructure within the National Park System.

(b) *Managerial findings.* After completing review of an application, the NPS will notify the applicant in writing that the right-of-way permit is:

(1) Conditionally approved; or

(2) Denied, with an explanation.

(c) *Execution of right-of-way permits.* The applicant must sign a conditionally approved right-of-way permit prior to execution by the NPS. No right-of-way permit is valid until it has been executed by the NPS.

(d) *Behavior and conduct.* At any time during the application process for a right-of-way permit, the NPS may, in its discretion, suspend or end the application process if the applicant:

(1) Is delinquent in paying any cost recovery, use and occupancy fees, or other debts to the Federal Government;

(2) Has an unresolved criminal or civil violation with the Federal Government;

(3) Has been notified that they are liable for damages under the System Unit Resource Protection Act (SURPA), 54 U.S.C. 100721–100725, for injuries to park area resources, or have not resolved or fully paid response costs and damages under SURPA; or

(4) Has caused unpermitted resource damage, impacts to visitors, management problems, or the applicant has violated the terms and conditions of any permit issued by a Federal agency, including the NPS.

§ 14.6 Application withdrawal.

(a) An applicant may withdraw an application at any time during the permitting process.

(b) If at any time during the permitting process an applicant does not respond to a written communication from the NPS within 90 days, the NPS may presume that the application has been withdrawn without further notice to the applicant.

(c) When an application is withdrawn or presumed withdrawn, the permitting process is terminated and the applicant must resubmit a new application pursuant to § 14.4 of this part.

§ 14.7 Cost recovery.

(a) The NPS will recover all costs from applicants and permittees pursuant to 54 U.S.C. 103104, according to NPS cost recovery policy, even in the case of withdrawn or denied applications, and suspended or terminated right-of-way permits. In addition to the application charge referred to in paragraph (b) of this section, the NPS may recover other actual costs incurred in processing an application for a right-of-way permit or special use permit for construction, including, but not limited to, costs incurred from completion of required compliance and reviews, appraisal or valuation related costs, and costs incurred from monitoring or managing permittee activities during the term of a permit.

(b) An applicant must pay an application charge with each application for a right-of-way permit unless this charge is waived by the NPS pursuant to NPS cost recovery policy. The application charge will include costs incurred by the NPS for initial discussions and review of the

application to determine if it is complete.

(1) The minimum application charge for a right-of-way permit is the cost of two hours of the System unit permit coordinator's time, plus one hour of their supervisor's time, including overhead costs.

(2) If the System unit permit coordinator is the superintendent, then the minimum application charge is the cost of two hours of the superintendent's time, including overhead costs.

(3) The application charge addresses the costs incurred by the NPS in initially discussing and reviewing an application for completeness and does not constitute all of the costs that the NPS may recover.

§ 14.8 Use and occupancy fee.

(a) Every permittee must pay a use and occupancy fee to the NPS for the use and occupancy of federally owned lands and waters within the National Park System, except as provided in paragraph (e) of this section.

(b) The use and occupancy fee will be the fair market value of the use and occupancy of federally owned lands and waters under the right-of-way permit.

(1) The NPS may adopt any method approved by the Department of the Interior to determine the use and occupancy fee.

(2) Costs for administration of the right-of-way program will be collected by the NPS in accordance with OMB Circular A–25 at the current indirect cost rate and will be a retained percentage of use and occupancy fees collected on right-of-way permits issued.

(3) If a permittee's infrastructure is for both exempt and non-exempt uses or users, as provided in paragraphs (e)(1)–(4) of this section, only those discrete portions that serve exempt uses or users may be eligible for exemption from the use and occupancy fee.

(c) The use and occupancy fee may be re-evaluated at any time during the term of a right-of-way permit at the discretion of the NPS, but at a minimum will be re-evaluated every 10 years.

(d) The use and occupancy fee will be re-evaluated when a right-of-way permit is renewed under § 14.12 of this part and when a subsequent right-of-way permit is issued for infrastructure that was authorized under an expired right-of-way permit that was not renewed in a timely manner.

(e) A permittee may be exempt from paying a use and occupancy fee if their infrastructure is exclusively:

(1) Used by a Federal Government agency, including the NPS;

(2) Serving the purposes of an authorized use and occupancy for which the NPS is already receiving compensation that was determined in consideration of services provided by the permittee;

(3) Operated or used by a Tribal, state, or local government for a direct non-commercial use; or

(4) For a project that is clearly in the public interest and consistent with the purposes and values of the park area.

§ 14.9 Resource impact considerations.

The NPS may direct the use and disposition of resources disturbed under a right-of-way permit. The permittee may be required to mitigate or compensate for permitted impacts to NPS resources and lost uses.

§ 14.10 Terms and conditions.

(a) A right-of-way permit will authorize the permittee to conduct specific operation and maintenance. Operation and maintenance not specifically authorized in the right-of-way permit requires written authorization or an amended right-of-way permit.

(b) The NPS will issue a right-of-way permit for a term that is consistent with applicable law and policy and may be up to 50 years when determined appropriate by the NPS.

(c) A permittee, by accepting a right-of-way permit, agrees and consents to comply with and be bound by the following terms and conditions, and any additional terms and conditions or modifications that may be required by the NPS in a right-of-way permit:

(1) To comply with all applicable laws and policies, including NPS regulations and planning documents.

(2) To ensure that all of its employees, agents, officers, contractors, and subcontractors comply with all of the terms and conditions of the right-of-way permit and requirements of this part.

(3) To pay the United States the full value of all damage to the lands, waters, or other property of the United States caused by permittee or permittee's employees, agents, officers, contractors, and subcontractors, and to indemnify the United States against any liability for damages to life, person, or property arising from operation and maintenance; except that where a right-of-way permit is issued to a state or other government agency whose power to assume liability by agreement is limited by law, such state or agency shall indemnify the United States as provided above to the extent allowed by law.

(4) That the exercise of authorized activities under a right-of-way permit will not unduly interfere with the management, administration, or disposal by the United States of any land, waters, structures, or interests in land or waters affected thereby. The permittee must agree and consent to the use and occupancy by the United States, its grantees, permittees, licensees, invitees, and lessees of any part of the permitted area not actually occupied for the purpose of the right-of-way permit to the extent that such use does not materially interfere with the full and safe utilization thereof by the permittee.

(5) That except as expressly authorized by the right-of-way permit or subsequently approved in writing by the NPS, the permittee may not move, remove, alter, damage, or destroy any park area resources, including vegetation, within the permitted area or other areas of the System unit. As directed by the NPS, the permittee must take all reasonable measures to avoid or minimize damage to park area resources. The NPS may require mitigation or compensation for permitted impacts to System unit resources authorized under this permit. The NPS may also direct the use and disposition of the disturbed resources.

(6) That the NPS will have a right of access at any time to the permitted area.

(7) That, unless an extension is granted in writing by the NPS, within 6 months after the expiration or termination of the right-of-way permit, the permittee will have completed removal of all infrastructure from the permitted area, as well as restoration and reclamation of the permitted area, to NPS standards directed and approved by the NPS. Any infrastructure not removed within that time will be deemed abandoned and will be disposed of in accordance with applicable Federal law, and the permittee will be liable for all costs incurred by the NPS that are associated with removing and disposing of such infrastructure, as well as with restoration and reclamation of the permitted area, to the satisfaction of the NPS. This obligation will survive the termination or expiration of a right-of-way permit.

(8) That the right-of-way permit terms and conditions, use and occupancy fee, and other stipulations and provisions may be modified during a right-of-way permit transfer, amendment, or renewal process.

§ 14.11 Special use permit for construction.

(a) *Permit requirement.* Applicants must apply for and obtain a separate special use permit for construction prior to beginning construction associated with a right-of-way permit.

(b) *Application form.* The applicant must use the currently approved application form for a special use permit.

(c) *Complete application.* The NPS will not begin processing an application for a special use permit for construction until the NPS has reviewed the application and determined that it is complete.

(d) *Associated right-of-way permit.* The NPS will only issue a special use permit for construction simultaneously or after it issues an associated right-of-way permit.

(e) *Application information.*

(1) The applicant must include all of the information required by the currently approved special use permit application form. This information must include, at a minimum, the following information:

(i) Description of proposed activity.

(ii) Requested location.

(iii) Proposed schedule, including proposed start and end dates, and interim activities.

(iv) List of equipment.

(2) The applicant is encouraged to attach additional pages with information useful in evaluating the permit request, including:

(i) Construction drawings.

(ii) A map showing areas for construction activities, including staging areas and access routes.

(iii) A construction area restoration plan, as applicable.

(3) The NPS may require additional information by written request.

(f) *Affidavit.* Prior to issuing a special use permit for construction, the NPS may require the applicant to provide an affidavit stating that all other required land rights, water rights, permits, certifications, approvals, and authorizations necessary for a viable project have been secured.

§ 14.12 Right-of-way permit renewal.

(a) Right-of-way permit renewal means the issuance of a new, separate, consecutive right-of-way permit, in response to a timely right-of-way permit application, for a new term and with new terms and conditions, as applicable.

(b) A permittee must submit a new, complete right-of-way permit application to continue use of lands and waters, and operation and maintenance of infrastructure beyond the term of a current right-of-way permit, unless the current right-of-way permit is extended under § 14.14(c) of this part.

(1) Permittees are encouraged to submit a timely, complete application at least six months prior to expiration of their current right-of-way permit.

(2) Renewal applications must meet the criteria in § 14.4 of this part.

(3) The term of a right-of-way permit may only be reset for a new and continuous term by renewal.

(4) The decision to renew a right-of-way permit is at the discretion of the NPS.

(c) If a right-of-way permit expires prior to issuance of a renewal, the infrastructure that had been authorized under the right-of-way permit will, upon expiration, be considered in trespass under § 14.16 of this part.

§ 14.13 Right-of-way permit transfer.

(a) Right-of-way permit transfers are necessary when a current permittee intends to convey ownership or control of and responsibility for the use and lands and waters, and operation and maintenance to a new entity.

(b) The NPS will not consider a transfer request until both of the following have occurred:

(1) The current permittee has provided a written request to the NPS that is signed by a representative legally authorized to bind the permittee, that contains the permit number and a statement clearly describing the reason for the requested transfer.

(2) The new entity has provided the NPS with written notice of its acceptance of and agreement to comply with the terms and conditions of the existing right-of-way permit. The written notice must be signed by a representative legally authorized to bind the new entity, and must contain the following information:

(i) Name of the entity;

(ii) Address and phone number of the entity;

(iii) Name, title, and contact information of the representative of the entity assuming responsibility for the right-of-way permit;

(iv) Statement affirming that the existing permitted uses, permitted areas, and purposes specified in the right-of-way permit remain the same;

(v) Proof of acceptable financial assurance and liability insurance, if required as a condition of the right-of-way permit, or requested as a modification by the NPS;

(vi) Proof of eligibility and suitability to hold a right-of-way permit as required by § 14.4 and § 14.5 of this part; and

(vii) Any additional information that the NPS may require by written request.

(c) The decision to approve a transfer is at the discretion of the NPS. A right-of-way permit transfer will be documented as an amendment to the existing right-of-way permit and will be reviewed and executed using the procedures that apply to the review and execution of right-of-way permits in paragraphs (a)–(d) in § 14.5 of this part.

(d) Unless and until a transfer is approved in writing by the NPS, the current permittee named on the right-of-way permit will remain responsible for compliance with the terms and conditions of the right-of-way permit, including all financial obligations.

§ 14.14 Right-of-way permit amendment.

(a) A permittee may request or the NPS may initiate an amendment to a right-of-way permit. If the NPS initiates an amendment, it will provide notice to the permittee.

(b) An amendment to an existing right-of-way permit may address operation and maintenance, the use and occupancy fee, a new permittee as a result of an approved transfers, or other terms and conditions.

(1) If a permittee requests an amendment to a right-of-way permit that would modify, change, or add to the authorized uses or locations, then the NPS may require the permittee to include some or all of the materials required under § 14.4.

(2) If modifications, changes, or additions to the authorized uses or locations proposed by the permittee are deemed significant by the NPS, then the NPS may require the permittee to submit a complete right-of-way permit application requesting a new right-of-way permit.

(c) An amendment may not alter the term of a right-of-way permit, except for a single extension of up to one year to prevent expiration of the right-of-way permit when there is a reasonable delay or ongoing good faith negotiations regarding renewal of an expiring right-of-way permit.

(d) Requests by the permittee for an amendment to a right-of-way permit must be in writing, signed by a representative legally authorized to bind the permittee, and must contain the following information:

(1) Right-of-way permit number;

(2) Permittee name;

(3) System unit name;

(4) Description of the activities and infrastructure authorized by the right-of-way permit;

(5) Description of the proposed amendment;

(6) Description of the purpose or justification for the requested amendment; and

(7) Other information required by the NPS.

(e) The decision to approve an amendment is at the discretion of the NPS. Amendments will be reviewed and executed using the procedures that apply to the review and execution of

right-of-way permits in paragraphs (a)–(c) in § 14.5 of this part. An approved amendment is deemed to be a part of the original right-of-way permit.

§ 14.15 Right-of-way permit suspension and termination.

(a) At any time during the term of a right-of-way permit and upon written notice provided to the permittee, the NPS may suspend or terminate all or any part of the right-of-way permit without liability or expense to the United States.

(b) If the NPS intends to suspend or terminate all or part of a right-of-way permit, the permittee may be provided an opportunity to cure the cause prior to commencement of the suspension or termination.

(c) Reasons for suspension or termination include, but are not limited to:

(1) Visitor and resource protection concerns;

(2) Failure to comply with right-of-way permit terms and conditions;

(3) Failure to comply with any provision of this part; or

(4) Abandonment or nonuse.

(d) A permittee may terminate a right-of-way permit by providing a written notice of termination to the NPS that is signed by the permittee's authorized representative and identifies the desired date of termination.

(e) Upon suspension, the permittee remains responsible for fulfilling all obligations under the permit, including payment of any use and occupancy fees and cost recovery due.

(f) Upon termination, the permittee will remain responsible for fulfilling all obligations under the permit, including:

(1) Payment of any use and occupancy fees and any cost recovery due;

(2) Restoration and reclamation of the permitted area; and

(3) Any other terms and conditions that survive the termination of the right-of-way permit.

§ 14.16 Trespass.

(a) Any uses, activities, or infrastructure not specifically authorized under a valid right-of-way permit or other legal authorization are prohibited and considered a trespass against the United States.

(b) The NPS may require an entity in trespass to immediately remove any of its infrastructure in trespass or cease the uses or associated activities and may pursue any additional legal remedy, penalty, or fees available.

(c) The NPS may continue to enforce the terms and conditions of an expired right-of-way permit, including collection of cost recovery and use and occupancy fees. An entity with an expired right-of-way permit has no authorization for continued use of lands and waters, and operation and maintenance, and those uses and associated infrastructure are considered a trespass.

(d) The NPS may require an entity to apply for a permit to authorize maintenance activities on infrastructure considered in trespass. Any permit issued for maintenance will not authorize the presence of the infrastructure. A maintenance permit will be considered only for activities that are required to maintain the safety of the infrastructure, and to protect public health and safety, visitor experience, or the resources and values of the park area.

§ 14.17 Penalties.

Violation of any section of this part, including any term and condition of a right-of-way permit, may result in fine or imprisonment, or both, in accordance with 36 CFR 1.3.

§ 14.18 Restoration and reclamation.

(a) After expiration or termination of the right-of-way permit, the permittee must restore or reclaim the permitted area to standards directed and approved by the NPS.

(b) If restoration or reclamation is not completed within a reasonable time or in accordance with a schedule established in a special use permit for the restoration and reclamation activities, the permittee will be liable to the NPS for all costs of restoring and reclaiming the permitted area undertaken by the NPS, or its contractor, to the satisfaction of the NPS. This obligation will survive the termination or expiration of a right-of-way permit.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2024–12605 Filed 6–7–24; 8:45 am]

BILLING CODE 4312–52–P

FEDERAL MARITIME COMMISSION

46 CFR Part 541

[Docket No. FMC–2024–0010]

Demurrage and Detention Billing Requirements; Filing of Petition and Request for Comments

AGENCY: Federal Maritime Commission.

ACTION: Notification of filing and request for comments.

SUMMARY: The Federal Maritime Commission (Commission) has received a petition for an extension of the effective date of the final rule for Demurrage and Detention Billing Requirements and seeks public comment.

DATES: Submit comments on or before July 1, 2024.

ADDRESSES: You may submit comments, identified by Docket No. FMC–2024–0010, by the following method:

Federal eRulemaking Portal: Your comments must be written and in English and submitted electronically through the Federal Rulemaking Portal at *www.regulations.gov.* To submit comments on that site, search for Docket No. FMC–2024–0010 and follow the instructions provided. If you would like to receive future information regarding this petition, you must include your contact information.

A copy of the comment must also be served on the Petitioner's counsel, Joshua P. Stein and Kathryn Sobotta, Cozen O'Connor at *jstein@cozen.com* and *ksobotta@cozen.com,* 1200 19th Street NW, Suite 300, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: For questions regarding the submission of written public comments or the treatment of any confidential information, please contact David Eng, Secretary, at (202) 523–5725 or by email at *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION: Notice is given that the Ocean Carrier Equipment Management Association (Petitioner) has petitioned the Commission, pursuant to 46 CFR 502.51(a), ''for an extension of the effective date of the Final Rule for Demurrage and Detention Billing Requirements, 89 FR 14330 (February 26, 2024) (the 'Final Rule') by at least 90 days or such longer period as may be deemed appropriate.'' A copy of this petition can be found at *www.regulations.gov* under Docket No. FMC–2024–0010.

For the Commission to make a thorough evaluation of the requested extension presented in the petition, interested parties are afforded an opportunity to participate through submission of written public comments. Comments must be received no later than the above stated date. The comments must be written and in English and submitted electronically through the Federal Rulemaking Portal at *www.regulations.gov.* To submit comments on that site, search for Docket

No. FMC–2024–0010 and follow the instructions provided. A copy of the comment must also be served on the Petitioner's counsel, Joshua P. Stein and Kathryn Sobotta, Cozen O'Connor at *jstein@cozen.com* and *ksobotta@cozen.com,* 1200 19th Street NW, Suite 300, Washington, DC 20036.

Dated: May 31, 2024.

David Eng,

Secretary.

[FR Doc. 2024–12320 Filed 6–7–24; 8:45 am]

BILLING CODE 6730–02–P

Notices

Federal Register
Vol. 89, No. 112
Monday, June 10, 2024

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

Forest Service

Northeast Oregon Forests Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Northeast Oregon Forests Resource Advisory Committee will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Malheur, Umatilla, and Wallowa-Whitman National Forests within Baker, Grant, Harney, Morrow, Union, Wallowa, and Wheeler counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on June 26, 2024, 9 a.m. to 4 p.m., Pacific daylight time (PDT).

Written and Oral Comments: Anyone wishing to provide in-person and/or virtual oral comments must pre-register by 11:59 p.m. PDT on June 17, 2024. Written public comments will be accepted by 11:59 p.m. PDT on June 20, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person at the La Grande Ranger District Office, located at 3502 US–30, La Grande, Oregon 97850. The public may also join the meeting virtually via teleconference, videoconference, or Homeland Security Information Network. Resource advisory committee information and meeting details can be found on the following websites: Malheur National Forest at *https://www.fs.usda.gov/main/malheur/workingtogether/advisorycommittees,* Umatilla National Forest at *https://www.fs.usda.gov/main/umatilla/workingtogether/advisorycommittees,* and Wallowa-Whitman National Forest at *https://www.fs.usda.gov/main/wallowa-whitman/workingtogether/advisorycommittees,* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *darren.goodding@usda.gov or* via mail (postmarked) to Darren Goodding, 1550 Dewey Avenue, Suite A, Baker City, Oregon 97814. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. Pacific time, June 17, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to *darren.goodding@usda.gov* or via mail (postmarked) to Darren Goodding, 1550 Dewey Avenue, Suite A, Baker City, Oregon 97814.

FOR FURTHER INFORMATION CONTACT: Darren Goodding, Designated Federal Officer, at 541–523–1238 or email at *darren.goodding@usda.gov;* or Acacia Probert, Resource Advisory Committee Coordinator, at 541–523–1387 or email at *acacia.probert@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Elect a co-chair or a new chairperson;
2. Review and discuss Title II project proposals;
3. Make funding recommendations on Title II projects;
4. Schedule the next meeting; and
5. Other.

The agenda will include time for individuals to make oral statements of three minutes or less. To be scheduled on the agenda, individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at 202–720–2600 (voice and TTY) or USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities,

cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: June 5, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–12660 Filed 6–7–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Forest Plan Area Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Northwest Forest Plan Advisory Committee will hold a public meeting according to the details shown below. The committee is authorized under the National Forest Management Act and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to provide advice and pragmatic recommendations regarding potential regional scale land management planning approaches and solutions within the Northwest Forest Plan area within the context of the 2012 Planning Rule.

DATES: An in-person and virtual meeting will be held on June 26, 9 a.m. to 5 p.m. Pacific daylight time (PDT); June 27, 2024, 9 a.m. to 5 p.m. PDT; and June 28, 2024, 9 a.m. to 5 p.m. PDT.

Written and Oral Comments: Anyone wishing to provide in-person oral comments must pre-register by 11:59 p.m. PDT on June 14, 2024. Written public comments will be accepted through 11:59 p.m. PDT on June 14, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person at the Courtyard by Marriott Olympia, 2301 Henderson Park Lane SE, Olympia, Washington 98501. Committee information and meeting details can be found on the Northwest Forest Plan Federal Advisory Committee website at *https://www.fs.usda.gov/detail/r6/landmanagement/planning/?cid=fseprd1076013* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *sm.fs.nwfp_faca@usda.gov* or via mail (postmarked) to Katie Heard, USDA Forest Service, 1220 Southwest 3rd Avenue, Ste. G015, Portland, OR 97204. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. PDT, June 14, 2024, and speakers can only register for one speaking slot. Requests to pre-register for oral comments must be sent by email to *sm.fs.nwfp_faca@usda.gov* or via mail (postmarked) to Katie Heard, USDA Forest Service, 1220 Southwest 3rd Avenue, Ste. G015, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: Jacqueline Buchanan, Designated Federal Officer, by phone at 303–275–5452 or email at *Jacqueline.buchanan@usda.gov;* or Katie Heard, FACA Coordinator, at *Kathryn.Heard@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Provide recommendations to the Forest Service for updates to the Northwest Forest Plan.
2. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing by 11:59 p.m. PDT on June 14, 2024. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at 202–720–2600 (voice and TTY) or USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: June 5, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–12662 Filed 6–7–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Directive Publication Notice

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Forest Service (Forest Service or Agency), U.S. Department of Agriculture, provides direction to employees through issuances in its Directive System, comprised of the Forest Service Manual and Forest Service Handbooks. The Agency must provide public notice of and opportunity to comment on any directives that formulate standards, criteria, or guidelines applicable to Forest Service programs. Once per quarter, the Agency provides advance notice of proposed and interim directives that will be made available for public comment during the next

three months; proposed and interim directives that were previously published for public comment but not yet finalized and issued; and notice of final directives issued in the last three months.

DATES: This notice identifies proposed and interim directives that will be published for public comment between April 1, 2024, and June 30, 2024; proposed and interim directives that were previously published for public comment but not yet finalized and issued; and final directives that have been issued since January 1, 2024.

ADDRESSES: Questions or comments may be submitted by email to the contact listed below.

FOR FURTHER INFORMATION CONTACT: JoLynn Anderson, 971–313–1718 or *jolynn.anderson@usda.gov.* Individuals who use telecommunications devices for the hearing impaired may call 711 to reach the Telecommunications Relay Service, 24 hours a day, every day of the year, including holidays. You may register to receive email alerts regarding Forest Service directives at *https://www.fs.usda.gov/about-agency/regulations-policies.*

SUPPLEMENTARY INFORMATION:

Proposed and Interim Directives

Consistent with 16 U.S.C. 1612(a) and 36 CFR part 216, the Forest Service publishes for public comment Agency directives that formulate standards, criteria, and guidelines applicable to Forest Service programs. Agency procedures for providing public notice and opportunity to comment are specified in Forest Service Handbook (FSH) 1109.12, Chapter 30, Providing Public Notice and Opportunity to Comment on Directives.

There are no public comment directives scheduled for publication from April 1, 2024, to June 30, 2024.

The following proposed directives have been published for public comment but have not yet been finalized:

1. FSM 2200, Rangeland Management, Chapters Zero Code; 2210, Rangeland Management Planning; 2220, Management of Rangelands (Reserved); 2230, Grazing Permit System; 2240, Rangeland Improvements; 2250, Rangeland Management Cooperation; and 2270, Information Management and Reports; FSH 2209.13, Grazing Permit Administration Handbook, Chapters 10, Term Grazing Permits; 20, Grazing Agreements; 40, Livestock Use Permits; 50, other Permits; and 90, Rangeland Management Decision-Making; and FSH 2209.16, Allotment Management Handbook, Chapter 10, Allotment Management and Administration.

2. FSM 3800, Landscape Scale Restoration Program.

3. FSH 2409.12, Timber Cruising Handbook, Chapters 30, Cruising Systems; 40, Cruise Planning, Data Recording, and Cruise Reporting; 60, Quality Control; and 70, Designating Timber for Cutting; FSH 2409.15, Timber Sale Administration Handbook, Chapters 20, Measuring and Accounting for Included Timber; 40, Rates and Payments; and 60, Operations and Other Provisions.

4. FSM 2000, National Forest Resource Management, Chapter 40, National Forest System Monitoring.

5. FSM 2300, Recreation, Wilderness, and Related Resource Management, Chapter 50, section 55, Climbing Management.

Final Directives That Have Been Issued Since January 1, 2024

Final FSH 5509.11, Title Claims, Sales, and Grants Handbook, Chapter 10, Title Claims and Encroachments, has been issued since January 1, 2024.

Title Claims and Encroachments, last updated August 3, 1992, has been updated in the final version. The contents of the 1992 handbook have been reorganized to be in parallel with the case processing activities in the Title Claims and Encroachment Management System Database. The revised handbook will provide a full understanding to land staffs regarding authorities used for title claim and encroachment cases. Nationwide understanding of steps for processing and resolving trespass and encroachment cases is needed to process these cases in a timely manner. Clear examples and exhibits of deeds, correspondence letters, and reports will help maintain consistency throughout the Forest Service.

The 30-day comment period for the proposed directive began June 16, 2023, and closed on July 15, 2023. The response to comments can be viewed at *https://cara.fs2c.usda.gov/Public/ReadingRoom?project=ORMS-3650.* Final chapter 10 was issued February 6, 2024, and can be viewed at *https://www.fs.usda.gov/im/directives/fsh/5509.11/wo_5509.11_10-Amend%202024-1,%20Title%20Claims%20and%20Encroachments.docx.*

JoLynn Anderson,

Branch Lead, Directives, Information Collections and Government Clearance, Policy Office, National Forest System.

[FR Doc. 2024–12612 Filed 6–7–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena-Lewis and Clark Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Helena-Lewis and Clark Resource Advisory Committee will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Helena-Lewis and Clark National Forest within Broadwater, Teton, Lewis and Clark, Judith Basin, and Meagher counties, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on June 26, 2024, 1 p.m. to 4 p.m., mountain daylight time (MDT).

Written and Oral Comments: Anyone wishing to provide in-person or virtual oral comments must pre-register by 11:59 p.m. MDT on June 19, 2024. Written public comments will be accepted by 11:59 p.m. MDT on June 19, 2024. Comments submitted after this date will be provided by the Forest Service to the committee, but the committee may not have adequate time to consider those comments prior to the meeting.

All committee meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person at the Helena-Lewis and Clark National Forest, Great Falls Office, located at 1220 38th St. N, Great Falls, MT 59401. The public may also join the meeting virtually via video conference using the Microsoft Teams platform: *https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting,* Meeting ID: 293 075 016 517, Passcode: 4oPBh9. Committee information and meeting details can be found online at *https://www.fs.usda.gov/main/hlcnf/workingtogether/advisorycommittees or* by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *chiara.cipriano@usda.gov or* via mail (postmarked) to Chiara Cipriano 2880 Skyway Drive Helena, MT 59602. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. MDT, June 19, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to *chiara.cipriano@usda.gov* or via mail (postmarked) to Chiara Cipriano 2880 Skyway Drive Helena, MT 59602.

FOR FURTHER INFORMATION CONTACT: Molly Ryan, Designated Federal Officer, at 406–949–9766 or email at *molly.ryan@usda.gov;* or Chiara Cipriano, Resource Advisory Committee Coordinator, at 406–594–6497 or email at *chiara.cipriano@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Elect a chairperson;
2. Create a local charter;
3. Hear from title II project proponents and discuss title II project proposals;
4. Make funding recommendations on title II projects;
5. Approve meeting minutes; and
6. Schedule the next meeting

The agenda will include time for individuals to make oral statements of three minutes or less. To be scheduled on the agenda, individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at 202–720–2600 (voice and TTY) or USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: June 5, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–12663 Filed 6–7–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–24–CF–0012]

Notice of Funding Availability for the Rural Community Development Initiative (RCDI) for Fiscal Year 2024

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announces the acceptance of applications under the Rural Community Development Initiative (RCDI) program for fiscal year (FY) 2024. Up to $5 million in funding is available for fiscal year (FY) 2024. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development that will support the community. Applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications must be submitted using one of the following methods:

- *Paper submissions:* Paper application must be received by 4 p.m. local time by the Rural Development State Office where the applicant's headquarters is located. July 15, 2024.
- *Electronic submissions:* Electronic applications must be submitted via *Grants.gov* by 11:59 p.m. eastern time on July 10, 2024.

Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to July 5, 2024.

ADDRESSES: Applicants wanting to apply for assistance may download the application documents and requirements as stated in this Notice from the RCDI website: *rd.usda.gov/programs-services/community-facilities/rural-community-development-initiative-grants.* Application information for electronic submissions may be found at *Grants.gov*. Applicants may also request paper application packages from the Rural Development office in their State. A list of Rural Development State office contacts can be found via *rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

FOR FURTHER INFORMATION CONTACT: Shirley J. Stevenson, Community Programs Specialist, Rural Development, United States Department of Agriculture, 1400 Independence Ave. SW, Washington, DC 20250, Phone: (202) 205–9685, Email: *Shirley.Stevenson@usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Housing Service (RHS).

Funding Opportunity Title: Rural Community Development Initiative (RCDI).

Announcement Type: Notice of Funding Availability (NOFA).

Funding Opportunity Number: USDA–RD–HCFP–RCDI–2024.

Assistance Listing: 10.446.

Dates: Applications must be submitted using one of the following methods:

- *Paper submissions:* The deadline for receipt of a paper application is 4

p.m. local time, to the Rural Development State Office where the applicant's headquarters is located. July 15, 2024. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and postage due applications will not be accepted. The application dates and times are firm. The Agency will not consider any application received after the deadline.

• *Electronic submission:* Electronic applications will be accepted via *Grants.gov*. The deadline for receipt of an electronic applications via *Grants.gov* is 11:59 p.m. eastern time on July 10, 2024. The application dates and times are firm. The Agency will not consider any application received after the deadline. The Agency recommends not filing electronic submissions too close to the submission deadline in the event there is a problem with the system. Applicants that choose to mail applications in lieu of an electronic submission must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail and postage due applications will not be accepted. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to July 5, 2024. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not accept any applications or consider additional information or documentation after the application deadline. The application dates and times are firm. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *rd.usda.gov/priority-points:*

• *Addressing Climate Change and Environmental Justice:* Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

• *Advancing Racial Justice, Place-Based Equity, and Opportunity:* Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects.

• *Creating More and Better Market Opportunities:* Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure.

A. Program Description

1. *Purpose of the Program.* The program is designed to assist qualified private organizations, nonprofit organizations, and public (including Tribal) intermediary organizations, proposing to carry out financial and technical assistance programs to improve housing, community facilities, and community and economic development projects in rural areas. The RCDI program requires the intermediary (Grantee) to provide a program of financial and technical assistance to recipients. The recipients will, in turn, provide programs to their communities (beneficiaries).

2. *Statutory and Regulatory Authority.* Congress created the RCDI program in 1999 (Pub. L. 106–78), and funding continued under the enactment of the Consolidated Appropriations Act, 2024 (Pub. L. 118–42), and the Further Consolidated Appropriations Act, 2024 (Pub. L. 118–47). This program is implemented under the guidelines announced in this Notice and 2 CFR part 200.

3. *Definitions.*

Agency. The Rural Housing Service or its successor.

Beneficiary. Entities or individuals that receive benefits from assistance provided by the recipient.

Capacity. The ability of a recipient to implement housing, community facilities, or community and economic development projects.

Conflict of interest. A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Regarding use of both grant and matching funds, Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds may not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of a conflict of interest occurs when an employee of the grantee, a member of the grantee's board of directors, or the immediate family of either, has the appearance of a professional or personal financial interest in a recipient receiving the benefits or services of the grant.

Federally recognized Tribes. Tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the most recent notice in the **Federal Register** published by the Bureau of Indian Affairs (pursuant to Pub. L. 103–454) and Tribes that received Federal recognition after the most recent publication. Tribally designated housing entities (TDHE) are eligible RCDI recipients.

Financial assistance. For the purpose of this Notice, financial assistance is grant funds used by the Intermediary to benefit the recipient. The grant funds, not to exceed $10,000 per award, may be used by the intermediary to purchase supplies and equipment to build the recipient's capacity. Grant funds are not directly available to the recipient.

Funds. The RCDI grant and matching funds that have been provided by the Grantee.

Intermediary. A qualified private organization, nonprofit organization (including faith-based and community organizations and philanthropic organizations), or public (including Tribal) organization that provides financial and technical assistance to multiple recipients.

Low-income rural community. An authority, district, economic development authority, regional council, federally recognized Tribe, or unit of government representing an incorporated city, town, village, county, township, parish, Indian reservation or borough whose income is at or below 80 percent of either the State or national Median Household Income as measured by the 2020 Census.

Matching funds. Cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount and committed for a period of not less than the grant performance period.

Recipient. The entity that receives the financial and technical assistance from the intermediary. The recipient must be a nonprofit community-based housing and development organization, a low-income rural community or a federally recognized Tribe.

Rural and rural area. Any area other than (i) a city or town that has a population of greater than 50,000 inhabitants and (ii) an urbanized area (note that the Agency has determined that the reference to ''urbanized area'' should be read as a reference to ''urban

area'' because the Census Bureau no longer identifies urbanized areas individually and instead refers to qualifying areas as ''urban areas'') that is contiguous and adjacent to such city or town.

Technical assistance. Skilled help in improving the recipient's abilities in the areas of housing, community facilities, or community and economic development.

4. *Application of Awards.* Awards under the RCDI Program are limited and are awarded through a competitive process. No reimbursement will be made for any funds expended prior to execution of the RCDI Grant Agreement unless the intermediary is a nonprofit or educational entity and has requested and received written Agency approval of the costs prior to the actual expenditure.

This exception is applicable for up to 90 days prior to grant closing and only applies to grantees that have received written approval but have not executed the RCDI Grant Agreement.

The Agency cannot retroactively approve reimbursement for expenditures prior to execution of the RCDI Grant Agreement.

B. Federal Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2024.

Available Funds: Up to $5 million. RHS may at its discretion, increase the total level of funding available in this funding round (or in any category in this funding round) from any available source provided the awards meet the requirements of the statute which made the funding available to the Agency.

Award Amounts: Grant funds are limited and are awarded through a competitive process.

Minimum/Maximum Award Amount: The minimum grant award per intermediary is $50,000 and the maximum award amount is $500,000. The intermediary must provide a program of financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development that will support the community.

Anticipated Award Date: September 15, 2024.

Performance Period: Grant funds must be utilized within three years from date of the award. A grantee that has an outstanding RCDI grant over three years old, as of the application due date in this Notice, is not eligible to apply for this round of funding.

The intermediary must provide a program of financial and technical assistance to one or more of the following: a private, nonprofit community-based housing and development organization, a low-income rural community or a federally recognized Tribe. A non-Tribal intermediary proposing to serve one or more federally recognized Tribe(s) must include a resolution of support with its application from the respective Tribe(s) it proposes to serve. If the resolution of support is not submitted for each respective Tribe, the Tribe will be considered ineligible as a recipient. This requirement is being added to ensure collaboration during the application process between intermediaries and all Tribes that they propose to serve.

Renewal or Supplemental Awards: Applicants must re-apply for an additional grant.

Type of Assistance Instrument: Grant agreement.

C. Eligibility Information

1. *Eligible Applicants.* Applicants must meet all the following eligibility requirements by the application deadline. Applications that fail to meet any of these requirements by the application deadline will be deemed ineligible, will not be evaluated further, and will not receive a Federal award under this funding opportunity:

(a) Qualified private organizations, nonprofit organizations (including faith-based organizations in accordance with 7 CFR part 16, community organizations and philanthropic foundations), and public (including Tribal) intermediary organizations are eligible applicants. Definitions that describe eligible organizations and other key terms are listed above.

(b) The recipient must be a nonprofit community-based housing and development organization, low-income rural community, or federally recognized Tribe based on the RCDI definitions of these groups.

(c) Private nonprofit, faith, or community-based organizations must provide a certificate of incorporation and a certificate of good standing from the Secretary of State of the State of incorporation, or other similar and valid documentation of current nonprofit status. For low-income rural community recipients, the Agency requires evidence that the entity is a public body and census data verifying that the median household income of the community where the office receiving the financial and technical assistance is located is at, or below, 80 percent of the State or national median household income, whichever is higher. For federally recognized Tribes the Agency needs the page listing their name from the current **Federal Register** list of Tribal entities recognized and eligible for funding services (see the definition of federally recognized Tribes in this Notice for details on this list).

(d) Any corporation that has been convicted of a felony criminal violation under any Federal law within the past 24 months; or has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government, is not eligible for financial assistance in accordance with restrictions in Sections 744 and 745 outlined in Division B, Title VII, ''General Provisions—Government-Wide'' of the Further Consolidated Appropriations Act, 2024 (Pub. L. 118–47).

2. *Cost Sharing or Matching.* Matching funds are required to be provided in an amount that, at a minimum, is equal to the amount of the grant. If this matching fund requirement is not met, the application will be deemed ineligible (*see,* the ''Application and Submission Information'' section for the required pre-award and post award matching funds documentation submission). Partnerships with other Federal, State, local, private, and nonprofit entities are encouraged.

(a) Matching funds must be in the form of cash or confirmed funding commitments that, at a minimum, are equal to the grant amount. Matching funds must also be committed for a period of not less than the grant performance period. These funds can only be used for eligible RCDI activities and must be used to support the overall purpose of the RCDI program.

(b) In-kind contributions such as salaries, donated time and effort, real and nonexpendable personal property, and goods and services cannot be used as matching funds.

(c) Grant funds and matching funds must be used in equal proportions. This does not mean funds have to be used equally by line item.

(d) Grant funds will be disbursed pursuant to relevant provisions of 2 CFR parts 200 and 400 (*see,* the ''Application and Submission Information'' section) for matching funds documentation and pre-award requirements.

(e) The intermediary is responsible for demonstrating that matching funds are available and committed for a period of not less than the grant performance period to the RCDI proposal. Matching funds may be provided by the intermediary or a third party. Other Federal funds may be used as matching funds if authorized by statute and the purpose of the funds is an eligible RCDI purpose.

(f) RCDI funds will be disbursed on an advance or reimbursement basis. Matching funds cannot be expended prior to execution of the RCDI Grant Agreement. The request for advance or reimbursement and supporting documentation must show that RCDI fund usage does not exceed the cumulative amount of matching funds used.

(g) Applicants must provide matching funds in an amount at least equal to the amount of the Federal grant. Successful applications will be selected by the Agency for funding and will be awarded from funds appropriated for the RCDI program.

3. *Other Eligibility Requirements.* The recipient and beneficiary, but not the intermediary, must be in an eligible rural area. The physical location of the recipient's office that will be receiving the financial and technical assistance must be in an eligible rural area. If the recipient is a low-income community, the median household income of the area where the office is located must be at or below 80 percent of the State or national median household income, whichever is higher. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Office contacts can be found at the following link: *rd.usda.gov/files/CF_State_Office_Contacts.pdf.* A map showing eligible rural areas can be found at the following link: *eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAction=RBSmenu.*

(a) RCDI grantees that have an outstanding grant over 3 years old, as of the application due date in this Notice, will not be eligible to apply for this round of funding. Grant and matching funds must be utilized in a timely manner to ensure that the goals and objectives of the program are met.

(b) Individuals cannot be recipients.

(c) The intermediary must provide a program of financial and technical assistance to the recipient.

(d) The intermediary organization must have been legally organized for a minimum of three years and have at least three years prior experience working with private nonprofit community-based housing and development organizations, low-income rural communities, or Tribal organizations in the areas of housing, community facilities, or community and economic development. The intermediary organization may contract with a nonaffiliated organization for not more than 49 percent of the awarded grant to provide the proposed technical assistance.

(e) Proposals must be structured to utilize the grant funds within 3 years from the date of the award.

(f) Each applicant, whether individually or jointly, may only submit one application for RCDI funds under this Notice. This restriction does not preclude the applicant from providing matching funds for other applications.

(g) Recipients can benefit from more than one RCDI application; however, after grant selections are made, the recipient can only benefit from multiple RCDI grants if the type of financial and technical assistance the recipient will receive is not duplicative. The services described in multiple RCDI grant applications must have separate and identifiable accounts for compliance purposes.

(h) The intermediary and the recipient cannot be the same entity. The recipient can be a related entity to the intermediary, if it meets the definition of a recipient, provided the relationship does not create a Conflict of Interest that cannot be resolved to Rural Development's satisfaction.

(i) If the recipient is a low-income rural community, identify the unit of government to which the financial and technical assistance will be provided (*e.g.,* town council or village board). The financial and technical assistance must be provided to the organized unit of government representing that community, not the community at large.

(j) A non-Tribal intermediary proposing to serve one or more federally recognized Tribes must include a resolution of support with its application from the Tribes it proposes to serve. If the resolution of support is not submitted for each Tribe, the Tribe will be considered ineligible as a recipient. This requirement is being added to ensure collaboration during the application process between intermediaries and all Tribes that they propose to serve.

D. Application and Submission Information

1. *Address to Request Application Package.* Entities wishing to apply for assistance may download the application documents and requirements delineated in this Notice from the RCDI website: *rd.usda.gov/programs-services/community-facilities/rural-community-development-initiative-grants.* Application information for electronic submissions may be found at *Grants.gov.*

Applicants may also request paper application packages from the Rural Development office in their State. A list of Rural Development State Office contacts can be found via *rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

2. *Content and Form of Application Submission.* If the applicant is ineligible or the application is incomplete, the Agency will inform the applicant in writing of the decision, reasons therefore, and its appeal rights and no further evaluation of the application will occur.

A complete application for RCDI funds must include the following:

(a) A summary page, double-spaced between items, listing the following:

(This information should not be presented in narrative form.)

- Applicant's name,
- Applicant's address,
- Applicant's telephone number,
- Name of applicant's contact person, email address and telephone number,
- County where applicant is located,
- Congressional district number where applicant is located,
- Amount of grant request, and
- Number of recipients.

(b) A detailed Table of Contents containing page numbers for each component of the application.

(c) A project overview, no longer than one page, including the following items, which will also be addressed separately and in detail under ''Building Capacity and Expertise'' of the ''Evaluation Criteria.''

- The type of technical assistance to be provided to the recipients and how it will be implemented.
- How the capacity and ability of the recipients will be improved.
- The overall goals to be accomplished.
- The benchmarks to be used to measure the success of the program.

Benchmarks should be specific and quantifiable.

(d) Organizational documents, such as a certificate of incorporation and a current good standing certification from the Secretary of State where the applicant is incorporated and other similar and valid documentation of current status, from the intermediary that confirms it has been legally organized for a minimum of three years as the applicant entity.

(e) Verification of source and amount of matching funds, (*e.g.,* a copy of a complete bank statement if matching

funds are in cash or a copy of the confirmed funding commitment from the funding source).

The verification must show that matching funds are available for the duration of the grant performance period. The verification of matching funds must be submitted with the application, or the application will be considered incomplete.

The applicant will be contacted by the Agency prior to grant award to verify that the matching funds provided with the application continue to be available. The applicant will have 15 days from the date contacted to submit verification that matching funds continue to be available.

If the applicant is unable to provide the verification within that timeframe, the application will be considered ineligible. The applicant must maintain bank statements on file or other documentation for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved.

(f) The following information for each recipient:

- Recipient's entity name,
- Complete address (mailing and physical location, if different),
- County where located,
- Number for Congressional district where recipient is located,
- Contact person's name, email address and telephone number, and
- Form RD 400–4, ''Assurance Agreement.'' If the Form RD 400–4 is not submitted for each recipient, the recipient will be considered ineligible. No information pertaining to that recipient will be included in the income or population scoring criteria and the requested funding may be adjusted due to the deletion of the recipient.

(g) Submit evidence that each recipient entity is eligible. Documentation must be submitted to verify recipient eligibility. Links to websites are not acceptable. Acceptable documentation varies depending on the type of recipient:

(1) *Nonprofits*—provide a current valid letter confirming nonprofit status from the Secretary of State of the State of incorporation, a current good standing certification from the Secretary of State of the State of incorporation, or other valid documentation of current nonprofit status of each recipient.

A nonprofit recipient must provide evidence that it is a valid nonprofit when the intermediary applies for the RCDI grant. Organizations with pending requests for nonprofit designations are not eligible.

(2) *Low-income rural community*—provide evidence the entity is a public body (*e.g.,* copy of Charter, relevant Acts of Assembly, relevant court orders (if created judicially) or other valid documentation), a copy of the 2020 census data to verify the population, and 2021 American Community Survey (ACS) 5-year estimates (2017–2021 data set) data as evidence that the median household income is at, or below, 80 percent of either the State or national median household income. We will only accept data and printouts from *data.census.gov/cedsci/.*

(3) *Federally recognized Tribes*—The 2024 list was published on January 8, 2024, in the **Federal Register** (89 FR 994) and is available by using the following link: *federalregister.gov/documents/2024/01/08/2024-00109/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of.* For Tribes that received Federal recognition status publication, outside the publication cited above, statutory citations and additional documentation will suffice.

An intermediary proposing to serve one or more federally recognized Tribes must include a resolution of support with its application from the Tribes it proposes to serve. If the resolution of support is not submitted for each Tribe, the Tribe will be considered ineligible as a recipient. This requirement is being added to ensure collaboration during the application process between intermediaries and all Tribes that they propose to serve.

(h) Each of the ''Evaluation Criteria'' must be addressed specifically and individually by category. Present these criteria in narrative form. Narrative (not including attachments) must be limited to five pages per criterion. The ''Population and Income'' criteria for recipient locations can be provided in the form of a list; however, the source of the data must be included on the page(s).

(i) A timeline identifying specific activities and proposed dates for completion.

(j) A detailed project budget that includes the RCDI grant amount and matching funds. This should be a line-item budget, by category. Categories such as salaries, administrative, other, and indirect costs that pertain to the proposed project must be clearly defined. Supporting documentation listing the components of these categories must be included. The budget should be dated: year 1, year 2, and year 3, as applicable.

(k) The indirect cost category in the project budget should be used only when a grant applicant has a federally negotiated indirect cost rate. A copy of the current rate agreement must be provided with the application. Non-Federal entities that have never received a negotiated indirect cost rate, except for those non-Federal entities described in appendix VII to 2 CFR part 200-States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph (D)(1)(b), may use the de minimis rate of 10 percent of modified total direct costs (MTDC).

(l) Form SF–424, ''Application for Federal Assistance.''

(Do not complete Form SF–424A, ''Budget Information.'' A separate line-item budget should be presented as described in Letter (j) of this section.)

(m) Certification of Non-Lobbying Activities, RD Instruction 1940–Q Exhibit A–1, ''Certification for Contracts, Grants and Loans'' or equivalent.

(n) Standard Form LLL, ''Disclosure of Lobbying Activities,'' if applicable.

Applicants must collect and maintain data provided by recipients on race, sex, and national origin and ensure Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the recipient must comply with title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

(o) Identify and report any association or relationship with Rural Development employees. (A statement acknowledging whether or not a relationship exists is required.)

3. *System for Award Management and Unique Entity Identifier.* At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25 (*ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25*). In order to register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *sam.gov/content/entity-registration.*

(a) Applicants must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(b) Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(c) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110 (*ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25/subpart-A/section-25.110*).

(d) Each applicant must provide documentation that it is registered in SAM and include its UEI number. If the applicant does not provide documentation confirming that it is registered in SAM and its UEI number, the application will not be considered for funding.

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.* Completed applications must be submitted using one of the following methods:

• *Paper submissions:* Paper application must be received by 4 p.m. local time by the Rural Development State Office where the applicant's headquarters is located. July 15, 2024. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and ''postage due'' applications will not be accepted. The application dates and times are firm. The Agency will not consider any application received after the deadline. To submit a paper application, the original application package must be submitted to the Rural Development State Office where the applicant's headquarters is located. The address for the headquarters of each USDA Rural Development State Office can be accessed at *rd.usda.gov/files/CF_State_Office_Contacts.pdf.* The applicant should contact the USDA Rural Development State Office to see if applications may be submitted to Field Offices within the state.

Applicants may also request paper application packages from the Rural Development office in their State. A list of Rural Development State Office contacts can be found via *rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

• *Electronic submissions:* Applications will not be accepted via FAX or electronic mail. Applicants may file an electronic application at *Grants.gov*. Applicants wanting to apply for assistance may download the application documents and requirements as stated in this Notice from the RCDI website: *rd.usda.gov/programs-services/community-facilities/rural-community-development-initiative-grants.*

Application information for electronic submissions may be found at *Grants.gov*. Electronic applications must be submitted via *Grants.gov* by 11:59 p.m. eastern time on July 10, 2024. The application dates and times are firm. The Agency will not consider any application received after the deadline. Follow the instructions at *Grants.gov* for registering and submitting an electronic application. If a system problem or technical difficulty occurs with an electronic application, please use the customer support resources available at the *Grants.gov* website.

Technical difficulties applying through *Grants.gov* will not be a reason to extend the application deadline. If an application is unable to be submitted through *Grants.gov*, a paper application must be received in the appropriate Rural Development State Office by the deadline noted previously.

5. *Intergovernmental Review.* This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Rural Development conducts intergovernmental consultation as implemented with 2 CFR part 415, subpart C. Not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following website: *usda.gov/ocfo/federal-financial-assistance-policy/intergovernmental-review.*

6. *Funding Restrictions.* The following are examples of eligible and ineligible purposes under the RCDI program. Activities that meet the objectives of the RCDI program and meet the criteria outlined in this Notice will be considered eligible. These examples are illustrative and are not meant to limit the activities proposed in the application:

(a) The intermediary provides training to the recipient on how to conduct homeownership education classes. The recipient then provides ongoing homeownership education to the residents of the community—the ultimate beneficiaries. This ''train the trainer'' concept fully meets the intent of this initiative. The intermediary is providing technical assistance that will build the recipient's capacity by enabling it to conduct homeownership education classes for the public.

This is an eligible purpose. However, if the intermediary directly provided homeownership education classes to individuals in the recipient's service area, this would not be an eligible purpose because the recipient would be bypassed.

(b) If the intermediary is working with a low-income community as the recipient, the intermediary must provide the technical assistance to the entity that represents the low-income community and is identified in the application. Examples of entities representing a low-income community are a village board or a town council.

If the intermediary provides technical assistance to the Board of the low-income community on how to establish a cooperative, this would be an eligible purpose. However, if the intermediary works directly with individuals from the community to establish the cooperative, this is not an eligible purpose.

The recipient's capacity is built by learning skills that will enable it to support sustainable economic development in its community on an ongoing basis.

(c) The intermediary may provide technical assistance to the recipient on how to create and operate a revolving loan fund. The intermediary may not monitor or operate the revolving loan fund. RCDI funds, including matching funds, cannot be used to fund revolving loan funds.

(d) The intermediary may work with recipients to build their capacity to provide planning and leadership development training. The recipients of this training would be expected to assume leadership roles in the development and execution of regional strategic plans. The intermediary would work with multiple recipients in helping communities recognize their connections to the greater regional and national economies.

(e) The intermediary could provide training and technical assistance to the recipients on developing emergency shelter and feeding, short-term housing, search and rescue, and environmental accident, prevention, and cleanup

program plans. For longer term disaster and economic crisis responses, the intermediary could work with the recipients to develop job placement and training programs and develop coordinated transit systems for displaced workers.

7. *Other Submission Requirements.* Fund uses must be consistent with the RCDI purpose.

(a) *Eligible purposes* of grant funds include, but are not limited to, the following:

(1) Provide technical assistance to develop recipients' capacity and ability to undertake projects related to housing, community facilities, or community and economic development, (*e.g.,* the intermediary hires a staff person to provide technical assistance to the recipient or the recipient hires a staff person, under the supervision of the intermediary, to carry out the technical assistance provided by the intermediary). Hiring must support the intermediary's training purpose. Additional staff can be hired as a secondary purpose needed to carry out technical assistance/training to the recipient and must support the intermediary's training purpose.

(2) Develop the capacity of recipients to conduct community development programs, (*e.g.,* homeownership education or training for business entrepreneurs).

(3) Develop the capacity of recipients to conduct developmental initiatives (*e.g.,* programs that support micro-enterprise and sustainable development).

(4) Develop the capacity of recipients to increase their leveraging ability and access to alternative funding sources by providing training and staffing.

(5) Develop the capacity of recipients to provide the technical assistance component for essential community facilities projects.

(6) Assist recipients in completing pre-development requirements for housing, community facilities, or community and economic development projects by providing resources for professional services, *e.g.,* architectural, engineering, or legal. While this is an eligible purpose, applicant needs to ensure the capacity of the recipient is being expanded with appropriate training during the process.

(7) Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, management, financial systems, and information technology.

(8) Purchase of computers, software, and printers is limited to $10,000 per award at the recipient level when directly related to the technical assistance program being undertaken by the intermediary.

(9) Provide funds to recipients for training-related travel costs and training expenses related to RCDI.

(10) RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting.

(b) The following is a list of *ineligible uses* of grant funds:

(1) Pass-through grants, and any funds provided to the recipient in a lump sum that are not reimbursements.

(2) Funding a revolving loan fund (RLF).

(3) Construction (in any form).

(4) Salaries for positions involved in construction, renovations, rehabilitation, and any oversight of these types of activities.

(5) Intermediary preparation of strategic plans for recipients.

(6) Funding prostitution, gambling, or any illegal activities.

(7) Grants to individuals.

(8) Funding a grant where there may be a conflict of interest, or an appearance of a conflict of interest, involving any action by the Agency.

(9) Paying obligations incurred before the beginning date without prior Agency approval or after the ending date of the grant agreement.

(10) Purchasing real estate.

(11) Improvement or renovation of the grantee or recipient's office space or for the repair or maintenance of privately-owned vehicles.

(12) Any purpose prohibited in 2 CFR part 200 or 400.

(13) Using grant or matching funds for Individual Development Accounts.

(14) In accordance with 31 U.S.C. 1345, ''Expenses of Meetings,'' appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI grant funds cannot be used for these meeting-related expenses. Matching funds may, however, be used to pay for these expenses.

(15) RCDI funds cannot be used for meetings; they can, however, be used for travel, transportation, or subsistence expenses for program-related training and technical assistance purposes. Any training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses (including meals and incidental expenses) will be allowed in accordance with 2 CFR parts 200 and 400.

E. Application Review Information

1. *Criteria.* All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in this notice. Awards are subject to USDA grant regulations at 2 CFR part 400, which incorporated the Office of Management and Budget (OMB) regulations at 2 CFR part 200. Failure to address any of the application criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

All applications that are complete and eligible will be scored and ranked competitively. The categories for scoring criteria used are the following:

(a) *Building Capacity and Expertise*—Maximum 40 Points

The applicant must demonstrate how it will improve the recipients' capacity, through a program of financial and technical assistance, as it relates to the RCDI purposes.

Capacity. Building financial and technical assistance should provide new functions to the recipients or expand existing functions that will enable the recipients to undertake projects in the areas of housing, community facilities, or community and economic development that will benefit the community. Capacity-building financial and technical assistance may include, but is not limited to: training to conduct community development programs (*e.g.,* homeownership education, or the establishment of minority business entrepreneurs, cooperatives, or micro-enterprises); organizational development (*e.g.,* assistance to develop or improve board operations, management, and financial systems); instruction on how to develop and implement a strategic plan; instruction on how to access alternative funding sources to increase leveraging opportunities; and staffing (*e.g.,* hiring a person at intermediary or recipient level to provide technical assistance to recipients).

The program of financial and technical assistance that is to be provided, its delivery, and the measurability of the program's effectiveness will determine the merit of the application.

All applications will be competitively ranked and the applications providing the most improvement in capacity development and measurable activities being ranked the highest.

The narrative response must contain the following items. This list also contains the points for each item.

(1) Describe the nature of financial and technical assistance to be provided

to the recipients and the activities that will be conducted to deliver the technical assistance (10 Points).

(2) Explain how financial and technical assistance will develop or increase the recipient's capacity. Indicate whether a new function is being developed or if existing functions are being expanded or performed more effectively (7 Points).

(3) Identify which RCDI purpose areas will be addressed with this assistance: Housing, community facilities, or community and economic development (3 Points).

(4) Describe how the results of the technical assistance will be measured and describe the benchmarks to be used to measure effectiveness. Benchmarks should be specific and quantifiable (5 Points).

(5) Demonstrate that the applicant/intermediary has conducted programs of financial and technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas (10 Points).

(6) Provide in a chart or excel spreadsheet, the organization name, point of contact, address, phone number, email address, and the type and amount of the financial and technical assistance the applicant organization has provided to the following for the last 3 years (5 Points).

- Nonprofit organizations in rural areas.
- Low-income communities in rural areas (also identify the type of entity, *e.g.,* city government, town council, or village board).
- Federally recognized Tribes or any other culturally diverse organizations.

(b) S*oundness of Approach*—Maximum 15 Points

The applicant can receive up to 15 points for soundness of approach. The overall proposal will be considered under this criterion.

The maximum of 15 points for this criterion will be based on the following:

(1) The proposal fits the objectives for which applications were invited, is clearly stated, and the applicant has defined how this proposal will be implemented (7 Points).

(2) The ability to provide the proposed financial and technical assistance based on prior accomplishments (6 Points).

(3) Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount and matching funds should be utilized to maximize capacity building at the recipient level (2 Points).

(c) *Population and Income*—Maximum 15 Points

Population is based on the average population from the 2020 census data for the communities in which the recipients are located. The physical address, not mailing address, for each recipient must be used for this criterion. Community is defined for scoring purposes as a city, town, village, county, parish, borough, Indian reservation or census-designated place where the recipient's office is physically located.

The applicant must submit the census data from the following website in the form of a printout to verify the population figures used for each recipient. The data can be accessed on the internet at *data.census.gov/cedsci.* Enter location, P1 (*i.e.,* Parma, Idaho, P1) and click ''search''; the name and population data for each recipient location must be listed in this section.

The average population of the recipient locations will be used and will be scored as follows in the table illustrated below:

Population	Scoring (points)
10,000 or less	5
10,001 to 20,000	4
20,001 to 30,000	3
30,001 to 40,000	2
40,001 to 50,000	1

The average of the median household income for the communities where the recipients are physically located will determine the points awarded. The physical address, not mailing address, for each recipient must be used for this criterion. Applicants may compare the average recipient median household income to the State median household income or the national median household income, whichever yields the most points. The national median household income to be used is $69,021.

The applicant must submit the income data in the form of a printout of the applicable information from the following website to verify the income for each recipient. The data being used is from the 2021 American Community Survey (ACS) 5-year estimates (2017–2021 data set). The data can be accessed on the internet at *data.census.gov/cedsci/;* enter location, S1903 (*i.e.,* Parma, Idaho, S1903), click on ''Search,'' click the ''+'' symbol to expand the table, and select the 2021 ACS–5-year estimates table. Use the Household and Median Income column. The name and income data for each recipient location must be listed in this section. Points will be awarded as follows in the table illustrated below:

Average recipient median income	Scoring (points)
Less than or equal to 70 percent of State or national median household income	10
Greater than 70, but less than or equal to 80 percent of State or national median household income	5
In excess of 80 percent of State or national median household income	0

(d) *State Director's Points Based on Project Merit*—Maximum 10 Points

(1) This criterion will be addressed by the Agency, not the applicant.

(2) The State Director may award up to 10 discretionary points for the highest priority project in each State, up to 7 points for the second highest priority project in each State and up to 5 points for the third highest priority project.

Information on whether your project qualifies for priority points can be found at the following website: *rd.usda.gov/priority-points.* Provided that all other requirements set forth in the notice are otherwise met, the discretionary points may be awarded to applicants proposing to advance any of the following three key priorities:

(a) *Addressing Climate Change and Environmental Justice:* Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

Priority Points: Applicants may receive priority points (up to 3 points) addressing climate change in three ways:

Option 1: Applicants will receive points if the project is located in or serves a Disadvantaged Community as defined by the Climate and Economic Justice Screening Tool (CEJST), from the White House Council on Environmental Quality (CEQ). CEJST is a tool to help Federal agencies identify disadvantaged communities that will benefit from programs included in the Justice40 initiative. Census tracts are considered disadvantaged if they meet the thresholds for at least one of the CEJST's eight (8) categories of burden: Climate, Energy, Health, Housing, Legacy Pollution, Transportation, Water and Wastewater, or Workforce Development.

Option 2: Applicants will receive points if the project is located in or serves an Energy Community as defined by the Inflation Reduction Act of 2022 (Pub. L. 117–169) (IRA). The IRA defines energy communities as:

- A ''brownfield site'' (as defined in certain subparagraphs of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA))

• A ''metropolitan statistical area'' or ''non-metropolitan statistical area'' that has (or had at any time after 2009):

• 0.17 percent or greater direct employment or 25% or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas; and has an unemployment rate at or above the national average unemployment rate for the previous year

• A census tract (or directly adjoining census tract) in which a coal mine has closed after 1999; or in which a coal-fired electric generating unit has been retired after 2009.

Option 3: Applicants will receive points by demonstrating through written narrative how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

To determine if your project qualifies for priority points under Option 1 or Option 2, please use the Disadvantaged Community & Energy Community Look-Up Map.

Information on whether your project qualifies for priority points can be found at the following website: *rd.usda.gov/priority-points.*

(b) *Advancing Racial Justice, Place-Based Equity, and Opportunity:* Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects. This priority aligns with the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. The Applicant receives priority points (up to 3 points) if the project is located in or serving a community with score 0.75 or above on the CDC Social Vulnerability Index. Please use Community Look-Up Map to look up map or list to determine if your project qualifies for priority points.

Applications from federally recognized Tribes, including Tribal instrumentalities and entities that are wholly owned by Tribes will receive priority points. Federally recognized Tribes are classified as any Indian or Alaska Native Tribe, band, nation, pueblo, village or community as defined by the Federally Recognized Indian Tribe List Act (List Act) of 1994 (Pub. L. 103–454). Please refer to the Bureau of Indian Affairs for a listing of federally recognized Tribes.

Additionally, projects where at least 50 percent of the project beneficiaries are members of federally recognized Tribes, will receive priority points if applications from non-Tribal applicants include a Tribal Resolution of Consent from the Tribe or Tribes that the applicant is proposing to serve.

U.S. Territories are considered socially vulnerable and qualify for priority points.

Applications from or benefiting a Rural Partner's Network's (RPN) community network will receive priority points (*rural.gov*) in applicable funding notices. Currently RPN Networks exist in Alaska, Arizona, Georgia, Kentucky, Mississippi, Nevada, New Mexico, North Carolina, Puerto Rico, West Virginia and Wisconsin. Please use the Community Look-Up map to determine if your project qualifies for priority points.

Information on whether your project qualifies for priority points can be found at the following website: *rd.usda.gov/priority-points.*

(c) *Creating More and Better Markets:* Assisting rural communities to recover economically through more and better market opportunities through improved infrastructure.

Applicants receive priority points (up to 4 points) if the project is located in or serving a rural community whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. The Distressed Communities Index provides a score between 1 and 100 for every community at the zip code level. The most distressed tier of the index are those communities with a score over 80. Please use the Distressed Communities Index Look-Up Map to determine if your project qualifies for priority points by using the following link: *rd.usda.gov/priority-points/rural-develoment-priorities-fy-2024.* For additional information on data sources used for this priority determination, please download the Data Sources for Rural Development Priorities document. Note: U.S. Territories are considered distressed and qualify for priority points.

U.S. Territories are considered distressed and qualify for priority points.

Information on whether your project qualifies for priority points can be found at the following website: *rd.usda.gov/priority-points.*

(3) Additional information:

• These points may be awarded by the Rural Development State Director to any application(s) that benefits their State regardless of whether the applicant is headquartered in their State.

• When an intermediary submits an application that will benefit a State that is not the same as the State in which the intermediary is headquartered, it is the intermediary's responsibility to notify the State Director of the State which is receiving the benefit of its application. In such cases, State Directors awarding points to applications benefiting their State must notify the reviewing State in writing.

• Assignment of any points under this criterion requires a written justification and must be tied to and awarded based on how closely the application aligns with the Rural Development State Office's strategic goals.

(e) *Administrator Discretionary Points*—Maximum 20 Points

The Administrator may award up to 20 discretionary points for projects to address items such as geographic distribution of funds, emergency conditions caused by economic problems, natural disasters and other initiatives identified by the Secretary. The Administrator may also award points to an application that will advance any of the following key priorities:

(a) *Addressing Climate Change and Environmental Justice: Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.*

Applicants may receive priority points addressing climate change in three ways:

Option 1: Applicants will receive points if the project is located in or serves a Disadvantaged Community as defined by the Climate and Economic Justice Screening Tool (CEJST), from the White House Council on Environmental Quality (CEQ). CEJST is a tool to help Federal agencies identify disadvantaged communities that will benefit from programs included in the Justice40 initiative. Census tracts are considered disadvantaged if they meet the thresholds for at least one of the CEJST's eight (8) categories of burden: Climate, Energy, Health, Housing, Legacy Pollution, Transportation, Water and Wastewater, or Workforce Development.

Option 2: Applicants will receive points if the project is located in or serves an Energy Community as defined by the Inflation Reduction Act (IRA). The IRA defines energy communities as:

• A ''brownfield site'' (as defined in certain subparagraphs of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA))

• A ''metropolitan statistical area'' or ''non-metropolitan statistical area'' that has (or had at any time after 2009)

• 0.17% or greater direct employment or 25% or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or

natural gas; and has an unemployment rate at or above the national average unemployment rate for the previous year.

• A census tract (or directly adjoining census tract) in which a coal mine has closed after 1999; or in which a coal-fired electric generating unit has been retired after 2009.

Option 3: Applicants will receive points by demonstrating through written narrative how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

Information on whether your project qualifies for priority points can be found at the following website: *rd.usda.gov/priority-points.*

(2) *Advancing Racial Justice, Place-Based Equity, and Opportunity: Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects.*

This priority aligns with the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Applicant receives priority points if the project is located in or serving a community with score of 0.75 or above on the CDC Social Vulnerability Index. Please use the Community Look-Up Map to review the map or list to determine if your project qualifies for priority points.

Applications from federally recognized Tribes, including Tribal instrumentalities and entities that are wholly owned by Tribes will receive priority points. Federally recognized Tribes are classified as any Indian or Alaska Native Tribe, band, nation, pueblo, village or community as defined by the Federally Recognized Indian Tribe List Act (List Act) of 1994 (Pub. L. 103–454). Please refer to the Bureau of Indian Affairs for a listing of federally recognized Tribes.

Additionally, projects where at least 50 percent of the project beneficiaries are members of federally recognized Tribes, will receive priority points if applications from non-Tribal applicants include a Tribal Resolution of Consent from the Tribe or Tribes that the applicant is proposing to serve.

Applications from or benefiting a Rural Partner's Network's (RPN) community network will receive priority points (*rural.gov*) in applicable funding notices. Currently RPN Networks exist in Alaska, Arizona, Georgia, Kentucky, Mississippi, Nevada, New Mexico, North Carolina, Puerto Rico, West Virginia and Wisconsin. Please use the Community Look-Up map to determine if your project qualifies for priority points.

U.S. Territories are considered socially vulnerable and qualify for priority points.

Information on whether your project qualifies for priority points can be found at the following website: *rd.usda.gov/priority-points.*

(3) *Creating More and Better Markets: Assisting rural communities to recover economically through more and better market opportunities through improved infrastructure.*

Applicants receive priority points if the project is located in or serving a rural community whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. The Distressed Communities Index provides a score between 1–100 for every community at the zip code level. The most distressed tier of the index are those communities with a score over 80. Please use the Distressed Communities Index Look-Up Map to determine if your project qualifies for priority points by using the following link: *rd.usda.gov/priority-points/rural-develoment-priorities-fy-2024.* For additional information on data sources used for this priority determination, please download the Data Sources for Rural Development Priorities document.

U.S. Territories are considered distressed and qualify for priority points.

Information on whether your project qualifies for priority points can be found at the following website: *rd.usda.gov/priority-points.*

2. *Review and Selection Process.* If requests exceed funds available, the applications will be rated and ranked on a national basis by a review panel based on the ''Application Review Information'' contained in this Notice.

(a) If there is a tied score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for ''Building Capacity and Expertise'' and the applicant with the highest score in that category will receive a higher ranking. If the scores for ''Building Capacity and Expertise'' are the same, the scores will be compared for the next criterion, in sequential order, until the highest score can be determined.

(b) *Initial screening:* The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are examples of reasons for rejection from previous funding rounds. The following reasons for rejection are not all inclusive; however, they represent the majority of the applications previously rejected.

• Recipients were not located in eligible rural areas based on the definition in this Notice.

• Applicants failed to provide evidence of recipient's status, *i.e.,* documentation supporting nonprofit evidence of organization.

• Applicants failed to provide evidence of committed matching funds or matching funds were not committed for a period at least equal to the grant performance period.

• Application did not follow the RCDI structure with an intermediary and recipients.

• Recipients were not identified in the application.

• Intermediary did not provide evidence it had been incorporated for at least three years as the applicant entity.

• Applicants failed to address the ''Application Review Information'' in this Notice.

• The purpose of the proposal did not qualify as an eligible RCDI purpose.

• Inappropriate use of funds (*e.g.,* construction or renovations).

• The applicant proposed providing financial and technical assistance directly to individuals.

• The application package was not received by closing date and time.

3. Anticipated Announcement and Federal Award Dates. September 15, 2024.

F. Federal Award Administration Information

1. *Federal Award Notices.* Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants in ranked order to eligible applicants under the procedures set forth in this Notice.

Successful applicants will receive a selection letter by mail containing instructions on requirements necessary to proceed with execution and performance of the award. This letter is not an authorization to begin performance. In addition, selected applicants will be requested to verify that components of the application have not changed at the time of selection and on the award obligation date, if requested by the Agency.

The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds'' and the grant agreement. Unsuccessful applicants will receive notification, including notification of appeal rights, by mail.

2. *Administrative and National Policy Requirements.*

Grantees will be required to do the following:

(i) Execute a Rural Community Development Initiative Grant Agreement.

(ii) Execute Form RD 1940–1, ''Request for Obligation of Funds.''

(iii) Use Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements. Provide receipts for expenditures, timesheets and any other documentation to support the request for reimbursement.

(iv) Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

(v) Maintain a financial management system that is acceptable to the Agency.

(vi) Ensure that records are maintained to document all activities and expenditures utilizing RCDI grant funds and matching funds. Receipts for expenditures will be included in this documentation.

(vii) Provide annual audited financial statements in accordance with 2 CFR part 200, subpart F, or management reports on Form RD 442–2, ''Statement of Budget, Income and Equity,'' and Form RD 442–3, ''Balance Sheet,'' depending on the amount of Federal funds expended and the outstanding balance.

(viii) Collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain the same data on beneficiaries. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(ix) Provide a final project performance report.

(x) Identify and report any association or relationship with Rural Development employees.

(xi) The intermediary and recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 12250, Age Act of 1975, Executive Order 13166 Limited English Proficiency, and 7 CFR part 1901, subpart E.

(xii) The grantee must comply with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations, and any successor regulations:

(A) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

(B) 2 CFR parts 417 and 180 (Government-wide Debarment and Suspension (Nonprocurement)).

3. *Reporting.* After grant approval and through grant completion, you will be required to provide the following, as indicated in the Grant Agreement:

(a) SF–425, ''Federal Financial Report'' and SF–PPR, ''Performance Progress Report'' will be required on a quarterly basis (due 30 working days after each calendar quarter). The Performance Progress Report shall include the elements described in the grant agreement.

(b) Final financial and performance reports will be due 120 calendar days after the period of performance end date.

(c) A summary at the end of the final report with elements as described in the grant agreement to assist in documenting the annual performance goals of the RCDI program for Congress.

G. Federal Awarding Agency Contacts

Contact the Rural Development State Office where the applicant's headquarters is located. A list of Rural Development State Offices contacts can be found via *rd.usda.gov/files/CF_State_Office_Contacts.pdf.*

H. Build America, Buy America

Funding to Non-Federal Entities. Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian Tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of section 70914 of the Build America, Buy America Act (BABAA) within the Infrastructure Investment and Jobs Act (Pub. L. 117–58), and its implementing regulations at 2 CFR part 184. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at *usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.*

I. Other Information

1. *Civil Rights Requirements.* All grants made under this Notice are subject to title VI of the Civil Rights Act of 1964, as required by the USDA in 7 CFR part 15, subpart A, section 504 of the Rehabilitation Act of 1973, title VIII of the Civil Rights Act of 1968, title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

2. *Paperwork Reduction Act.* The paperwork burden has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0575–0180.

3. *National Environmental Policy Act.* All recipients under this notice are subject to the requirements of 7 CFR part 1970, available at: *rd.usda.gov/resources/environmental-studies/environmental-guidance.*

4. *Nondiscrimination Statement.* In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Federal Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *usda.gov/oascr/filing-program-discrimination-complaint-usda-customer* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024–12606 Filed 6–7–24; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: U.S. Commission on the Social Status of Black Men and Boys (CSSBMB), U.S. Commission on Civil Rights (CRC).

ACTION: Notice of CSSBMB public business meeting.

DATES: Friday, June 7; 11:00 a.m.–12:00 p.m. EDT.

ADDRESSES: Meeting to take place at U.S. Commission on Civil Rights (USCCR) headquarters and virtually on U.S. Commission on Civil Rights' official YouTube channel: *https://youtube.com/live/oST5qtvdwSI.*

FOR FURTHER INFORMATION CONTACT: Diamond Newman, 202–339–2371,*dnewman@usccr.gov*.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 116–156, 1134 Stat. 700 (2020), the U.S. Commission on the Social Status of Black Men and Boys (CSSBMB) will hold its third quarter business meeting. This business meeting is open to the public via livestream on the U.S. Commission on Civil Rights' official YouTube channel at *https://youtube.com/live/oST5qtvdwSI.* (*Streaming information subject to change.*) Public participation is available for the event with view access, along with an audio option for listening. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on June 7 is *http://upload.youtube.com/closedcaption?cid=faem-bz2w-gq0r-btyz-64jw.* Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

* Date and meeting details are subject to change. For more information on CSSBMB or the upcoming public briefing, please visit *cssbmb.gov* and CSSBMB's *Instagram, Facebook,* and *X.*

Dated: May 31, 2024.

Zakee Martin,

Deputy Director, United States Commission on the Social Status of Black Men & Boys, United States Commission on Civil Rights (USCCR).

[FR Doc. 2024–12321 Filed 6–6–24; 11:15 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the District of Columbia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold three public meetings via Zoom. The purpose of these meetings is to draft a report on the accessibility and provision of special education for students with disabilities in DC public schools.

DATES:

- Wednesday, July 17, 2024, from 1:00 p.m.–2:00 p.m. Eastern Time
- Wednesday, September 25, 2024, from 1:00 p.m.–2:00 p.m. Eastern Time
- Wednesday, October 23, 2024, from 1:00 p.m.–2:00 p.m. Eastern Time

ADDRESSES: These meetings will be held via Zoom.

July 17th Meeting:

- *Registration Link (Audio/Visual): https://bit.ly/3VatePn*
- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 160 100 1336#

September 25th Meeting:

- *Registration Link (Audio/Visual): https://bit.ly/3K9DH7w*
- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 160 965 5055#

October 23rd Meeting:

- *Registration Link (Audio/Visual): https://bit.ly/3QRFDFG*
- *Join by Phone (Audio Only):* 1–833–435–1820 USA Toll Free; Webinar ID: 160 096 5876#

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 1–202–809–9618.

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

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

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

Agenda

I. Welcome and Roll Call

II. Report Discussion

III. Public Comment

IV. Adjournment

Dated: June 3, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–12433 Filed 6–7–24; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Office of the Under Secretary of Economic Affairs

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Concrete Masonry Products Research, Education, and Promotion Voter Registration and Ballot Forms; Correction

AGENCY: Office of the Under Secretary for Economic Affairs, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: On May 16, 2024, the Department of Commerce published a 30-day public comment period notice in the **Federal Register** seeking public comments for an information collection entitled, ''Concrete Masonry Products Research, Education, and Promotion Voter Registration and Ballot Forms.'' This document referenced incorrect information in the Agency: Bureau of Economic Analysis, Department of Commerce Section, and Commerce hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Kenneth White, Senior Policy Analyst, Under Secretary of Economic Affairs, U.S. Department of Commerce; by phone at (202) 482–2406 or via email at *kwhite2@doc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of May 16, 2024, at 89 FR 42836 in the first column, FR Document 2024–10710, correct the agency line to read:

Agency: Office of the Under Secretary of Economic Affairs, Department of Commerce.

Request for Comments

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted by June 14, 2024, 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 0605–0029.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–12666 Filed 6–7–24; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–953]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers/exporters of narrow woven ribbons with woven selvedge (ribbons) from the People's Republic of China (China) received countervailable subsidies during the period of review (POR) January 1, 2022, through December 31, 2022. In addition, Commerce is rescinding this review, in part, with respect to 136 companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3642.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2023, Commerce published in the **Federal Register** the notice of initiation of this administrative review of the countervailing duty order on ribbons from China.[1] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as appendix I.[2] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by the *Order* are narrow woven ribbons with woven selvedge from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, Commerce preliminarily determines that there is a subsidy (*i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific).[3] For a full description of the methodology underlying our conclusions, including our including our reliance on adverse facts available (AFA) pursuant to section 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. We received a timely withdrawal of the request for review from Berwick Offray LLC including its wholly-owned subsidiary, Lion Ribbon Company LLC (the petitioner) for 136 companies, pursuant to 19 CFR 351.213(d)(1).[4] Because the withdrawal request was timely filed and

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 78298 (November 15, 2023); *see also Narrow Woven Ribbons With Woven Selvedge from the People's Republic of China: Countervailing Duty Order,* 75 FR 53642 (September 1, 2010) (*Order*).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2022 Administrative Review of the Countervailing Duty Order on Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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

[4] *See* Petitioner's Letter, ''Withdrawal of Administrative Review Request as to Certain Companies,'' dated February 8, 2024.

no other parties requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this administrative review with respect to the companies listed in appendix II.

Preliminary Results of Review

We preliminarily determine the following net countervailable subsidy rates for the period January 1, 2022, through December 31, 2022:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Weifang Chenrui Textile Co., Ltd	165.52
Xiamen Lude Ribbons & Bows Co., Ltd	165.52

Disclosure and Public Comment

Normally, Commerce discloses its calculations and analysis performed in connection with the preliminary results to interested parties within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily assigned subsidy rates based on AFA to Weifang Chenrui Textile Co., Ltd. and Xiamen Lude Ribbons & Bows Co., Ltd., there are no calculations to disclose.

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of these preliminary results of review.[5] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[6] Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[7] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide a public executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[8] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.

Final Results of Review

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

In accordance with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For the companies listed in Appendix II for which we are rescinding this review, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2022, through December 31, 2022, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions directly to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends, upon publication of the final results, to instruct CBP to collect cash deposits of the estimated countervailing duties in the amounts calculated in the final results of this review for the companies listed above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: June 3, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

Appendix II

Companies Rescinded From Review

1. Amadeus Textile Ltd.
2. Amsun Industrial Co., Ltd.

[5] *See* 19 CFR 351.309(c)(1)(ii).

[6] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[7] *See* 19 CFR 351.309(c)(2) and (d)(2).

[8] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[9] *See APO and Service Final Rule.*

3. Apex Ribbon
4. Apex Trimmings (d/b/a Papillon Ribbon & Bow (Canada))
5. Beauty Horn Investment Limited
6. Bestpak Gifts and Crafts Co., Ltd.
7. Billion Trend International Ltd.
8. Changle Huanyu Ribbon Weaving Co., Ltd.
9. Changle Ruixiang Webbing Co., Ltd.
10. Changtai Rongshu Textile Co., Ltd.
11. Cheng Xeng Label Mfg. Co.
12. Complacent Industrial Co., Ltd. (HK)
13. Creative Design Ltd.
14. Dongguan Qaotou Sheng Feng Decoration Factory
15. Dongguan Yi Sheng Decoration Co., Ltd.
16. Dragon Max Weaving & Accessories Company
17. East Sun Gift & Crafts Factory
18. Fasheen Accessories Co. Ltd.
19. Fly Dragon (Guang zhou) Imports & Exports trading Co., Ltd.
20. Fuhua Industrial Co., Ltd.
21. Fujian Rongshu Industry Co., Ltd.
22. Fujian Shi Lian Da Garment Accessories Co., Ltd.
23. Fujian Xin Sheng Da Weaving Ribbons Co., Ltd.
24. Fujian Xinshengda Weaving Ribbons Co., Ltd.
25. Fung Ming Ribbon Ind., Ltd.
26. Goodyear Webbing Products Co., Ltd.
27. Gordon Ribbons & Trimmings Co., Ltd.
28. Guangzhou Complacent Weaving Co., Ltd.
29. Guangzhou Leiyu Trade Co., Ltd.
30. Guangzhou Liman Ribbon Factory
31. Guangzhou Mafolen Ribbons & Bows Ltd.
32. Guangzhou String Textile Accessories Co., Ltd.
33. Hen Hao Trading Co. Ltd.; Taiwan Tulip Ribbons and Braids Co., Ltd.
34. Hubscher Ribbon Corp., Ltd. (d/b/a Hubschercorp)
35. Huian Huida Webbing Co., Ltd.
36. Huizhou Weiyi Gifts Co., Ltd.
37. Huzhou Linghu Tianyi Tape Co., Ltd.
38. Huzhou Lingxian Silk Ribbon Co., Ltd.
39. Huzhou Unifull Label Fabric Co., Ltd.
40. Intercontinental Skyline
41. Jian Chang Ind. Co., Ltd.
42. Jiangyin Lilai Tape Co., Ltd.
43. Jufeng Ribbon Co., Ltd.
44. Kaiping Qifan Weaving Co., Ltd.
45. King Young Enterprises Co., Ltd.
46. King's Pipe Cleaner's Ind. Inc; King's Crafts (China) Ltd; King's Pipe Cleaner's, Ind. Inc.
47. Kinstarlace & Embroidery Co.
48. Kunshan Dah Mei Weaving Co., Ltd.
49. Lace Fashions Industrial Co., Ltd.
50. Linghu Jiacheng Silk Ribbon Co., Ltd.
51. Multicolor
52. Nan Mei Decorative Ribbons Co., Ltd.
53. Ningbo Bofa Co., Ltd.
54. Ningbo Flowering Crafts Co., Ltd.
55. Ningbo Hongshine Decorative Packing Industrial Co., Ltd.; Ningbo Hongrun Craft and Ornament Factory
56. Ningbo Jinfeng Thread & Ribbon Co., Ltd.
57. Ningbo MH Industry Co., Ltd.
58. Ningbo R&D Ind. Company
59. Ningbo Sunshine Import & Export Co., Ltd.
60. Ningbo V.K. Industry and Trading Co., Ltd.
61. Ningbo Wanhe Industry Co., Ltd.
62. Ningbo XWZ Ribbon Manufactory
63. Ningbo Yinzhou Jinfeng Knitting Factory
64. Ningbo Yinzhou Hengcheng Ribbon Factory
65. Pacific Imports
66. Papillon Ribbon & Bow (H.K.) Ltd.
67. Papillon Ribbon & Bow (Shanghai) Ltd.
68. Precious Planet Ribbons & Bows Co., Ltd.
69. PROTEX Co., Ltd.
70. Qingdao Cuifengyuan Industrial and Trading Co., Ltd.
71. Qingdao Haili Lace & Ribbon Co., Ltd.
72. Qingdao Hileaders Co., Ltd.
73. RizeStar Weaving Ribbon Factory
74. Roung Shu Industry Corporation; Cheng Hsing Ribbon Factory
75. Shandong Hileaders Industrial Co., Ltd.
76. Shanghai Dae Textile International Co., Ltd.
77. Shanghai E & T Jawa Import & Export Co., Ltd.
78. ShaoXing Haiyue Gifts Co., Ltd.
79. Sheinq Huong Enterprise Co., Ltd.; Hsien Chan Enterprise Co., Ltd.; Novelty Handicrafts Co., Ltd.
80. Shenq Sin Company Ltd.
81. Shenzhen Bostrip Crafts Co., Ltd.
82. Shenzhen Candour Belt & Tape Co., Ltd.
83. Shenzhen Jinpin Gifts & Crafts Factory
84. Shenzhen Lucky Star Craft Co., Ltd.
85. Shenzhen Weiyi Crafts Technology Co., Ltd.
86. Shenzhen Yibao Gifts Co., Ltd.
87. Shishi Lifa Computer Woven Label Co., Ltd.
88. Shuanglin Label
89. Sinopak Gifts & Crafts Co., Ltd.
90. Stribbons (Guangzhou) Ltd; MNC Stribbons
91. Stribbons (Nanyang) MNC Ltd.
92. String Textile Accessories Co., Ltd.
93. Success Charter Enterprise Limited
94. Sungai Garment Accessories Co., Ltd.
95. Sun Rich (Asia) Limited
96. Supreme Laces Inc.
97. Tianjin Sun Ribbon Company Ltd; Tian Jin Sun Ribbon Company Ltd.
98. Weifang Aofulon Weaving Company Ltd.
99. Weifang Dongfang Ribbon Weaving Co., Ltd.
100. Weifang Jiacheng Webbing Co., Ltd.
101. Weifang Jinqi Textile Co., Ltd.
102. Weifang Yuyuan Textile Co., Ltd.
103. Wenzhou Chuntian Ribbon Manufacturing Co., Ltd.
104. Wenzhou GED Industrial Co., Ltd.
105. Wiefang Shicheng Ribbon Factory
106. Wing Tat Haberdashery Co., Ltd; Wing Hiang Belt Weaving Ltd.
107. Xiamen Bailuu Thread Manufacture Co., Ltd.
108. Xiamen Bethel Ribbon & Trims Co., Ltd.
109. Xiamen Boca Ribbons & Crafts Co., Ltd.
110. Xiamen Daiyuan Ribbons & Printing Co., Ltd.
111. Xiamen Egret Thread Manufacturing Co., Ltd.
112. Xiamen Especial Industrial Co., Ltd.
113. Xiamen LA Ribbons Crafts Co., Ltd.
114. Xiamen Lianglian Ribbons & Bows Co., Ltd.
115. Xiamen Linji Ribbons & Bows Co., Ltd.
116. Xiamen Midi Ribbons & Crafts Co., Ltd.
117. Xiamen Rainbow Gifts & Packs Co., Ltd.
118. Xiamen Sanling Ribbon Packing Co., Ltd.
119. Xiamen ShangPeng Weaving Ribbon Factory
120. Xiamen Sling Ribbon & Bows Co., Ltd.
121. Xiamen Yi He Textile Co., Ltd. (d/b/a Roungshu Ribbon)
122. Yama Ribbons and Bows Co., Ltd.
123. Yangzhou Bestpak Gifts and Crafts Co., Ltd.
124. Yi Jia Trimmings Accessories & Supplies; Dong Guan WSJ Weaving Factory Limited
125. Yiwu Baijin Belt Co., Ltd.
126. Yiwu City Pingzhan Weaving Ribbon Factory
127. Yiwu Dong Ding Ribbons Co., Ltd.
128. Yiwu Ruitai Webbing Factory
129. Yiwu Yunli Tape Co., Ltd.
130. Yu Shin Development Co., Ltd.
131. Yuanhong Garment Accessory Co., Ltd.
132. Yuyao Warp & Weft Tape Weaving Co., Ltd.
133. Zenith Garment Accessories Co., Ltd.
134. Zhejiang Chengxin Weaving Co., Ltd
135. Zhejiang Sanding Weaving Co., Ltd.
136. Zibo All Webbing Co., Ltd.

[FR Doc. 2024–12609 Filed 6–7–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–894]

Forged Steel Fluid End Blocks From India: Final Results of Countervailing Duty Administrative Review; 2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain producers and exporters of forged steel fluid end blocks (fluid end blocks) from India received countervailable subsidies during the period of review (POR) January 1, 2022, through December 31, 2022.

DATES: Applicable June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1603.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2024, Commerce published in the **Federal Register** the *Preliminary Results* of the 2022 administrative review of the countervailing duty order on fluid end blocks from India and invited comments from interested parties.[1] For a complete

[1] *See Forged Steel Fluid End Blocks from India: Preliminary Results of Countervailing Duty Administrative Review and Rescission of*

description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The products covered by the order are fluid end blocks from India. For a full description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. The topics discussed and the issues raised by parties to which we responded in the Issues and Decision Memorandum are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of comments from interested parties and the evidence on the record, we made changes to the net countervailable subsidy rates for Bharat Forge Limited (Bharat Forge). For a full description of this revision, *see* the Issues and Decision Memorandum.

Methodology

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

Final Results of Administrative Review

We find the following net countervailable subsidy rates for the period January 1, 2022, through December 31, 2022:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Bharat Forge Limited [5]	3.77

Disclosure

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

Assessment

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

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

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

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

Dated: May 30, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–12610 Filed 6–7–24; 8:45 am]

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Administrative Review, in Part; 2022, 89 FR 7373 (February 2, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Forged Steel Fluid End Blocks from India; 2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Forged Steel Fluid End Blocks from India: Countervailing Duty Order,* 86 FR 7535 (January 29, 2021) (*Order*).

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

[5] Commerce finds the following companies to be cross-owned with Bharat Forge: Bharat Forge Utilities Limited and Saarloha Advanced Materials Private Limited.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–555–002]

Certain Paper Shopping Bags From Cambodia: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part; Withdrawal

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

DATES: Applicable June 10, 2024, FR Doc. 2024–11779, published at 89 FR 46363 on May 29, 2024, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Charles Doss or Kyle Clahane, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–5449, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2024, the U.S. Department of Commerce (Commerce) erroneously published a duplicate **Federal Register** notice titled *Certain Paper Shopping Bags from Cambodia: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part.* Commerce is withdrawing the above-mentioned notice, **Federal Register** Doc. 2024–11779.

Notification to Interested Parties

This notice is issued and published pursuant to section 735(d) and 777(i)(1) of the Tariff Act of 1930, and 19 CFR 351.210(c).

Dated: June 3, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–12611 Filed 6–7–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–845]

Certain Aluminum Foil From the Republic of Türkiye: Final Results and Partial Rescission of the Countervailing Duty Administrative Review; 2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that ASAS Aluminyum Sanayi ve Ticaret A.S. (ASAS) and Assan Aluminyum Sanayi ve Ticaret A.S. (Assan) received countervailable subsidies during the period of review (POR) March 5, 2021, through December 31, 2021.

DATES: Applicable June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on December 7, 2023.[1] In January and February 2024, Commerce conducted an on-site verification of ASAS' reported subsidy information.[2] On March 26, 2024, Commerce extended the deadline for issuing the final results until June 4, 2024.[3] Subsequently, on April 5, 2024, we invited interested parties to comment on the *Preliminary Results* and verification.[4] For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[5]

Scope of the Order[6]

The merchandise covered by this *Order* is aluminum foil from Türkiye. For a complete description of the scope of this *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' case briefs are addressed in the Issues and Decision Memorandum. The topics discussed and the issues raised by parties to which we responded in the Issues and Decision Memorandum are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Rescission of Administrative Review, In Part

As noted in the Intent to Rescind Memorandum,[7] based on our analysis of U.S. Customs and Border Protection (CBP) data, we determine that Ilda Pack Ambalaj, John Good Denizcilik Tas.Ve, and Seherli Danismanlik A.S had no reviewable shipments, sales, or entries of subject merchandise during the POR. We received no comments or additional information from any interested parties regarding the Intent to Rescind Memorandum issued regarding these three companies. Therefore, absent evidence of shipments on the record, we are rescinding the administrative review of these companies, pursuant to 19 CFR 351.213(d)(3).

Changes Since the Preliminary Results

Based on our analysis of comments from interested parties and the results of verification, we made certain changes to ASAS' and Assan's countervailable subsidy rate calculations from the *Preliminary Results.* For a full description of these changes, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the

[1] *See Certain Aluminum Foil from Turkey: Preliminary Results of Countervailing Duty Administrative Review,* 88 FR 85228 (December 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Verification of the Questionnaire Responses of Asas Aluminyum Sanayi Ve Ticaret A.Ş.,'' dated April 4, 2024.

[3] *See* Memorandum, ''Extension of Deadlines for 2021 Final Results of Countervailing Duty Administrative Review,'' dated March 26, 2024.

[4] *See* Memorandum, ''Clarification of Briefing Schedule,'' dated April 5, 2024.

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

[6] *See Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey: Countervailing Duty Orders,* 86 FR 62782 (November 12, 2021) (*Order*).

[7] *See* Memorandum, ''Notice of Intent to Rescind Review, In Part,'' dated April 5, 2024 (Intent to Rescind Memorandum).

Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

Company Not Selected for Individual Review

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review, pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for determining the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 705(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

There is one company, Panda Aluminyum, for which a review was requested, but which was not selected as a mandatory respondent or found to be cross-owned with a mandatory respondent. For Panda Aluminyum, because the rates calculated for mandatory respondents ASAS and Assan were above *de minimis* and not based entirely on facts available, we applied a final subsidy rate based on a simple average of the rates calculated for the two mandatory respondents.

Final Results of Review

We determine that, for the period March 5, 2021, through December 31, 2021, the following total net countervailable subsidy rates exist:

Producer/exporter	Subsidy rate (percent *ad valorem*)
ASAS Aluminyum Sanayi ve Ticaret A.S	0.50
Assan Aluminyum Sanayi ve Ticaret A.S.[9]	1.15
Panda Aluminyum	0.83

Disclosure

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

Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and CBP shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. For the companies for which we are rescinding this administrative review, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period March 5, 2021, through December 31, 2021, in accordance with 19 CFR 351.212(c)(l)(i).

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

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

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

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

Dated: June 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–12654 Filed 6–7–24; 8:45 am]

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

[9] Commerce finds the following companies to be cross-owned with Assan: Kibar Dış Ticaret A.S.; Kibar Holding A.S.; and Ispak Esnek Ambalaj Sanayi A.S.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–867]

Welded Stainless Pressure Pipe From India: Final Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that welded stainless pressure pipe (WSPP) from India was sold in the United States at less than normal value during the period of review (POR), November 1, 2021, through October 31, 2022.

DATES: Applicable June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Charles Doss or John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474 and (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2023, Commerce published the *Preliminary Results* for this review in the **Federal Register** and invited interested parties to comment on those results.[1] On December 11, 2023, Ratnamani Metal & Tubes Ltd. (Ratnamani) responded to Commerce's second supplemental questionnaire and on April 4, 2024, Prakash Steelage Limited (PSL) and Seth Steelage Private Limited (SSPL) (collectively, PSL/SSPL)[2] responded to Commerce's post-preliminary questionnaire.[3] On April 16, 2024, Commerce notified parties of the final briefing schedule for interested parties to submit comments concerning the *Preliminary Results* and any factual information received since the issuance thereof.[4] No interested party submitted comments or requested a hearing for this administrative review. Although Commerce has made certain minor changes to the margin calculations for both respondents based on information received subsequent to the *Preliminary Results,* because no substantive comment was received, no decision memorandum accompanies this notice. Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order[5]

The merchandise subject to the *Order* is welded stainless pressure pipe from India. For a complete description of the scope, *see* the Preliminary Decision Memorandum.

Rates for Companies Not Selected for Individual Examination

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this segment of the proceeding, we have calculated a weighted-average dumping margin that is not zero, *de minimis,* or determined entirely on the basis of facts available for Ratnamani. Therefore, in accordance with section 735(c)(5)(A) of the Act, we have assigned Ratnamani's weighted-average dumping margin of 2.55 percent to the non-examined companies because this is the only rate that is not zero, *de minimis,* or based entirely on facts available. *See* the appendix to this notice for a list of these companies.

Changes Since the Preliminary Results

There have been minor changes since the *Preliminary Results* based on subsequent supplemental questionnaire responses and updated sales databases, which are detailed in the final analysis memoranda.[6]

Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period November 1, 2021, through October 31, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Ratnamani Metals & Tubes Ltd	2.55
Prakash Steelage Ltd/Seth Steelage Pvt. Ltd	0.00
Non-examined companies[7]	2.55

Disclosure

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

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.212(b)(1), for Ratnamani, we calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce will ''automatically assess'' entries of subject merchandise during the POR for which the examined companies did not know that the merchandise they sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate

[1] *See Welded Stainless Pressure Pipe from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 85211 (December 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] Commerce preliminarily determined PSL and SSPL to be affiliated and collapsed into a single entity, PSL/SSPL. *See* Memorandum, ''2021–2022 Antidumping Duty Administrative Review of Welded Stainless Pressure Pipe from India: Preliminary Affiliation and Collapsing Memorandum,'' dated November 30, 2023. We received no comment in opposition to this preliminary collapsing determination. Therefore, we continue to find PSL and SSPL to be affiliated and collapsed as a single entity for the purposes of these final results.

[3] *See* Ratnamani's Letter, ''Submission of Section-B & C 2nd Supplemental Questionnaire Response,'' dated December 11, 2023; *see also* PSL's Letter, ''Response to Section ABCD 2nd Supplemental Questionnaire,'' dated April 4, 2024.

[4] *See* Memorandum, ''Updated Briefing Schedule,'' dated April 16, 2024.

[5] *See Welded Stainless Pressure Pipe from India: Antidumping and Countervailing Duty Orders,* 81 FR 81062 (November 17, 2016) (*Order*).

[6] For further discussion, *see* Memoranda, ''PSL/SSPL Final Analysis Memorandum,'' dated concurrently with this notice; and ''Ratnamani Final Analysis Memorandum,'' dated concurrently with this notice.

[7] *See* the appendix for a full list of these companies.

unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

The assessment rate for antidumping duties for each of the companies not selected for individual examination will be equal to the weighted-average dumping margin identified above in the ''Final Results of Review'' section.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies identified above in the ''Final Results of Review'' will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this administrative review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or completed prior segment of this proceeding but the producer is, the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.35 percent, the rate established in the investigation of this proceeding.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties has occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the term of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: June 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Companies Not Individually Examined

1. Apex Tubes Private Ltd.
2. Apurvi Industries
3. Arihant Tubes
4. Divine Tubes Pvt. Ltd.
5. Heavy Metal & Tubes
6. Hindustan Inox. Limited
7. J.S.S. Steelitalia Ltd.
8. Linkwell Seamless Tubes Private Limited
9. Maxim Tubes Company Pvt. Ltd.
10. MBM Tubes Pvt. Ltd.
11. Mukat Tanks & Vessel Ltd.
12. Neotiss Ltd.
13. Quality Stainless Pvt. Ltd.
14. Raajranta Metal Industries Ltd.
15. Ratnadeep Metal & Tubes Ltd.
16. Remi Edelstahl Tubulars
17. Shubhlaxmi Metals & Tubes Private Limited
18. SLS Tubes Pvt. Ltd.
19. Steamline Industries Ltd.

[FR Doc. 2024–12655 Filed 6–7–24; 8:45 am]

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[8] *See Order,* 81 FR at 81063.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–844]

Certain Aluminum Foil From the Republic of Türkiye: Final Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain producers and exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR) September 23, 2021, through October 31, 2022.

DATES: Applicable June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Christopher Williams, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3683 and (202) 482–5166, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2021, Commerce published in the **Federal Register** the antidumping duty order on certain aluminum foil (aluminum foil) from the Republic of Türkiye (Türkiye).[1] On December 7, 2023, Commerce published the *Preliminary Results* of the 2021–2022 administrative review of the antidumping duty order on certain aluminum foil (aluminum foil) from Türkiye and invited interested parties to comment.[2] The review covers four companies, including two mandatory respondents, Assan Aluminyum Sanayi ve Ticaret A.S., Kibar Dis Ticaret A.S., and Ispak Esnek Ambalaj Sanayi A.S. (collectively, the Assan Single Entity),[3] and ASAS Aluminyum Sanayi Ve

[1] *See Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Antidumping Duty Orders,* 86 FR 62790 (November 12, 2021) (*Order*).

[2] *See Certain Aluminum Foil from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 85237 (December 7, 2023) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[3] Commerce previously determined in the investigation that these three companies are a single entity and no party has challenged that determination in this review. *See Certain Aluminum Foil from the Republic of Turkey: Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 52880 n.10 (September 23, 2021).

Ticaret A.S. (ASAS).[4] On May 10, 2024, Commerce extended the deadline for issuing the final results until June 4, 2024.[5] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[6] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the *Order* is aluminum foil from Türkiye. For a full description of the scope of the *Order, see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

The issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. The topics discussed in the Issues and Decision Memorandum are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and the comments received from interested parties, we made changes to the *Preliminary Results* with respect to the margins calculated for the respondents. For further details, *see* the Issues and Decision Memorandum.

Rate for Non-Examined Companies

The statute and regulations do not address the establishment of a rate to be assigned to respondents not selected for individual examination when we limit our examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' Accordingly, in the final results of review, we are assigning to the companies not individually examined, listed in the chart below, a weighted-average dumping margin based on the average of the individually calculated weighted-average dumping margins of the Assan Single Entity and ASAS weighted by their publicly available ranged U.S. sales values.[8]

Final Results of Review

Commerce determines that the following estimated weighted-average dumping margins exist for the period September 23, 2021, through October 31, 2022:

Producer or exporter	Weighted-average dumping margin (percent)
Assan Aluminyum Sanayi ve Ticaret A.S.; Kibar Dis Ticaret A.S.; and Ispak Esnek Ambalaj Sanayi A.S	1.41
ASAS Aluminyum Sanayi Ve Ticaret A.S	1.88
Ilda Pack Ambalaj	1.49
Panda Aluminyum A.S	1.49

Disclosure

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

Assessment of Antidumping Duties

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Because the weighted-average dumping margins for the Assan Single Entity and ASAS are not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we calculated an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[9] Where an importer-specific assessment rate is zero or *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[10]

For entries of subject merchandise during the POR produced by either of the individually examined respondents for which they did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[11]

For all non-examined companies subject to this review, we will instruct CBP to liquidate all entries of subject merchandise that entered the United States during the POR and assess antidumping duties at a rate equal to the weighted-average dumping margin listed above.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

[4] We initiated this administrative review of ASAS Aluminyum Sanayi ve Ticaret A.S. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 50, 55 (January 3, 2023). In the *Preliminary Results,* we inadvertently omitted the suffix A.S. from this company's name. *See Preliminary Results,* 88 FR at 85238.

[5] *See* Memoranda, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2021–2022,'' dated February 27, 2024, and ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2021–2022,'' dated May 10, 2024.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the Republic of Türkiye; 2021–2022,'' dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

[7] *Id.*

[8] *See* Memorandum, ''Final Rate for Non-Selected Companies,'' dated concurrently with this notice.

[9] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[10] *See* section 751(a)(2)(C) of the Act.

[11] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

Upon publication of this notice in the **Federal Register**, the following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or a prior segment of the proceeding (*e.g.,* the original investigation of sales at less than fair value (LTFV)) but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 1.95 percent,[12] the all-others rate established in the LTFV investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: June 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–12653 Filed 6–7–24; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See Certain Aluminum Foil from the Republic of Turkey: Final Affirmative Determination of Sales at Less Than Fair Value,* 86 FR 52880 (September 23, 2021).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–161, C–533–923]

2,4-Dichlorophenoxyacetic Acid From the People's Republic of China and India: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

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

DATES: Applicable June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Claudia Cott (the People's Republic of China) and Frank Schmitt (India), AD/CVD Operations, Offices I and VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4270 and (202) 482–4880, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2024, the U.S. Department of Commerce (Commerce) initiated countervailing duty (CVD) investigations of imports of 2,4-dichlorophenoxyacetic acid (2,4-D) from China and India.[1] Currently, the preliminary determinations are due no later than June 27, 2024.

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) the petitioner[2] makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On May 24, 2024, the petitioner submitted a timely request that Commerce postpone the preliminary CVD determinations.[3] The petitioner stated that it requests postponement for Commerce to receive initial responses, issue supplemental questionnaires as needed, develop the records regarding potential deficiencies, and prepare the preliminary determinations.[4]

[1] *See 2,4-Dichlorophenoxyacetic Acid from the People's Republic of China and India: Initiation of Countervailing Duty Investigations,* 89 FR 34205 (April 30, 2024).

[2] The petitioner is Corteva Agriscience LLC.

[3] *See* Petitioner's Letter, ''Request For Extension Preliminary Determination Deadline,'' dated May 24, 2024.

[4] *Id.*

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to no later than 130 days after the date on which these investigations were initiated, *i.e.,* September 3, 2024.[5] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–12608 Filed 6–7–24; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 1:00 p.m. EDT, Friday, June 14, 2024.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: June 5, 2024.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2024–12624 Filed 6–6–24; 11:15 am]

BILLING CODE 6351–01–P

[5] Postponing the preliminary determinations to 130 days after initiation would place the deadline on Saturday, August 31, 2024, and Monday, September 2, 2024, is a federal holiday. Commerce's practice dictates that, where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day, *i.e.,* Tuesday, September 3, 2024. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, U.S. Department of Defense (DoD).

ACTION: Notice of partially closed meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the U.S. Naval Academy Board of Visitors, hereafter ''Board,'' will take place.

DATES: Open to the public, September 16, 2024, from 9 a.m. to 11 a.m. eastern time zone (ET). Closed to the public, September 16, 2024, from 11 a.m. to noon (12 p.m.) ET.

ADDRESSES: This meeting will be held at the Library of Congress (Member's Room), Washington, DC. Pending prevailing health directives, the meeting will be handicap accessible. Escort is required.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Alexandra Fitzgerald, USMC, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503, *pao@usna.edu,* or visit *https://www.usna.edu/PAO/Superintendent/bov.php.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 United States Code (U.S.C.), appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), the General Services Administration's (GSA) Federal Advisory Committee Management Final Rule (41 Code of Federal Regulations (CFR) part 102–3).

Purpose of Meeting: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board deems necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

Agenda

Proposed meeting agenda for September 16, 2024.

0900 Call to Order (Open to Public)
0900–1055 Opening Meeting (Open to Public)
1055–1100 Break (Open to Public)
1100–1200 Closed Meeting (Closed to Public)

Current details on the board of visitors may be found at *https://www.usna.edu/PAO/Superintendent/bov.php.*

The closed meeting from 11 a.m. to 12 p.m. on September 16, 2024, will consist of discussions of new and pending administrative or minor disciplinary infractions and non-judicial punishments involving midshipmen attending the Naval Academy to include but not limited to, individual honor or conduct violations within the Brigade, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, a portion of this meeting will be closed to the public, as the discussion of such information cannot be adequately segregated from other topics, which precludes opening the closed meeting to the public. The Principal Deputy General Counsel has determined in writing that the meeting shall be partially closed to the public because the discussions during the closed meeting from 11 a.m. to noon (12 p.m.) will be concerned with matters protected under sections 552b(c)(5), (6), and (7) of title 5, U.S.C.

Meeting Accessibility: Pursuant to FACA and 41 CFR 102–3.140, this meeting is open to the public. Any public attendance at the meeting will be governed by prevailing health directives at the United States Naval Academy. Please contact the Executive Secretary five business days prior the meeting to coordinate access to the meeting.

Written Statements: Per section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration at any time, but should be received by the Designated Federal Officer at least five business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written statements should be submitted via mail to 121 Blake Rd, Annapolis, MD 21402. Please note that since the Board operates under the provisions of the FACA, as amended, all submitted comments and public presentations may be treated as public documents and may be made available for public inspection, including, but not limited to, being posted on the board website.

Authority: 5 U.S.C. 552b.

Dated: June 4, 2024.

J.E. Koningisor,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2024–12602 Filed 6–7–24; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0398; FRL–8944–01–OCSPP]

Pesticides; Draft Pesticide Registration Notice; Revised Procedures for Citing Data To Support Pesticide Registrations (EPA Forms No. 8570–34 and 8570–35); Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or ''Agency'') is announcing the availability of and seeking public comment on a draft Pesticide Registration Notice (PR Notice) entitled ''Revised Procedures for Citing Data to Support Pesticide Registrations (EPA Forms No. 8570–34 and 8570–35).'' PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This draft PR Notice, will supersede PR Notice 98–5, entitled ''New forms for the Certification with Respect to Citation of Data'' dated June 12, 1998. The Agency is eliminating the instructions provided in PR Notice 98–5 that required registrants to submit two versions of EPA Form No. 8570–35 (''Data Matrix''), and the use of paper submissions. The changes in procedure are necessary updates to reflect current operations established to help reduce the burden associated with completing, submitting, and processing these forms for both applicants and the Agency, as well as to provide improved efficiencies for providing public access to the information without the extra burden associated with the use of formal procedures to request additional information.

DATES: Comments must be received on or before July 10, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0398, through the *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Earl Ingram, Office of Chemical Safety and Pollution Prevention (7603M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1381; email address: *ingram.earl@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the general public, although this action may be of particular interest to those persons who are required to submit data in support of pesticide registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

II. What is the Agency's authority for taking this action?

Pesticide registration activities are governed by FIFRA, 7 U.S.C. 136 *et seq.*

III. What guidance does this PR Notice provide?

This draft PR Notice provides updated guidance to registrants and applicants (hereinafter ''registrants'') concerning their submission of the forms used for citing data to support pesticide registrations. The forms themselves that are currently in use are not being changed. This PR Notice will supersede PR Notice 98–5, entitled ''New forms for the Certification with Respect to Citation of Data'' dated June 12, 1998, that announced the availability of these forms to use for citation of data to support pesticide registrations, which were newly established in 1998 to streamline the forms previously used. With this PR Notice, OPP is revising the procedures established in 1998. Specifically, OPP is eliminating the instruction in PR Notice 98–5 that registrants submit two versions of EPA Form 8570–35 (''Data Matrix''), *i.e.,* one the ''Internal Agency Use Copy'' and the other the ''Public File Copy''. Consistent with federal mandates that direct agencies to adopt electronic submissions, OPP is also eliminating the instruction to use paper submissions as described in PR Notice 98–5 because these forms can be completed and submitted electronically.

In addition, EPA has determined that none of the information provided on EPA Form No. 8570–35 is confidential. EPA regulations at 40 CFR 152.119(c) require that, when requested, the Agency provides the form to the public for inspection after a product is registered. The information in the data matrix form is specified by EPA regulations at 40 CFR 152.119(b):

> Materials that will be publicly available include an applicant's list of data requirements, the method used by the applicant to demonstrate compliance for each data requirement, and the applicant's citations of specific studies in the Agency's possession if applicable.

CBI claims for information submitted under EPA's data requirements in 40 CFR part 158 is strictly limited in 40 CFR 158.33 to manufacturing or quality control processes, the details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide, and the identity or percentage quantity of any deliberately added inert ingredient of a pesticide, pursuant to FIFRA section 10(d)(1) (A) through (C). None of this information is reported in the data matrix form. Because none of the information on EPA Form No. 8570–35 is CBI, the Agency is able to release the form in response to a Freedom of Information Act (FOIA) request.

In addition, OPP is eliminating the instruction to use paper submissions as described in PR Notice 98–5 because these forms can be completed and submitted electronically. This PR Notice provides updated instructions for completing and submitting these forms electronically through the Pesticide Submission Portal (PSP) that OPP established to allow registrants to create and submit packages electronically in lieu of submitting multiple paper copies. The PSP is accessed through the EPA's Central Data Exchange (CDX) Network (*https://cdx.epa.gov/*), which is a web-based system used for various electronic environmental data submissions to EPA.

The changes in procedure presented in this draft PR Notice are necessary updates to reflect current operations established to help reduce the burden associated with completing, submitting and processing these forms for both applicants and the Agency, as well as to provide improved efficiencies for providing public access to the information without the extra burden associated with the use of formal requests for the additional information contained in the ''Internal Agency Use Copy'' of EPA Form 8570–35 (''Data Matrix'').

IV. Do PR Notices contain binding requirements?

The draft PR Notice discussed in this document is intended to provide guidance to EPA personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on

EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

V. Are these forms approved under the Paperwork Reduction Act (PRA)?

According to the PRA, 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 that requires approval under the PRA, unless it has been approved by the Office of Management and Budget (OMB) and displays a currently valid OMB control number. The information collection activities associated with EPA Forms 8570–34 and 8570–35 and the activities described in this PR Notice are already approved by OMB under the PRA and are contained in the Information Collection Requests (ICRs) entitled ''Consolidated Pesticide Registration Submission Portal'' identified as EPA ICR No. 2624.01 and approved under OMB Control No. 2070–0226; and the ''Pesticide Data Call-in Program'' identified as EPA ICR No. 2288 and approved under OMB Control No. 2070–0174. For additional information about these ICRs, use the link *https://www.reginfo.gov/public/* and search on the applicable OMB control number.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 4, 2024.

Edward Messina,

Director, Office of Pesticide Programs.

[FR Doc. 2024–12626 Filed 6–7–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11944–01–OA]

Science Advisory Board Scientific and Technological Achievement Awards Panel; Closed Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a meeting of the Scientific and Technological Achievement Awards (STAA) Panel. The purpose of the meeting is to review the 2024 STAA nominations and to make recommendations for awards. The meeting is closed to the public.

DATES: The SAB STAA Panel will meet on the following dates. All times listed are in eastern time.

1. July 8, 2024, from 10 a.m. to 4 p.m.
2. July 19, 2024, from 10 a.m. to 4 p.m.
3. August 8, 2024, from 10 a.m. to 4 p.m.
4. August 12, 2024, from 10 a.m. to 4 p.m.

ADDRESSES: The SAB STAA Panel meeting will be conducted virtually.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information concerning this notice may contact Dr. Shaunta Hill-Hammond, Designated Federal Officer (DFO), via telephone (202) 564–3343, or via email at *hill-hammond.shaunta@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. 10. 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 SAB STAA Panel, will hold a closed meeting to review the 2024 STAA nominations and to make recommendations for awards and recommendations for improvement of the Agency's STAA program.

The STAA awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. In conducting its review, the SAB considers each nomination in relation to the following four award levels:

- Level I awards are for those who have accomplished an exceptionally high-quality research or technological effort. The awards recognize the creation or general revision of a scientific or technological principle or procedure, or a highly significant improvement in the value of a device, activity, program, or service to the public. Awarded research is of national significance or has high impact on a broad area of science/technology. The research has far reaching consequences and is recognizable as a major scientific/technological achievement within its discipline or field of study.
- Level II awards are for those who have accomplished a notably excellent research or technological effort that has qualities and values similar to, but to a lesser degree, than those described under Level I. Awarded research has timely consequences and contributes as an important scientific/technological achievement within its discipline or field of study.
- Level III awards are for those who have accomplished an unusually notable research or technological effort. The awards are for a substantial revision or modification of a scientific/technological principle or procedure, or an important improvement to the value of a device, activity, program, or service to the public. Awarded research relates to a mission or organizational component of the EPA, or significantly affects a relevant area of science/technology.
- Honorable Mention awards acknowledge research efforts that are noteworthy but do not warrant a Level I, II or III award. Honorable Mention applies to research that: (1) May not quite reach the level described for a Level III award; (2) show a promising area of research that the STAA Panel wants to encourage; or (3) show an area of research that the STAA Panel feels is too preliminary to warrant an award recommendation at this time.

The SAB reviews the STAA nomination packages according to the following five evaluation factors:

- The extent to which the work reported in the nominated publication(s) resulted in either new or significantly revised knowledge. The accomplishment is expected to represent an important advancement of scientific knowledge or technology relevant to environmental issues and EPA's mission.
- The extent to which environmental protection has been strengthened or improved, whether of local, national, or international importance.
- The degree to which the research is a product of the originality, creativeness, initiative, and problem-solving ability of the researchers, as well as the level of effort required to produce the results.
- The extent of the beneficial impact of the research and the degree to which the research has been favorably recognized from outside EPA.

• The nature and extent of peer review, including stature and quality of the peer-reviewed journal or the publisher of a book for a review chapter published therein.

I have determined that the meetings of the STAA Panel and Chartered SAB will be closed to the public because they are concerned with selecting employees deserving of awards. In making these recommendations, the Agency requires full and frank advice from the SAB. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such matters relate solely to EPA's internal personnel rules and practices and involve the discussion of information that is of a personal nature and the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, are protected from disclosure by section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 10, and subsections (c)(2) and (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b. Minutes of the meetings of the STAA Panel and the Chartered SAB will be kept and certified by the chair of those meetings.

Michael S. Regan,

Administrator.

[FR Doc. 2024–12613 Filed 6–7–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0999; FR ID 224289]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 9, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0999.

Title: Hearing Aid Compatibility Status Report and Section 20.19, Hearing Aid-Compatible Mobile Handsets (Hearing Aid Compatibility Act).

Form Numbers: FCC Forms 655 and 855.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 934 respondents; 934 responses.

Estimated Time per Response: 13.97 hours per response (average).

Frequency of Response: On occasion and annual reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 214, 301, 303, 308, 309(j), 310 and 610 of the Communications Act of 1934, as amended.

Total Annual Burden: 13,049 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission is requesting that OMB grant it a three-year extension of the currently approved information collection related to the Commission's wireless hearing aid compatibility requirements located in section 20.19 of the Commission's rules. 47 CFR 20.19. OMB's approval of the information collection contain in these rules expires on October 31, 2024. While the Commission is not requesting approval of any substantive changes to the information collection, it is requesting approval of a few minor, non-substantive changes to FCC Form 855 and the related instructions. The Commission uses this form to ensure wireless service provider compliance with the hearing aid compatibility rules. The Commission is also requesting approval of certain minor, non-substantive changes to the instructions for FCC Form 655 but not to the form, itself. The Commission uses this form to ensure handset manufacturer compliance with the Commission's hearing aid compatibility rules. These changes are for clarification purposes only and do not affect the burden hours or the cost of compliance associated with the approved information collection.

The Commission's wireless hearing aid compatibility rules ensure that consumers with hearing loss have the same access to the newest and most technologically advanced handset models as consumers without hearing loss. These rules were adopted by the Commission in response to the Hearing Aid Compatibility Act, which was enacted in 1988 and is codified as amended at 47 U.S.C. 610. *See* Public Law 100–394, sec. 3, 102 Stat. 976, 976 (1988). In order to ensure handset manufacturer and service provider compliance with the Hearing Aid Compatibility Act and the Commission's regulations implementing the Act, the Commission has adopted handset labeling and disclosure requirements, website posting and record retention requirements, and handset manufacturer and mobile wireless service provider reporting requirements. *See* 47 CFR 20.19(f), (h), (i). These requirements are the subject of this information collection submission, and these regulations ensure that consumers are given the information that they need to make informed purchasing decisions and that handset manufacturers and service providers meet hearing aid-compatible handset model deployment requirements that the Commission has adopted.

The Commission is not proposing changes to the handset labeling and disclosure requirements, nor to the website posting and record retention requirements. These requirements will remain unchanged after OMB approval

of this information collection submission.

With respect to FCC Form 855, the Commission is proposing to add an information icon to two of the form's questions for clarification purposes only. The two questions appear in the certification part of the form and the Commission will place a validation stop after each question to ensure that filers provide answers to the questions before proceeding to complete the form. The two information icons will be placed in the following locations and will provide as follows:

- One information icon will be placed at the end of the question requesting filers to provide the percentage of hearing-aid compatible handset models that they provided for the reporting period. The information icon will provide the following clarification: ''If your company claims a HAC handset model compliance percentage of less than 85%, then you must indicate above which *de minimis* exception your company is claiming.'' The addition of this information icon will not change what the question is asking, but will provide filers with guidance on how to complete the form.
- The second information icon will be placed at the end of the question requesting filers who maintain publicly accessible websites to provide the website address where required hearing aid compatibility information is posted. The information icon will provide the following clarification: ''If your company did not have a publicly-accessible website for the reporting period, then type the following statement into the box: 'For the reporting period, [name of company] did not operate a publicly-accessible website.' '' The addition of this information icon will not change what the question is asking, but will provide filers with guidance on how to complete the form.

In addition to these minor, non-substantive changes to FCC Form 855, the Commission is proposing to modify the form's instructions to provide the following clarifications:

- The filing window for the form opens on the first business day in January each year and closes on January 31, unless January 31 is not a business day. In this case, the filing window closes on the first business day after January 31. This change conforms the form's instructions concerning the filing window with the information on the Commission's wireless hearing aid compatibility website concerning the filing window.
- The instruction which states that service providers should provide the percentage of handset models that they offered for the reporting period that were hearing aid-compatible will be modified by changing the word ''should'' to ''must,'' and ''must'' will be bolded for emphasis. This instruction will also reference the information icon discussed above that will be added to this question for clarification purposes only.
- The instruction which states that service providers must post on their publicly accessible websites certain hearing aid compatibility information required by the Commission's rules will be modified by bolding the existing word ''must'' for emphasis. This instruction will also reference the information icon discussed above that will be added to this question for clarification purposes only.
- The instruction which states that service providers who are not in full compliance with the Commission's hearing aid compatibility rules must provide an attachment explaining their non-compliance will be modified by bolding the existing word ''must'' for emphasis.

The Commission is not seeking approval of any changes to FCC Form 655 used by handset manufacturers to show compliance with the Commission's hearing aid compatibility requirements. The Commission is proposing to modify the form's instructions to provide the following clarifications:

- The filing window for the form opens on the first business day in July each year and closes on July 31, unless July 31 is not a business day. In this case, the filing window closes on the first business day after July 31. This change conforms the form's instructions concerning the filing window with the information on the Commission's wireless hearing aid compatibility website concerning the filing window.
- The instruction which states that handset manufacturers must post on their publicly accessible websites certain hearing aid compatibility information required by the Commission's rules will be modified by bolding the existing word ''must'' for emphasis.

These minor, non-substantive modifications the Commission is proposing to the existing information collection will provide clarity and promote efficiency. These changes will not affect the burden estimate or compliance cost that OMB has previously approved for this information collection. After the 60-day comment period expires, the Commission will submit the information collection to OMB to obtain a full three-year clearance.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–12603 Filed 6–7–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 224106]

Open Commission Meeting Thursday, June 6, 2024

May 30, 2024.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 6, 2024, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	Public Safety and Homeland Security	*Title:* Reporting on Border Gateway Protocol Risk Mitigation Progress (PS Docket No. 24–146); Secure Internet Routing (PS Docket No. 22–90) *Summary:* The Commission will consider a Notice of Proposed Rulemaking to increase the security of the information routed across the internet and promote national security by requiring broadband providers to report on their progress in addressing vulnerabilities in the Border Gateway Protocol.

Item No.	Bureau	Subject
2	Wireline Competition	*Title:* Establishing a Schools and Libraries Cybersecurity Pilot Program (WC Docket No. 23–234) *Summary:* The Commission will consider a Report and Order that would establish the Schools and Libraries Cybersecurity Pilot Program and provide up to $200 million in Universal Service Fund (USF) support available to eligible schools and libraries, over a three-year period, to defray the costs of eligible cybersecurity services and equipment and help the Commission evaluate the use of the USF to support these services and equipment.
3	Wireline Competition	*Title:* Letters of Credit for Recipients of High-Cost Competitive Bidding Support (WC Docket No. 24–144); Connect America Fund (WC Docket No. 10–90); The Uniendo a Puerto Rico Fund and the Connect USVI Fund (WC Docket No. 18–143); Rural Digital Opportunity Fund (WC Docket No. 19–126); Connect America Fund Phase II Auction (AU Docket No. 17–182); Rural Digital Opportunity Fund Auction (AU Docket No. 20–34); Establishing a 5G Fund for Rural America (GN Docket No. 20–32) *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would seek comment on changes to the rules for letters of credit required for recipients of high-cost support authorized through a competitive process.
4	Media	*Title:* Amendment of the Commission's Rules to Advance the Low Power Television, TV Translator and Class A Television Service (MB Docket No. 24–148); Political Programming and Online Public File Requirements for Low Power Television Stations (MB Docket No. 24–147) *Summary:* The Commission will consider a Notice of Proposed Rulemaking regarding updates and amendments to the Commission's rules to address advances in the LPTV Service.

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairwoman may hold a news conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–12600 Filed 6–7–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 224316]

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Communications Security, Reliability, and Interoperability Council (CSRIC) IX will hold its first meeting on June 28, 2024 at 1 p.m. EDT.

DATES: June 28, 2024.

ADDRESSES: The meeting will be held at 45 L Street NE, Washington, DC, and via conference call. The meeting is open to the public and is also available via WebEx at *https://www.fcc.gov/live* and on the FCC's YouTube channel.

FOR FURTHER INFORMATION CONTACT: Suzon Cameron, Designated Federal Officer (DFO), CSRIC IX, FCC, (202) 418–1916 or email: *CSRIC@fcc.gov,* Kurian Jacob, Deputy DFO, CSRIC IX, FCC, (202) 418–2040 or email: *CSRIC@fcc.gov,* or Logan Bennett, Deputy DFO, CSRIC IX, FCC, (202) 418–7790 or email: *CSRIC@fcc.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be held on June 28, 2024, at 1 p.m. ET, in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC. While the CSRIC IX meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *https://www.fcc.gov/visit.*

The CSRIC is a Federal Advisory Committee that will provide recommendations to the Commission to improve the security, reliability, and interoperability of communications systems. On March 26, 2024, the Commission, pursuant to the Federal Advisory Committee Act, renewed the charter for CSRIC IX for a period of two years through March 25, 2026. The meeting on June 28, 2024, will be the first meeting of CSRIC IX under the current charter. The FCC will provide audio and/or video coverage of the meeting over the internet from the FCC's web page at *https://www.fcc.gov/live* and on the FCC's YouTube channel. The public may submit written comments before the meeting to Suzon Cameron, DFO, CSRIC IX, via email to *CSRIC@fcc.gov.*

Open captioning will be provided for this event. Other reasonable

accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the Commission can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may be impossible to fill.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–12584 Filed 6–7–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0819; FR ID 224317]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before July 10, 2024.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0819.

Title: Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support.

Form No.: FCC Form 481, 497, 555, 5629, 5630, and 5631.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit enterprises.

Number of Respondents and Responses: 25,110,068 respondents; 26,877,412 responses.

Estimated Time per Response: 0.0167–125 hours.

Frequency of Response: Annual, biennial, monthly, daily and on occasion reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i),155, 201,205, 214,219, 220,254, 303(r),403, and 1302.

Total Annual Burden: 6,534,382 hours.

Total Annual Cost: $937,500.

Needs and Uses: The Commission provides updates to the existing FCC Form 5629 to implement the Safe Connections Act Order, FCC 23–96, to include information for survivors suffering financial hardship about how they can qualify to receive emergency communications support from the Lifeline program. The revisions also allow survivors to document or self-certify their financial hardship status and include a new question on survivor communication preferences. Additionally, the Commission adds a new requirement for Eligible Telecommunications Carriers (ETCs) seeking to relinquish their ETC designation.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–12601 Filed 6–7–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole-Source Cooperative Agreement To Fund Mali Ministry of Health

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $600,000 with an expected total funding of approximately $3,000,000 over a 5-year period, to Mali Ministry of Health. This award will strengthen Mali's health system capacities to prevent, detect, and respond to infectious disease outbreaks and other public health emergencies.

DATES: The period for this award will be September 30, 2024, through September 29, 2029.

FOR FURTHER INFORMATION CONTACT: Shana Eatman, Centers for Disease Control and Prevention, 1600 Clifton Rd., Atlanta, GA Telephone: 770–488–3933, E-Mail: *DGHPNOFOs@cdc.gov.*

SUPPLEMENTARY INFORMATION: The sole-source award will build upon the work awarded under CDC–RFA–GH15–1627 *Protecting and Improving Public Health Globally: Building and Strengthening Public Health Impact, Systems, Capacity, and Security.*

Mali Ministry of Health is in a unique position to conduct this work, as it will support the training of a cadre of public health workers in field epidemiology and emergency preparedness and response. Surveillance and response capacities will be bolstered through improved laboratory point of care diagnostics and the integration of epidemiologic and laboratory data.

Summary of the Award

Recipient: Mali Ministry of Health.

Purpose of the Award: The purpose of this award is to improve core Global Health Security Agenda (GHSA) priorities in disease surveillance, laboratory diagnostics, and emergency preparedness and response and strengthen the public health workforce in field epidemiology, anti-microbial resistance, and emergency preparedness and response.

Amount of Award: $600,000 in Federal Fiscal Year (FFY) 2024 funds, with a total estimated $3,000,000 for the 5-year period of performance, subject to availability of funds. Please note, Year 1 funding will be $600,000 for Core Component 1.

Authority: This program is authorized under section 307 of the Public Health Service Act [42 U.S.C. 242*l*] and section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act.

Period of Performance: September 30, 2024, through September 29, 2029.

Dated: June 4, 2024.

Jamie Legier,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024–12652 Filed 6–7–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–372(S)]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 9, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–372(S) Section 1915(c) Home and Community-Based Services Waivers and Supporting Regulations

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:* Revision of a currently approved collection; *Title of Information Collection:* Section 1915(c) Home and Community-Based Services Waivers and Supporting Regulations; *Use:* We use this report to compare actual data to the approved waiver estimates. In conjunction with the waiver compliance review reports, the information provided will be compared to that in the Medicaid Statistical Information System (MSIS) (CMS–R–284; OMB control number: 0938–0345) report and FFP claimed on a state's Quarterly Expenditure Report (CMS–64; OMB control number: 0938–1265), to determine whether to continue the state's home and community-based services waiver. States' estimates of cost and utilization for renewal purposes are based upon the data compiled in the CMS–372(S) reports. *Form Number:* CMS–372(S) (OMB control number: 0938–0272); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 47; *Total Annual Responses:* 259; *Total Annual Hours:* 11,396. (For policy questions regarding this collection contact George Failla at 410–786–7561.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–12637 Filed 6–7–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10774 and CMS–10636]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by July 10, 2024.

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.

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 Parham at (410) 786–4669.

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. 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 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-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 that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* The International Classification of Diseases, 10th Revision, Procedure Coding System (ICD–10–PCS); *Use:* The HIPAA Act of 1996 required CMS to adopt standards for coding systems that are used for reporting health care transactions. The Transactions and Code Sets final rule (65 FR 50312) published in the **Federal Register** on August 17, 2000 adopted the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) Volumes 1 and 2 for diagnosis codes and ICD–9–CM Volume 3 for inpatient hospital services and procedures as standard code sets for use by covered entities (health plans, health care clearinghouses, and those health care providers who transmit any health information in electronic form in connection with a transaction for which the Secretary has adopted a standard). ICD–9–CM Volumes 1 and 2, and ICD–9–CM Volume 3 were already widely used in administrative transactions when we promulgated the August 17, 2000 final rule, and we decided that adopting these existing code sets would be less disruptive for covered entities than modified or new code sets.

When a request is submitted in MEARIS™, the Diagnosis Related Groups (DRGs) and Coding Team in the Division of Coding and DRGs (DCDRG) have instant access to the request and accompanying materials to facilitate a more-timely review of the proposed updates or changes. Upon receipt of a procedure code request, CMS immediately acknowledges receipt of the request and communicates to the requestor that additional follow up will occur once an analyst has been assigned. In addition, CMS provides information via email communication in a letter to each requestor outlining the meeting process. CMS holds standard pre-meeting conference calls with requestors to discuss their procedure code topic request in more detail in advance of the ICD–10 C&M Committee Meetings. Also, prior to the committee meeting, we make the procedure code topic meeting materials publicly available, commonly referred to as the ''Agenda packet'' on our website at: *https://www.cms.gov/medicare/coding-billing/icd-10-codes/icd-10-coordination-maintenance-committee-materials.* Lastly, once the meeting has concluded, CMS sends a follow-up letter to the requestor informing them of next steps in the process so they can anticipate what to expect. *Form*

Number: CMS–10774 (OMB control number: 0938–1409); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 80; *Total Annual Responses:* 80; *Total Annual Hours:* 800. (For policy questions regarding this collection contact Andrea Hazeley at 410–786–3543.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Triennial Network Adequacy Review for Medicare Advantage Organizations and 1876 Cost Plans; *Use:* This collection of information request is authorized under section 1852(d)(1) of the Social Security Act which permits an MA organization to select the providers from which an enrollee may receive covered benefits, provided that the MA organization makes such benefits available and accessible in the service area with promptness and in a manner which assures continuity in the provision of benefits as defined in §§ 422.112(a)(1)(i) and 422.114(a)(3)(ii) (under part 422, subpart C—benefits and beneficiary protections) and §§ 417.414(b) and 417.416(a) and (e) (under part 417, subpart J—Qualifying Conditions for Medicare Contracts).

The information will be collected by CMS through HPMS. CMS measures access to covered services through the establishment of quantitative standards for a predefined list of provider and facility specialty types. These quantitative standards are collectively referred to as the network adequacy criteria. Network adequacy is assessed at the county level and CMS requires that organizations contract with a sufficient number of providers and facilities to ensure that at least 90 percent of enrollees within a county can access care within specific travel time and distance maximums for Large Metro and Metro county types and that at least 85 percent of enrollees within a county can access care within specific travel time and distance maximums for Micro, Rural and CEAC (Counties with Extreme Access Considerations county types. *Form Number:* CMS–10636 (OMB control number: 0938–1346); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit; *Number of Respondents:* 502; *Total Annual Responses:* 2,753; *Total Annual Hours:* 27,470. (For policy questions regarding this collection contact Amber Casserly at 410–786–5530.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–12585 Filed 6–7–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10003, CMS–10146 and CMS–R–240]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 9, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10003 Notice of Denial of Medical Coverage (or Payment)—NDMCP

CMS–10146 Notice of Denial of Medicare Prescription Drug Coverage

CMS–R–240 Prospective Payments for Hospital Outpatient Services and Supporting Regulations in 42 CFR 413.65

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:* Revision with change of a previously approved collection; *Title of Information Collection:* Notice of Denial of Medical Coverage (or Payment)—NDMCP; *Use:* Section 1852(g)(1)(B) of the Social Security Act (the Act) requires Medicare health plans to provide enrollees with a written notice in understandable language of the reasons for the denial and a description of the applicable appeals processes. Regulatory authority for this notice is set forth in Subpart M of Part 422 at 42 CFR 422.568, 422.572, 417.600(b), and 417.840.

Medicare health plans, including Medicare Advantage plans, cost plans, and Health Care Prepayment Plans (HCPPs), are required to issue form CMS–10003 to Medicare Advantage plan enrollees when a request for either a medical service or payment is denied in whole or in part. The notice explains to the enrollee why the plan denied the service or payment and informs Medicare enrollees of their appeal rights. *Form Number:* CMS–10003 (OMB control number: 0938–0829); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 970; *Total Annual Responses:* 18,232,560; *Total Annual Hours:* 3,037,544. (For policy questions regarding this collection contact Sabrina Edmonston at (410) 786–3209.)

2. *Type of Information Collection Request:* Revision with change of a previously approved collection; *Title of Information Collection:* Notice of Denial of Medicare Prescription Drug Coverage; *Use:* Part D plan sponsors are required to issue the Notice of Denial of Medicare Prescription Drug Coverage notice when a request for a prescription drug or payment is denied, in whole or in part. The written notice must include a statement, in understandable language, the reasons for the denial and a description of the appeals process.

The purpose of this notice is to provide information to enrollees when prescription drug coverage has been denied, in whole or in part, by their Part D plans. The notice must be readable, understandable, and state the specific reasons for the denial. The notice must also remind enrollees about their rights and protections related to requests for prescription drug coverage and include an explanation of both the standard and expedited redetermination processes and the rest of the appeal process. *Form Number:* CMS–10146 (OMB control number: 0938–0976); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 772; *Total Annual Responses:* 2,962,857; *Total Annual Hours:* 740,714. (For policy questions regarding this collection contact Coretta Edmonston at (410) 786–0512.)

3. *Type of Information Collection Request:* Reinstatement of a previously approved collection; *Title of Information Collection:* Prospective Payments for Hospital Outpatient Services and Supporting Regulations in 42 CFR 413.65; *Use:* Section 1833(t) of the Act, as added by section 4523 of the Balanced Budget Act of 1997 (the BBA) requires the Secretary to establish a prospective payment system (PPS) for hospital outpatient services. Successful implementation of an outpatient PPS requires that CMS distinguish facilities or organizations that function as departments of hospitals from those that are freestanding, so that CMS can determine which services should be paid under the OPPS, the clinical laboratory fee schedule, or other payment provisions applicable to services furnished to hospital outpatients. Information from the reports required under sections 413.65(b)(3) and (c) is needed to make these determinations. In addition, section 1866(b)(2) of the Act authorizes hospitals and other providers to impose deductible and coinsurance charges for facility services but does not allow such charges by facilities or organizations which are not provider-based. Implementation of this provision requires that CMS have information from the required reports, so it can determine which facilities are provider-based. *Form Number:* CMS–R–240 (OMB control number: 0938–0798); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 2032; *Total Annual Responses:* 15,138,400; *Total Annual Hours:* 683,670. (For policy questions regarding this collection contact Emily Lipkin at 410–786–3633.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–12583 Filed 6–7–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, June 20, 2024, 10:00 a.m. to June 20, 2024, 05:30 p.m., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 which was published in the **Federal Register** on May 24, 2024, 89 FR 45908.

The meeting notice is amended to change the start date of the meeting from 6/20/2024 to 6/28/2024. The meeting is closed to the public.

Dated: June 5, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–12649 Filed 6–7–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be 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 Aging Special Emphasis Panel; Proteostasis and Lung Aging.

Date: July 17, 2024.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kaitlyn Noel Lewis Hardell, Ph.D., M.P.H., Scientific Review Officer, Scientific Review Branch, National Institute of Aging, 7201 Wisconsin Avenue, Gateway Bldg., Room: 2E405, Bethesda, MD 20814, (301) 555–1234, *kaitlyn.hardell@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 5, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–12650 Filed 6–7–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Maximizing Investigators' Research Award A Study Section.

Date: July 1–2, 2024.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW, Washington, DC 20001 (In-Person Meeting).

Contact Person: Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0510, *mollie.manier@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Developmental Biology.

Date: July 1, 2024.

Time: 2:00 p.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 20817 (Virtual Meeting).

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cancer Immunology and Immunotherapy II.

Date: July 2, 2024.

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: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular Differentiation and Development.

Date: July 2, 2024.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4136, Bethesda, MD 20892, 301–435–0904, *sara.ahlgren@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 5, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–12651 Filed 6–7–24; 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 Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Computational Models of Influenza Immunity (U01 Clinical Trial Not Allowed).

Date: July 9–10, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, Hamilton, MT 59840 (Video Assisted Meeting).

Contact Person: Kristin L. McNally, Ph.D., Scientific Review Officer, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, Hamilton, MT 59840, *mcnallyk@niaid.nih.gov.*

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: July 9, 2024.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Maryam Rohani, Ph.D., Scientific Review Officer, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892, (301) 761–6656 *maryam.rohani@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: June 4, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–12604 Filed 6–7–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0381]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0078

AGENCY: Coast Guard, DHS.

ACTION: Sixty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the

following collection of information: 1625–0078, Credentialing and Manning Requirements for Officers of Towing Vessels; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before August 9, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0381] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email *hqs-dg-m-cg-61-pii@uscg.mil* for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0381, and must be received by August 9, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://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.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Credentialing and Manning Requirements for Officers of Towing Vessels.

OMB Control Number: 1625–0078.

Summary: Credentialing and manning requirements ensure that towing vessels operating on the navigable waters of the U.S. are under the control of credentialed officers who meet certain qualification and training standards.

Need: Title 46 Code of Federal Regulations parts 10 and 11 prescribe regulations for the credentialing of maritime personnel. This information collection is necessary to ensure that a mariner's training information is available to assist in determining his or her overall qualifications to hold certain credentials.

Forms: None.

Respondents: Owners and operators of towing vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 24,152 hours to 25,006 a year, due to an estimated increase in the annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: May 23, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–12618 Filed 6–7–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0382]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0045

AGENCY: Coast Guard, DHS.

ACTION: Sixty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0045, Adequacy Certification for Reception Facilities and Advance Notice; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before August 9, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0382] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email *hqs-dg-m-cg-61-pii@uscg.mil* for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0382, and must be received by August 9, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://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.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Adequacy Certification for Reception Facilities and Advance Notice—33 CFR part 158.

OMB Control Number: 1625–0045.

Summary: This information helps ensure that waterfront facilities are in compliance with reception facility standards. Advance notice information from vessels ensure effective management of reception facilities.

Need: Section 1905 of Title 33 U.S.C. gives the Coast Guard the authority to certify the adequacy of reception facilities in ports. Reception facilities are needed to receive waste from ships which may not discharge at sea. Under the regulations in 33 CFR part 158 there are discharge limitations for oil and oily waste, noxious liquid substances, plastics, and other garbage.

Forms:

- CG–5401, Certificate of Adequacy for Reception Facility.
- CG–5401A, Application for a Reception Facility Certificate of Adequacy (COA) for Oil, Form A.
- CG–5401B, Application for a Reception Facility Certificate of Adequacy (COA) for Noxious Liquid Substance (NLS) Residues and Mixtures Containing NLS Residues, Form B.
- CG–5401C, Application for a Reception Facility Certificate of Adequacy for Garbage, Form C.
- CG–5401D, Application for a Reception Facility Certificate of Adequacy for Ozone Depletion Substances and Exhaust Gas Cleaning System Residue, Form D.
- CG–5401X, Certificate of Adequacy (COA) Application.

Respondents: Owners and operators of reception facilities, and owners and operators of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 4,167 hours to 3,963 hours a year, due to the estimated decrease in time to complete a COA application.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: May 23, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–12615 Filed 6–7–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0340]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0097

AGENCY: Coast Guard, DHS.

ACTION: Sixty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0097, Plan Approval and Records for Marine Engineering Systems; without change.

Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before August 9, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0340] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email *hqs-dg-m-cg-61-pii@uscg.mil* for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0340, and must be received by August 9, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://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.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F.

OMB Control Number: 1625–0097.

Summary: This collection of information requires an owner or builder of a commercial vessel to submit to the U.S. Coast Guard for review and approval, plans pertaining to marine engineering systems to ensure that the vessel will meet regulatory standards.

Need: Under 46 U.S.C. 3306, the Coast Guard is authorized to prescribe vessel safety regulations including those related to marine engineering systems. Title 46 CFR subchapter F prescribes those requirements. The rules provide the specifications, standards and requirements for strength and adequacy of design, construction, installation, inspection, and choice of materials for machinery, boilers, pressure vessels, safety valves, and piping systems upon which safety of life is dependent.

Forms: None.

Respondents: Owners and operators of commercial vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 5,793 hours to 2,404 hours a year, due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: May 23, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–12616 Filed 6–7–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2024–0008]

Commercial Customs Operations Advisory Committee

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee management; notice of open Federal advisory committee meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Wednesday, June 26, 2024, in Long Beach, CA. The meeting will be open for the public to attend in person or via webinar. The in-person capacity is limited to 50 persons for public attendees.

DATES: The COAC will meet on Wednesday, June 26, 2024, from 1 p.m. to 5 p.m. Pacific daylight time (PDT). Please note that the meeting may close early if the committee has completed its business. Registration to attend in-person and comments must be submitted no later than June 21, 2024.

ADDRESSES: The meeting will be held at the Hilton Long Beach, 701 West Ocean Boulevard, Long Beach, CA 90831 in the Gallerie One room. For virtual participants, the webinar information will be posted by 5 p.m. EDT on June 25, 2024, at *https://www.cbp.gov/trade/stakeholder-engagement/coac.* For information or to request special assistance for the meeting, contact Mrs. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, at (202) 344–1440, as soon as possible.

Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for Docket Number USCBP–2024–0008. To submit a comment, click the ''Comment'' button located on the top left-hand side of the docket page.
- *Email: tradeevents@cbp.dhs.gov.* Include Docket Number USCBP–2024–0008 in the subject line of the message.

Comments must be submitted in writing no later than June 21, 2024, and must be identified by Docket No. USCBP–2024–0008. All submissions received must also include the words ''Department of Homeland Security.'' All comments received will be posted without change to *https://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings* and *www.regulations.gov.* Therefore, please refrain from including any personal information you do not wish to be posted. You may wish to view the Privacy and Security Notice, which is available via a link on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Latoria Martin, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229, (202) 344–1440; or Ms. Felicia M. Pullam, Designated Federal Officer, at (202) 344–1440 or via email at *tradeevents@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the authority of the Federal Advisory Committee Act, title 5 U.S.C., ch. 10. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of the Department of Homeland Security, the Secretary of the Department of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Pre-Registration: Meeting participants may attend either in person or via webinar. All participants who plan to participate in person must register using the method indicated below.

For members of the public who plan to participate in person, please register online at *https://cbptradeevents.certain.com/profile/16835* by 5 p.m. EDT on June 21, 2024. For members of the public who are pre-registered to attend the meeting in person and later need to cancel, please do so by 5 p.m. EDT on June 21, 2024, utilizing the following link: *https://cbptradeevents.certain.com/profile/16835.*

For members of the public who plan to participate via webinar, the webinar information will be posted by 5 p.m. EDT on June 25, 2024, at *https://www.cbp.gov/trade/stakeholder-engagement/coac.* Registration is not required to participate virtually.

The COAC is committed to ensuring that all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Mrs. Latoria Martin at (202) 344–1440 as soon as possible.

Please feel free to share this information with other interested members of your organization or association.

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

There will be a public comment period after each subcommittee update during the meeting on June 26, 2024. Speakers are requested to limit their comments to two minutes or less to facilitate greater participation. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page: *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

Agenda

The COAC will hear from the current subcommittees on the topics listed below:

1. The Intelligent Enforcement Subcommittee will provide updates on the work completed and topics discussed in its working groups as well as present proposed recommendations for the COAC's consideration. The Antidumping/Countervailing Duty (AD/CVD) Working Group will provide updates regarding its work and discussions on importer compliance with AD/CVD requirements. The Intellectual Property Rights (IPR) Process Modernization Working Group anticipates providing proposed recommendations for the committee's consideration regarding the Trade Seminars Mailbox and enhancements to the CBP Petitions Portal specific to IPR enforcement. The Forced Labor Working Group (FLWG) will provide updates regarding its updated Statement of Work that aims to enhance focus on technology best practices, stakeholder training and guidance, increased transparency on the Uyghur Forced Labor Prevention Act (UFLPA) applicability reviews, and enforcement of cotton imports under the UFLPA. Additionally, the FLWG will continue to monitor progress of the implementation of prior recommendations made by the COAC.

2. The Next Generation Facilitation Subcommittee will provide updates on all its existing working groups. The Broker Modernization Working Group (BMWG) plans to present proposed recommendations which aim to improve the end user experience and re-envision the Customs Broker Licensing Exam (CBLE). The Modernized Entry Processes Working Group (MEPWG) will report on the work done in the area of Cyber Incident Guidance for Brokers. The remaining working groups, the Automated Commercial Environment (ACE) 2.0 Working Group, the Passenger Air Operations Working Group, and the Customs Interagency Industry Working Group (CIIWG), were not active this past quarter but will provide a report on topics that each working group will focus on in the coming quarter.

3. The Secure Trade Lanes Subcommittee will provide updates on its seven active working groups: the Centers Working Group, the Cross-Border Recognition Working Group, the De Minimis Working Group, the Export Modernization Working Group, the FTZ/Warehouse Working Group, the Pipeline Working Group, and the Trade Partnership and Engagement Working Group. The Centers Working Group has continued to have robust discussions around the interactions between the Centers of Excellence and Expertise (Centers) and the trade community, including opportunities for improved communications and for providing the trade community with a better understanding of the Centers' internal organization. The Cross-Border Recognition Working Group has continued to discuss best practices at ports of entry on the southern border that facilitate legitimate trade. The De Minimis Working Group has continued discussions on the revised timeframe for submitting Type 86 entries and on potential compliance measurements for de minimis shipments that CBP can communicate to the trade community. The Export Modernization Working Group has continued its work on the Electronic Export Manifest Pilot Program. The Export Modernization Working Group is specifically focused on the effects of progressive filing by the shipper to continuously update export information on successive dates, rather than on a specific date. The Drawback Task Force under the Export Modernization Working Group has continued discussions around recommendations from last quarter, conducting an analysis of program statistics and examining areas to maximize resources. The FTZ/Warehouse Working Group continues to review previous recommendations along with 19 CFR part 146 and anticipates presenting proposed recommendations at the June public meeting. The Pipeline Working Group has continued discussing the most appropriate commodities and potential users of Distributed Ledger Technology to engage once the pilot for tracking pipeline-borne goods deploys. The Trade Partnership and Engagement Working Group has continued its work on the elements of the Customs Trade Partnership Against Terrorism (CTPAT) security program and the validation process.

4. The Rapid Response Subcommittee was inactive this quarter. It will not provide any status updates.

Meeting materials will be available on June 17, 2024, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Felicia M. Pullam,

Executive Director, Office of Trade Relations.

[FR Doc. 2024–12598 Filed 6–7–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Trimble GNSS R12i Receiver

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of the Trimble GNSS R12i Receiver. Based upon the facts presented, CBP has concluded that the GNSS R12i Receiver is a product of the United States for purposes of U.S. Government procurement and does not undergo a substantial transformation during its final assembly in Thailand.

DATES: The final determination was issued on June 4, 2024. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than July 10, 2024.

FOR FURTHER INFORMATION CONTACT: Mitchell Emery, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 4, 2024, U.S. Customs and Border Protection (CBP) issued a final determination concerning the country of origin of Trimble GNSS R12i Receivers for purposes of title III of the Trade Agreements Act of 1979. This final determination, HQ H338116, was issued at the request of Trimble, Inc. under procedures set forth at 19 CFR part 177, subpart B, which implements title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination CBP has concluded that the GNSS R12i Receiver is a product of the United States and does not undergo a substantial transformation during its final assembly in Thailand. The final determination also finds that the GNSS R12i Receiver is exempt from the country of origin marking requirements of 19 CFR 134.32(m).

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H338116

June 4, 2024

OT:RR:CTF:VS H338116 ME

Category: Origin

John McKenzie
Baker & McKenzie LLP
Two Embarcadero Center, 11th Floor
San Francisco, CA 94111–3802

Re: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of Global Navigation Satellite System R12i Receivers; Country of Origin Marking 134.32(d); 19 CFR 134.32(m).

Dear Mr. McKenzie,

This is in response to your March 1, 2024 request, on behalf of Trimble, Inc. (''Trimble''), for a final determination concerning the country of origin of certain Global Navigation Satellite System (''GNSS'') R12i Receivers, pursuant to Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 *et seq.*), and subpart B of Part 177, U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21, *et seq.*). Trimble is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a) and is therefore entitled to request this final determination. You also requested a determination on whether the product is exempt from country of origin marking requirements under Section 134.32(m) of the CBP Regulations (19 CFR 134.32(m)).

Facts

Trimble is a Delaware corporation based in Colorado, specializing in the production and design of industrial technology for the agricultural, construction, and geospatial transportation industries. At issue in this case is the GNSS R12i Receiver, which you describe as designed for ''surveying and mapping in challenging environments.''

You state that the GNSS R12i Receiver consists of seven primary components, which undergo final assembly into a chassis in Thailand:

- Main Board Assembly
- Power Supply and Communications Board Assembly
- Antenna Element Assembly
- Radio Interface
- Antenna Low Noise Amplifier
- Battery SIM
- 450MHz Radio

Four of these components, the main board assembly, the power supply and communications board assembly, the antenna element assembly, and the radio interface are manufactured in the United States. Notably, you characterize three of these U.S.-origin components as Printed Circuit Board Assemblies (''PCBAs''). You state that the main board assembly is the primary PCBA, which provides the ''essential character'' of the GNSS R12i Receiver, including the central processing unit (''CPU''), random access memory (''RAM''), Flash memory module, RF processor, baseband processer, and Global Positioning System (''GPS'') Components. These components are assembled onto the board using Surface Mount Technology (''SMT'') in the United States. You additionally state that the Radio Interface is a separate PCBA with 74 components assembled onto the bare circuit board with SMT. You also state that the power supply and communications board assembly is a PCBA with 526 components assembled onto a circuit board using SMT and includes all communications functions of the GNSS R12i Receiver.

Two of the main components, the antenna low noise amplifier and battery SIM, are produced in Thailand. You state that these ''perform subsidiary roles with respect to the GNSS R12i device.'' You describe the antenna low noise amplifier as a PCBA with 142 components assembled onto a bare printed circuit board using SMT, which is then shipped to the United States and built into the Antenna Element Assembly. Additionally, you describe the battery SIM as a PCBA produced by assembling five components onto a bare printed circuit board.

The final main component is a 450MHz Radio, which is produced in China. This component is optional; however, you have included it for the purpose of determining the country of origin of the GNSS R12i Receiver. You provide no details about the production process of this component.

You describe the final assembly operations in Thailand as ''simple assembly,'' consisting ''primarily of inserting and fastening [PCBAs] into a chassis.'' The final assembly includes the following steps:

1. The primary PCBA, radio interface PCBA, and communications and power supply PCBA are screwed onto a ''hot box'' subassembly by fastening with two to three screws. They are then subject to a series of sensor tests.

2. The antenna assembly is fastened to the ''hot box'' with two screws, the

radio module is installed onto the ''hot box'' with four screws, and then the ''hot box'' assembly is subject to a series of signal tests.

3. The keypad is installed onto the chassis with glue and two screws.

4. The battery compartment floor, and battery compartment are assembled and affixed to the chassis with two and four screws respectively.

5. The battery SIM is attached to the chassis with four screws.

6. The ''hot box'' subassembly with the PCBAs and antenna element are affixed to the chassis with four screws.

7. The battery compartment door is installed to the outside of the chassis with two screws.

8. Various mechanical parts are installed into the chassis.

9. Four compliance labels, overlays and serial number labels are attached to the exterior of the chassis.

10. A series of functional tests are conducted (Leak Test; Calibration Confirmation; Unit input/output Testing; Unit Gyroscope Testing).

On top of this, you state that various subcomponents are used at all stages to produce the main components of the GNSS R12i Receiver. You also state that small mechanical parts and additional subcomponents are added to the product during final assembly. For all these subcomponents, you provide charts showing that the parts originate from over 20 different countries, and you state that no ''single country predominates as the source country.'' We note that several of these ''subcomponents'' cost more than items which you have designated as ''primary components.'' However, the most expensive subcomponents largely relate to GNSS R12i Receiver's outer shell and are not central to the device's functionality.

Furthermore, you state that the GNSS R12i Receiver would not be functional without Trimble's proprietary software. You estimate that software development ''involved more than 1 million developer hours,'' and that 67 percent of the code was written by developers in the United States and 33 percent by developers in Germany. You state that this proprietary software has further undergone ''software build'' in the United States, where it was compiled from its constituent source code into machine readable binaries. You state that this software will be flashed onto a memory component in the United States and assembled onto the primary PCBA as part of the manufacturing process. In total, you estimate that 70 percent of the GNSS R12i Receiver's value is the result of this proprietary software.

Issues

1. What is the country of origin of the GNSS R12i Receiver for the purposes of U.S. Government procurement?

2. Is the GNSS R12i Receiver excepted from country of origin marking requirements under 19 CFR 134.32(m)?

Law and Analysis

Country of Origin Determination

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21–177.31, which implements Title III of the TAA, as amended (19 U.S.C. 2511–2518).

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

> For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, *an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title* (Emphasis added).

The Secretary of the Treasury's authority mentioned above, along with other customs revenue functions, are delegated to CBP in the Appendix to 19 CFR part 0—Treasury Department Order No. 100–16, 68 FR 28,322 (May 23, 2003).

The rule of origin set forth under 19 U.S.C. 2518(4)(B) states:

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulation (''FAR''). *See* 19 CFR 177.21. In this regard, CBP recognizes that the FAR restricts the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

The FAR, 48 CFR 25.003, defines ''U.S.-made end product'' as:

> . . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Section 25.003 defines ''designated country end product'' as:

> a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines ''WTO GPA country end product'' as an article that:

> (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
>
> (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Thailand is not a ''designated country,'' and products of Thailand are not eligible for U.S. Government procurement.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

You argue that because the key components of the GNSS R12i Receiver are manufactured in the United States, it is a product of the United States. You further argue that the final production in Thailand is ''simple assembly'' and

does not result in a substantial transformation. In support of this, you cite the U.S. Court of International Trade's opinion in *Energizer Battery, Inc.* v. *United States,* 190 F. Supp. 3d 1308 (2016). *Energizer* involved the manufacture of a flashlight, where all of the components of the flashlight were of Chinese origin, except for a white LED and a hydrogen getter. The components were imported into the United States and assembled into the finished Generation II flashlight. *The Energizer Battery* court reviewed the ''name, character and use'' test utilized in determining whether a substantial transformation had occurred and noted, citing *Uniroyal, Inc. v United States,* 542 F. Supp. 1026, 1031 (Ct. Int'l Trade 1982), that when ''the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change.'' *Energizer Battery* at 1318. In addition, the court noted that ''when the end-use was pre-determined at the time of importation, courts have generally not found a change in use.'' *Energizer Battery* at 1319, citing as an example, *National Hand Tool Corp.* v. *United States,* 16 C.I.T. 308, 312 (1992), *aff'd,* 989 F.2d 1201 (Fed. Cir. 1993). Furthermore, courts have considered the nature of the assembly, *i.e.,* whether it is a simple assembly or more complex, such that individual parts lose their separate identities and become integral parts of a new article.

With regards to electronic equipment, CBP has found that circuit boards undergo a substantial transformation into PCBAs when various components are assembled onto the board via SMT. *See* C.S.D. 85–25, 19 Cust. Bull. 844 (1985) (determining that the assembly of the PCBA involved a very large number of components and a significant number of different operations, required a relatively significant period of time as well as skill, attention to detail, and quality control, and resulted in significant economic benefit to the beneficiary developing country from the standpoint of both value added to the PCBA and the overall employment generated thereby). Additionally, CBP has found that the mere attachment of wires to a PCBA and installation into a case, along with minor tuning processes, does not result in a substantial transformation. *See* Headquarters Ruling (''HQ'') 561232, dated April 20, 2004.

As you further highlight, the programing of a device may also affect its country of origin. In *Data General* v. *United States,* 4 C.I.T. 182 (1982), the court determined that the programming of a foreign PROM (''Programmable Read-Only Memory'' chip) in the United States substantially transformed the PROM into a U.S. article. In the United States, the programming bestowed upon each integrated circuit its electronic function, that is, its ''memory'' which could be retrieved. A distinct physical change was affected in the PROM by the opening or closing of the fuses, depending on the method of programming. The essence of the article, its interconnections or stored memory, was established by programming. *Texas Instruments* v. *United States,* 681 F.2d 778, 782 (CCPA 1982) (stating the substantial transformation issue is a ''mixed question of technology and customs law'').

Accordingly, the programming of a device that defines its use generally constitutes substantial transformation. *See* HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitutes a substantial transformation); *but see* HQ 734518, dated June 28, 1993 (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

CBP has elaborated that mere downloading of software onto a device alone is typically not enough to show a substantial transformation, as ''[p]rogramming involves writing, testing and implementing code necessary to make a computer function in a certain way.'' *See* HQ H241177, dated December 3, 2013 (holding that the downloading of U.S.-origin software in Singapore did not constitute a substantial transformation in Singapore or the United States, and therefore the country of origin was Malaysia where the final assembly of the hardware took place); *see also* HQ H240199, dated March 10, 2015 (holding that the notebook computer was not substantially transformed when the computer was assembled in Country A, imported into Country F, and Country D-origin BIOS was downloaded). However, in cases where the downloading of software onto a PCBA is combined with more complex operations to its firmware and hardware, which are essential to the device's operation, CBP has determined that a substantial transformation has occurred. *See* HQ 563012, dated May 4, 2004 (holding that the PCBA and casing that were manufactured for a switch in China, were substantially transformed in the United States or Hong Kong, where U.S.-origin software was loaded, and the PCBA was further assembled with a power supply, fans, and an A/C filter of various origins to form the final fabric switch, as the switch was transformed into a functional device).

You also argue that the main PCBA, once fully assembled and programmed, contains the ''essential character'' of the GNSS R12i Receiver. CBP has issued multiple opinions addressing this issue. For instance, in HQ H301910, dated August 5, 2019, which concerned mailing machine engines, CBP determined that the main PCBA, the print control firmware, and the print head constituted the primary and fundamental essence of the mailing machine engine because these components controlled the engine's function, operations, and enabled the printing of the correct postage. In particular, the main PCBA was composed of components essential to the fundamental function and primary purpose of the engine, including the CPU, the memory, and the Field-Programmable Gate Array, which combined to form the ''brain'' of the device. CBP held that, inasmuch as the main PCBA, the print control firmware, and the print head were all produced in Japan, the country of origin of the mailing engine machine was Japan.

In HQ H302801, dated October 3, 2019, CBP considered the country of origin of certain ''Fitbit'' smart watches. The case involved multiple PCBAs from Taiwan or the Philippines, which were assembled together into a final product in China by installing PCBAs into a housing with a vibration motor, battery, display, and wristband. The assembly did not alter the PCBAs' functional or physical attributes, and the PCBAs had a predetermined end-use as the electronic ''brain'' of the device. Additionally, the final assembly in China was neither complex nor time intensive, whereas the assembly of the PCBAs required complex equipment for SMT, a high level of expertise, and involved more components and subassemblies than the final assembly in China. Therefore, the country of origin was where the PCBAs were manufactured, in Taiwan or the Philippines.

However, in HQ H304677, dated April 21, 2023, CBP found that the country of origin of laser printers was China, even though the main PCBAs were manufactured and installed into the final product in Mexico. In that case, the printer transports which included all the mechanical components of the device, such as the housing, scanner, power supply, and fuser, were

manufactured in China. The PCBAs were manufactured in Mexico, where components were added to the board with SMT, and U.S. and Philippine-origin firmware was downloaded onto the PCBA. The PCBAs were then installed into the printers and the devices underwent a series of tests. CBP determined that the PCBAs were not the only fundamental functioning component of the printer, as the Chinese printer transports also provided character to the final article. Furthermore, since all of the mechanical printing functions were imparted by the Chinese transports, the country of origin was China.

In the instant case, based on the totality of the circumstances and consistent with the pertinent authorities, we find that the country of origin of the GNSS R12i Receiver is the United States. We agree that the U.S.-origin primary PCBA contains the ''essential character'' of the GNSS R12i Receiver. Like in HQ H302801, the PCBA originates from the United States, where most of the required production took place. This production process included assembling hundreds electronic of components onto the PCBA using SMT, including the CPU, RAM, GPS components, and communications components, which are central to the device's operation. Furthermore, it involved programing and configuring the primary PCBA with Trimble's proprietary U.S.-origin software, which is required in order for the device to function and defines it use. This case is unlike HQ H304677, which involved U.S.-origin software programmed onto a Mexican-origin PCBA, because here both the software and the primary PCBA originate from the same country. Additionally, in that case all other fundamental functional components of the printer were produced in China, whereas in this instance, most of the primary components of the GNSS R12i Receiver were assembled in the United States. Furthermore, once they are fully assembled, all U.S.-origin components have a predetermined end-use in the GNSS R12i Receiver when exported to Thailand and installed into the device.

Furthermore, we agree that the assembly in Thailand is simple assembly that does not result in a substantial transformation. It primarily involves placing the PCBAs into a ''hot box'' subassembly and then affixing the ''hot box,'' antenna, battery, and keypad to the chassis, in contrast to the complex SMT performed in the United States. While the two Thai-origin main components are also PCBAs and are produced using complex SMT, they play a subsidiary role within the device. They do not undergo any programming, or process any communications or navigational information, which is required for the GNSS R12i Receiver to function. The U.S.-origin components are notably more complex, which is why more worker hours are required to produce the U.S.-origin components than all Thailand operations combined. Therefore, based on the totality of the circumstances, we determine that the final assembly in Thailand does not result in a substantial transformation.

Accordingly, we find that the country of origin of the finished GNSS R12i Receiver for the purpose of U.S. Government procurement is the United States.

Country of Origin Marking

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article. *See also* 19 CFR 134.11. Section 134.32(m) of the CBP Regulations provides several exceptions to the marking requirement. Specifically, ''products of the United States exported and returned'' are exempt from the country of origin marking requirement. 19 CFR 134.32(m).

For the purposes of the marking requirement, the term ''country of origin'' is defined under 19 CFR 134.1(b), which adopts the same ''substantial transformation'' rule as the TAA and the FAR. *See* 19 U.S.C. 2518(4)(B); FAR, 48 CFR 25.003. Specifically, Section 134.1(b) of the CBP Regulations states that:

> ''Country of origin'' means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the ''country of origin'' within the meaning of this part;

As a discussed above, for the purposes of Section 308(4)(B) of the TAA, the GNSS R12i Receiver is a product of the United States, where the PCBAs are produced, and it does not undergo a substantial transformation during the final assembly in Thailand. Having already reached this determination, we also find that the GNSS R12i Receiver is a product of the United States for the purpose of country of origin marking. Furthermore, the GNSS R12i Receiver is ''exported and returned'' within the meaning of 19 CFR 134.32(m) and is therefore excepted from the country of origin marking requirement.

Holding

Based on the information outlined above, for the purposes of U.S. Government procurement and country of origin marking, the GNSS R12i Receiver is a product of the United States and is not substantially transformed by its final assembly in Thailand. Furthermore, as a product of the United States, it is excepted from the country of origin marking requirement when exported and returned to the United States, under 19 CFR 134.32(m).

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

[FR Doc. 2024–12617 Filed 6–7–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency's National Advisory Council (NAC) will meet virtually on June 26, 2024. The Planning for Animal Wellness (PAW) Subcommittee under the NAC will present to the full NAC membership its determination on the sufficiency of best practices and Federal guidance regarding congregate and non-congregate sheltering and evacuating planning, relating to the needs of

household pets, service, and assistance animals, and captive animals, as appropriate, in emergency and disaster preparedness, response, and recovery.

DATES: The public is invited to participate as the NAC meets by virtual means from 3:30 to 5 p.m. eastern time (ET) on Wednesday, June 26, 2024. The meeting may pause for breaks and can continue past the scheduled end time or may end early when the NAC has completed its business.

ADDRESSES: Anyone who wishes to participate must register with FEMA in advance by providing their name, official title, organization, telephone number, email address to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below by 3 p.m. ET on Monday, June 24, 2024. Links to attend by virtual means will be provided by registration confirmation email. Members of the public are urged to provide written comments on the issues to be considered by the NAC. The topic areas are indicated in the **SUPPLEMENTARY INFORMATION** section below. Any written comments must be submitted and received by 3 p.m. ET on Monday, June 24, 2024, identified by Docket ID FEMA–2007–0008, and submitted via the Federal eRulemaking Portal at *http://www.regulations.gov,* following the instructions for submitting comments below.

Instructions for Submitting Comments: All submissions must include the words ''Federal Emergency Management Agency'' and the docket number (Docket ID FEMA–2007–0008) for this action. Comments received, including any personal information provided, will be posted without alteration at *http://www.regulations.gov.* For access to the docket or to read comments received by the NAC, go to *http://www.regulations.gov,* and search for Docket ID FEMA–2007–0008.

The open public comment period is anticipated on Wednesday, June 26, 2024, from 4:15 to 4:30 p.m. ET. All speakers must register in advance of the meeting to make remarks during the open public comment period and must limit their comments to three minutes. Comments should be addressed to the NAC. Any comments unrelated to the agenda topics will not be considered. Opportunities for public comments during meeting deliberations and voting, limited to one minute per instance and directed to the current topic, are offered by the Designated Federal Officer as time permits on Wednesday, June 26, 2024, from 3:30 to 5 p.m. ET. To register to make remarks during the public comment period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below by 3 p.m. ET on Monday, June 24, 2024. Please note that the public comment periods may end before the time indicated, following the last call for comments.

The NAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below by 3 p.m. ET on Monday, June 24, 2024. Last-minute requests will be accepted but may not be possible to fulfill.

FOR FURTHER INFORMATION CONTACT: Dawn Essenmacher, Alternate Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C St. SW, Washington, DC 20472–3184, 202–212–3026, *FEMA-PAW@fema.dhs.gov.* The NAC website is *https://www.fema.gov/about/offices/national-advisory-council/subcomittees.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. ch. 10.

The NAC advises the FEMA Administrator on all aspects of emergency management. The NAC incorporates input from State, local, Tribal, and territorial governments, and the private sector in the development and revision of FEMA plans and strategies. The NAC includes a cross-section of officials, emergency managers, and emergency response providers from State, local, Tribal, and territorial governments, the private sector, and nongovernmental organizations.

Agenda: On Wednesday, June 26, 2024, the Planning for Animal Wellness (PAW) Subcommittee under the NAC will present to the full NAC membership its determination on the sufficiency of best practices and Federal guidance regarding congregate and non-congregate sheltering and evacuating planning, relating to the needs of household pets, service, and assistance animals, and captive animals, as appropriate, in emergency and disaster preparedness, response, and recovery. This determination is required of the subcommittee under the Planning for Animal Wellness (PAW) Act (Pub. L. 117–212). The NAC will then vote on whether it concurs with the determination.

The full agenda and available preparatory materials for this meeting will be available at *https://www.fema.gov/about/offices/national-advisory-council* by Friday, June 21, 2024, or by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–12644 Filed 6–7–24; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7084–N–03]

60-Day Notice of Proposed Information Collection: Reporting on Section 3 Activities; HUD Form 60002A; OMB Control No.: 2501–0042

AGENCY: Office of Field Policy and Management, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 9, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Amanda Herrmann Vasquez, Office of Field Policy and Management, Department of Housing and Urban Development, 300 Pearl Street, Suite Room 301, Buffalo, NY 14202 or the number (202–402–6601) this is not a toll free number or email at *Amanda.L.HerrmannVasquez@hud.gov* or a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Anna Guido, Paperwork Reduction Act Compliance Officer, Reports Management Officer, REE, Department

of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email at *Anna.P.Guido@hud.gov,* 202–402–5535. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*Copies of available documents submitted to OMB may be obtained from Anna Guido.

SUPPLEMENTARY INFORMATION:

The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Information Collection: Reporting on Section 3 Activities.

OMB Control Number, if applicable: 2501–0042.

Description of the need for the information and proposed use: This form is used to collect information from recipients of HUD financial assistance (*i.e.* public housing agencies, municipalities and property owners) to report the amount of labor hours provided to low- and very-low income individuals that have been generated from HUD financial assistance annually on the benchmarks (*https://www.federalregister.gov/documents/2020/09/29/2020-19183/section-3-benchmarks-for-creating-economic-opportunities-for-low--and-very-low-income-persons-and#:~:text=HUD%20defines%20a%20Section%203,very%20low%2Dincome%20persons%3B%20or*) required to achieve compliance with Section 3.

Agency form numbers, if applicable: HUD FORM 60002A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Business Registry*	6000.00	1.00	6000.00	1.00	6000.00	$56.23	$337,380.00
HUD Form 60002–A**	4283.00	1.00	4283.00	3.00	12849.00	21.87	281,007.63
Total	10283.00			4.00	18849.00		618,387.63

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Christopher D. Taylor,

National Director, Office of Field Policy and Management.

[FR Doc. 2024–12636 Filed 6–7–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7084–N–01]

60-Day Notice of Proposed Information Collection: Section 3 Utilization Tools—HUD Form 4737, A–D; OMB Control No.: 2501–0040

AGENCY: Office of Field Policy and Management, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 9, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Amanda Herrmann Vasquez, Office of Field Policy and Management, Department of Housing and Urban Development, 300 Pearl Street, Suite Room 301, Buffalo, NY 14202 or the number (202–402–6601) this is not a toll free number or email at *Amanda.L.HerrmannVasquez@hud.gov* or a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Anna Guido, Paperwork Reduction Act Compliance Officer, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email at *Anna.P.Guido@hud.gov,* 202–402–5535. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Anna Guido.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Collection: Section 3 Utilization Tools.

OMB Control Number, if applicable: 2501–0040.

Description of the need for the information and proposed use: This request is for a new collection to provide a voluntary sample tool for Section 3 related entities, to document the Section 3 labor hours for Section 3 workers and Section 3 Business concerns participating in housing and community development programs with HUD funding. This collection is reflective of the changes to the Section 3 regulation, published in the **Federal Register** 9/29/2020. The completion and submission of this Section 3 Utilization Plan meets the provisions of Section 3 found in 24 CFR part 75, which is the current regulation published pursuant to requirements in 12 U.S.C. 1701u, for the entities identified within this plan. Grantees of HUD funded projects can use this as a sample tool to document their Section 3 labor hours. This collection is not a requirement but is to be used as a sample if employers do not already have a process in place to document Section 3 labor hours. The Section 3 regulation requires each recipient to maintain adequate records demonstrating compliance with the regulation. (24 CFR 75.33(a)).

Agency form numbers, if applicable: HUD Forms 4737, 4737 A–D.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD Form 4737 *Section 3 Utilization Tracker: Business Labor Hours*	2,500.00	1	2,500.00	5	12,500.00	$38.55	$481,875.00
HUD Form 4737A *Section 3 Utilization Tracker: Section 3 Labor Hours*	2,500.00	1	2,500.00	5	12,500.00	38.55	481,875.00
HUD Form 4737B *Section 3 Sample Utilization Tool: PHA Financial Assistance*	2,500.00	1	2,500.00	1.5	3,750.00	38.55	144,562.50
HUD Form 4737C *HUD Section 3 Sample Utilization Tool: Section 3 Projects with HCD Funding*	2,500.00	1	2,500.00	1.5	3,750.00	38.55	144,562.50
HUD Form 4737D *HUD Funding Tracker for Section 3*	2,500.00	1	2,500.00	3	7,500.00	38.55	289,125.00
Total	12,500.00			16	40,000.00		1,542,000.00

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Christopher D. Taylor,

National Director, Office of Field Policy and Management.

[FR Doc. 2024–12634 Filed 6–7–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7084–N–02]

60-Day Notice of Proposed Information Collection: Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Opportunities for Low- and Very-Low Income Persons and Eligible Businesses; HUD Forms 4736, 4736 A–D; OMB Control No.: 2501–0041

AGENCY: Office of Field Policy and Management, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 9, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can 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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Amanda Herrmann Vasquez, Office of Field Policy and Management, Department of Housing and Urban Development, 300 Pearl Street, Suite Room 301, Buffalo, NY 14202 or the number (202–402–6601) this is not a toll free number or email at *Amanda.L.HerrmannVasquez@hud.gov* or a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Anna Guido, Paperwork Reduction Act Compliance Officer, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; email at *Anna.P.Guido@hud.gov,* 202–402–5535. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Anna Guido.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of

information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Information Collection: Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Opportunities for Low- and Very-Low Income Persons and Eligible Businesses.

OMB Control Number, if applicable: 2501–0041.

Description of the need for the information and proposed use: This request is for a new collection of new sample certification forms from a new rule called ''Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Opportunities for Low- and Very-Low Income Persons and Eligible Businesses,'' published at 24 CFR part 75. 24 CFR 75.31 that outlines the ways a worker can be certified as an eligible Section 3 worker. These sample certification forms address these options.

Agency form numbers, if applicable: HUD Forms 4736, 4736 A–D.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD Form 4736—*PH Certification Form*	150	1	150	0.5	75	$62.18	$4,663.50
HUD Form 4736A—*Employer Certification HCD*	500	1	500	0.5	250	56.23	14,057.50
HUD Form 4736B—*Employer Certification PHA*	500	1	500	0.5	250	56.23	14,057.50
HUD Form 4736C—*Employee Self Certification HCD*	500	1	500	0.5	250	7.25	1,812.50
HUD Form 4736D—*Employee Self-Certification PHA*	500	1	500	0.5	250	7.25	1,812.50
Total	2,150.00		2,150.00	2.5	1,075.00		36,403.50

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Christopher D. Taylor,

National Director, Office of Field Policy and Management.

[FR Doc. 2024–12633 Filed 6–7–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7086–N–14]

60-Day Notice of Proposed Information Collection: Tenant Education and Outreach Program Notice of Funding Opportunity; OMB Control No.: 2502–0626

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

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 9, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone (202) 402–3577 (this is not a toll-free number) or email: *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Tenant Education and Outreach Program Notice of Funding Opportunity.

OMB Approval Number: 2502–0626.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: FR–6700–N–46 Tenant Education and Outreach Notice of Funding Opportunity.

Description of the need for the information and proposed use: The Tenant Education and Outreach (TEO) Program supports tenant capacity building at eligible existing Project-Based Rental Assistance (PBRA) properties. This information collection is for the Notice of Funding Opportunity (NOFO) that will make available approximately $10 million for tenant capacity building activities. Per Section 514 of MAHRAA, The Secretary of HUD is authorized to ''make obligations to tenant groups, nonprofit organizations, and public entities for building the capacity of tenant organizations, for technical assistance . . .'' This NOFO will solicit applications from eligible entities to serve as the intermediary organization that will provide sub-awards and technical assistance to eligible tenant organizations at PBRA properties.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Frequency of Response: No more than annually.

Average Hours per Response: 10.

Total Estimated Burden hours: 402.5.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected

parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2024–12638 Filed 6–7–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7086–N–16]

60-Day Notice of Proposed Information Collection: Title: Multifamily Housing Service Coordinator Program; OMB Control No.: 2502–0447

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

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 9, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can 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. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; telephone (202) 402–3400 (this is not a toll-free number) or email: *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email; *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Service Coordinators in Multifamily Housing.

OMB Approval Number: 2502–0447.

OMB Expiration Date: 8/31/2024.

Type of Request: Extension of currently approved collection.

Form Number: HUD–91186, HUD–91186–A, HUD–50080–SCMF, HUD–2530, HUD–2880, SF–424, SF–424–Supp and SF–LLL.

Description of the need for the information and proposed use: The collection of information is necessary to ensure efficient and proper use of funds for eligible activities. This information collection will assist HUD in better determining the need and eligibility when reviewing a new request for funding. Further, without this information, HUD staff cannot effectively assess the continued need for renewals. The information will also enable HUD and the grantees to more effectively evaluate their program performance, account for funds and maintain appropriate program records.

Grant funds are taken to pay costs previously incurred and are obtained through use of the electronic Line of Credit Control System (eLOCCS). Grantees are required to draw down from eLOCCS monthly or quarterly. Grantees will submit the revised form HUD–50080–SCMF on a semi-annual basis. Grantees will complete one worksheet per draw down. Each worksheet will list every expense incurred during that month or quarter. Grantees will be required to maintain detailed expense documentation in their files. HUD may request copies of such documentation if additional program review is warranted. The data reported will allow HUD staff to track expenses and drawdown of funds for eligible costs at intervals within the grant term.

Respondents: Multifamily Housing assisted housing owners.

Estimated Number of Respondents: 4,230.

Estimated Number of Responses: 9,420.

Frequency of Response: Quarterly to annually.

Average Hours per Response: 1.5 hour.

Total Estimated Burden: 8,560.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Jeffrey D. Little,

General Deputy Assistant Secretary, Office of Housing.

[FR Doc. 2024–12639 Filed 6–7–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2023–0189; FXES11140800000–223–FF08ECAR00]

Incidental Take Permit Application for the Desert Tortoise; Draft Habitat Conservation Plan and Draft Environmental Assessment; Desert Breeze Solar Energy Project, San Bernardino, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Desert Breeze Solar, LLC for an incidental take permit under the Endangered Species Act. The permit would authorize take of the federally threatened desert tortoise (*Gopherus agassizii*) incidental to otherwise lawful activities associated with construction, operation, maintenance, and decommissioning of the Desert Breeze Solar Site. We invite comments on the applicant's draft habitat conservation plan and the draft environmental assessment, which we have prepared pursuant to the National Environmental Policy Act. We will take comments into consideration before deciding whether to issue an incidental take permit.

DATES: *Submitting Comments:* We must receive any written comments on or before July 10, 2024.

ADDRESSES:

Obtaining Documents: The application, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–R8–ES–2023–0189.

Submitting Written Comments: You may submit your written comments using one of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2023–0189.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2023–0189; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Jeremy Bisson, Fish and Wildlife Biologist, by email at *jeremy_bisson@fws.gov* or via phone at 760–322–2070. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We have received an application from Desert Breeze Solar, LLC (applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential take of the federally threatened desert tortoise, incidental to otherwise lawful activities at the Desert Breeze Solar Site (project), as described in the applicant's draft habitat conservation plan. The proposed project would be located north of the town of Hinkley in San Bernardino County, California.

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations promulgated pursuant to section 4(d) of the ESA (16 U.S.C. 1533) prohibit the take of endangered and threatened animals without special exemption. Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for endangered and threatened species are set forth in title 50 of the Code of Federal Regulations (CFR) at part 17, sections 17.22 and 17.32.

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze their proposed actions to determine whether the actions may significantly affect the human environment. In the NEPA analysis, the Federal agency will identify the effects, as well as possible mitigation for effects on environmental resources, that could occur with the implementation of the proposed action and alternatives. The Federal action in this case is the Service's proposed issuance of an incidental take permit for the federally threatened desert tortoise.

Permit Application

The applicant has submitted a draft habitat conservation plan that describes the activities covered by the permit, such as the construction of a solar field. To minimize the risk of incidental take, the applicant would employ qualified biologists to translocate desert tortoises to a safe location off site. The conservation plan also includes adaptive management to allow for maintaining the protection of desert tortoises if necessary. To mitigate the impact of the incidental take, the applicant proposes to fund the preservation of desert tortoise habitat through a combination of new acquisition and purchased bank credits from an existing conservation credit bank.

The draft conservation plan and the draft environmental assessment consider alternatives to the proposed action, including a no action alternative.

The Service prepared a draft environmental assessment to evaluate the impacts of issuing the proposed incidental take permit on the human environment, consistent with the purpose and goals of NEPA and pursuant to the Council on Environmental Quality's implementing NEPA regulations at 40 CFR parts 1500–1508. Additionally, the draft environmental assessment was prepared consistent with the Department of the Interior NEPA regulations (43 CFR part 46); longstanding Federal judicial and regulatory interpretations; and Administration priorities and policies, including Secretary's Order No. 3399, which requires bureaus and offices to use ''the same application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect.''

Public Comments

If you wish to comment on the draft conservation plan and draft environmental assessment, you may submit comments by one of the methods in **ADDRESSES**.

Public Availability of Comments

You may submit comments by one of the methods shown under **ADDRESSES**. All comments and materials we receive in response to this request will become part of the decision record associated with this action. 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

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2024–12599 Filed 6–7–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2024–0095; FXIA16710900000–245–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by July 10, 2024.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2024–0095.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2024–0095.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2024–0095; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Timothy MacDonald, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Duke University, Durham, NC; Permit No. PER10535315

The applicant requests authorization to import biological samples acquired from wild chimpanzees (*Pan troglodytes*), drill (*Mandrillus leucophaeus*), white-collared mangabey (*Cercocebus torquatus*), and guenons (*Cercopithecus spp.*), for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: USFWS Texas Coastal Ecological Services Field Office, Corpus Christi, TX; Permit No. PER10823753

The applicant requests a permit to import one Kemp's ridley sea turtle (*Lepidochelys kempii*) from Rotterdam Zoo, Rotterdam, Netherlands, for the purpose of enhancing the propagation or

survival of the species. This notification is for a single import.

Applicant: Saginaw Valley Zoological Society, Saginaw, MI; Permit No. PER10289648

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for African penguin *(Spheniscus demersus)* and cotton-top marmoset *(Saguinus oedipus)* to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Lowry Park Zoological Society of Tampa Inc., Tampa, FL; Permit No. PER10793987

The applicant requests to renew a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Common name	Scientific name
southern white rhinoceros	*Ceratotherium simum simum*.
Hartmann's mountain zebra	*Equus zebra hartmannae*.
African elephant	*Loxodonta africana*.
clouded leopard	*Neofelis nebulosa*.
great Indian rhinoceros	*Rhinocero unicornis*.
African penguin	*Spheniscus demersus*.
Asian tapir	*Tapirus indicus*.
Komodo Island monitor	*Varanus komodoensis*.

Applicant: Delaware Museum of Nature and Science, Wilmington, DE; Permit No. 184718

The applicant requests the renewal and amendment of their permit to export and re-import non-living museum specimens of endangered and threatened species previously legally accessioned into the permittee's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2024–12630 Filed 6–7–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act

On June 3, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Arkansas in the lawsuit entitled *United States and the Arkansas Game and Fish Commission and the Arkansas Department of Energy and Environment, Division of Environmental Quality, as Agencies of the State of Arkansas* v. *ExxonMobil Pipeline Company LLC, et al.,* Case No. 4:24–cv–473–KGB.

The United States and the State of Arkansas filed a joint complaint in this action asserting claims under section 1002(a) and (b)(2)(A) of the Oil Pollution Act of 1990 (''OPA''), 33 U.S.C. 2702(a) and (b)(2)(A), and under State law, against ExxonMobil Pipeline Company LLC and Mobil Pipe Line Company seeking damages for injury to, destruction of, loss of, or loss of use of, natural resources, resulting from the March 29, 2013, discharge of oil from the Pegasus Pipeline into the environment in and around Mayflower, Faulkner County, Arkansas, that migrated to waters, wetlands, and ultimately to Lake Conway. The spill caused impacts to vegetation and sediments, as well to wildlife that were exposed to oil, and the loss of recreational use of Lake Conway. Federal and State natural resource trustees assessed the injuries.

Plaintiffs and Defendants negotiated a Consent Decree that resolves the claims in the complaint. The proposed Consent Decree provides for a total cash payment by Settling Defendants of $1,755,082. Of this total, Settling Defendants will pay $1,300,000 to the Federal and State trustees for use in planning and performing restoration projects to redress the injuries and loss from the spill, $115,000 to the Federal and State trustees ($75,000 and $40,000 respectively) for future oversight costs, and $340,082 to reimburse the State trustees for past assessment costs.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and State of Arkansas* v. *ExxonMobil Pipeline Company LLC, et al.,* Case No. 4:24–cv–473–KGB, D.J. Ref. No. 90–5–1–1–10862/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter. During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the Agreement and Order, you may request assistance by

email or by mail to the addresses provided above for submitting comments.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–12580 Filed 6–7–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On April 29, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Ohio in the lawsuit entitled *United States and the State of Ohio* v. *Sunoco Pipeline, L.P. et al.,* Civil Action No. 1:24–cv–00238–SJD. The Consent Decree was lodged for a second time on June 3, 2024. The Consent Decree has not changed but has been re-lodged to include the Consent Decree appendices for public review.

The complaint filed in the above matter alleges that Defendants Sunoco Pipeline L.P. and Mid-Valley Pipeline Company violated the Clean Water Act when crude oil escaped from a ruptured pipeline and flowed into waters of the United States. 33 U.S.C. 1321(b)(3). The crude oil contaminated the waters and caused damage to natural resources in violation of the Oil Pollution Act. 33 U.S.C. 2702(a) and (b). The proposed settlement resolves the claims in the complaint and requires payment of a civil penalty of $550,000 and a payment of $1,250,000 to compensate for harm to natural resources.

On May 3, 2024, the Department of Justice published a **Federal Register** notice opening a public comment period on the Consent Decree. 89 FR 36833–01. The publication of this notice extends the period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *United States and the State of Ohio* v. *Sunoco Pipeline, L.P. et al.,* D.J. Ref. Nos. 90–5–1–1–11543 and 90–5–1–1–11543/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the Consent Decree, you may request assistance by email or by mail to the address provided above for submitting comments.

Laura Thoms,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–12582 Filed 6–7–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meetings

TIME AND DATE: Wednesday, June 12, 2024, at 1:00 p.m.

PLACE: U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of December 14, 2023, Quarterly Meeting Minutes.

2. Verbal Updates since the December Quarterly Meeting from the Acting Chairman, Commissioner, Acting Chief of Staff/Case Operations Administrator, Case Services Administrator, Acting Executive Officer, and General Counsel.

CONTACT PERSON FOR MORE INFORMATION: Jacquelyn Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: June 6, 2024.

Patricia K. Cushwa,

Chairman (Acting), U.S. Parole Commission.

[FR Doc. 2024–12730 Filed 6–6–24; 11:15 am]

BILLING CODE 4410–31–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 24–036]

Notice of Intent To Grant an Exclusive, Co-Exclusive or Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration (NASA).

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 June 25, 2024 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 June 25, 2024 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.

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) 358–0646.

SUPPLEMENTARY INFORMATION: NASA intends to grant an exclusive, co-exclusive, or partially exclusive patent license in the United States to practice the inventions described in disclosure number KSC–14622 entitled ''Cryopumping-Resistant LH2 Storage Vessel,'' to CB&I STS Delaware LLC, having its principal place of business in Houston, Texas. 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.*

Trenton J. Roche,

Agency Counsel for Intellectual Property, National Aeronautics and Space Administration.

[FR Doc. 2024–12623 Filed 6–7–24; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Renewal of Agency Information Collections for Comments Request: Proposed Collections

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comments.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Written comments should be received on or before August 9, 2024 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dacia Rogers, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, Suite 5067; Fax No. (703) 519–8579; or email at *PRAComments@NCUA.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dacia Rogers at (703) 718–1155.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0188.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Type of Review: Extension of a previously approved collection.

Abstract: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 42,000.

OMB Number: 3133–0200.

Title: Consumer Assistance Center.

Type of Review: Extension of a previously approved collection.

Abstract: NCUA has centralized the intake of consumer complaints and inquiries under the Consumer Assistance Center, via the *myCreditUnion.gov.* The Consumer Assistance Center assists consumer with information about federal financial consumer protection and share insurance matters and assists in resolving disputes with credit unions in resolving disputes. Consumers can make inquiries or submit a complaint electronically through the *MyCreditUnion.gov* website. The on-line portal offers a template for consumers to use to identify the information needed.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 2,209.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2024–12596 Filed 6–7–24; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of June 10, 17, 24, and July 1, 8, 15, 2024. 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 *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of June 10, 2024

There are no meetings scheduled for the week of June 10, 2024.

Week of June 17, 2024—Tentative

There are no meetings scheduled for the week of June 17, 2024.

Week of June 24, 2024—Tentative

There are no meetings scheduled for the week of June 24, 2024.

Week of July 1, 2024—Tentative

There are no meetings scheduled for the week of July 1, 2024.

Week of July 8, 2024—Tentative

Thursday, July 11, 2024

10:00 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Greg Stock: 570–449–4306)

Additional Information: The meeting will be held in the Commissioners' Hearing 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 July 15, 2024—Tentative

There are no meetings scheduled for the week of July 15, 2024.

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: June 5, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–12625 Filed 6–6–24; 11:15 am]

BILLING CODE 7590–01–P

PUBLIC BUILDINGS REFORM BOARD

Notice of Public Meeting by the Public Buildings Reform Board

AGENCY: Public Buildings Reform Board.

ACTION: Notice of public meeting.

SUMMARY: As provided by the Federal Assets Sale and Transfer Act of 2016 (FASTA), the Public Buildings Reform Board (PBRB) is holding its ninth public meeting. At this meeting, the Board will discuss the progress of past rounds and well as plans for the second round to be submitted in late 2024, as well as the results of its study of the Federal portfolio in several key cities.

DATES: The meeting is scheduled for Thursday, July 11, 2024 from 10 a.m. to 1:45 p.m. (eastern daylight time).

ADDRESSES: The meeting will be held at the JLL offices at 2020 K St. NW, Washington, DC 20006. Registration for the meeting is required: *https://forms.gle/DoXvky7Br5XxErVH9.*

FOR FURTHER INFORMATION CONTACT: Paul Walden, PBRB, at (202) 716–8165, or questions and comments can be forwarded to the PBRB Team by email at *fastainfo@pbrb.gov.*

SUPPLEMENTARY INFORMATION:

Background: FASTA created the PBRB as an independent Board to identify opportunities for the Federal Government to significantly reduce its inventory of civilian real property and thereby reduce costs. The Board is directed, within 6 months of its formation, to recommend to the Office of Management and Budget (OMB) the sale of not fewer than five properties not on the list of surplus or excess with a fair market value of not less than $500 million and not more than $750 million. In two subsequent rounds over a five-year period, the Board is responsible for making recommendations for other sales, consolidations, property disposals or redevelopment of up to $7.25 billion.

Format and Registration: The format for the meeting will be panel discussions with appropriate time allowed for a Q&A segment. Interested participants must register for the public meeting via this link: *https://forms.gle/DoXvky7Br5XxErVH9.*

Individuals wishing to attend who require special assistance or accommodations must contact the PBRB Team at *fastainfo@pbrb.gov* at least 12 days prior to the event.

Portions of the meeting may be held in executive session if the Board is considering issues involving classified or proprietary information.

A transcript of the public meeting will be uploaded to *pbrb.gov* shortly after the session.

If you have any additional questions, please email *fastainfo@pbrb.gov.*

Authority: Public Law 114–287, 130 Stat. 1463.

Paul Walden,

Executive Director, Federal Register Liaison, Public Buildings Reform Board.

[FR Doc. 2024–12664 Filed 6–7–24; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100265; File No. SR–IEX–2024–10]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rule 2.160(p) To Reopen the Period by Which Certain Participants in the Maintaining Qualifications Program Will Be Able To Complete Their Prescribed 2022 and 2023 Continuing Education Content

June 4, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 22, 2024, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] the Exchange is filing with the Commission a proposed rule change to amend IEX Rule 2.160(p) to reopen the period by which certain participants in the Maintaining Qualifications Program will be able to complete their prescribed 2022 and 2023 continuing education content. The Exchange has designated this proposal as non-controversial pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) thereunder.[7]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.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 the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX is proposing to amend Supplementary Material .01 to IEX Rule 2.160(p)(c) to reopen the period by which certain participants in the Maintaining Qualifications Program (''MQP'') will be able to complete their prescribed 2022 and 2023 continuing education (''CE'') content. This proposed rule change is based on a substantively similar filing made by the Financial Industry Regulatory Authority, Inc. (''FINRA''), which amended FINRA's equivalent rule,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii).

FINRA Rule 1240.01, to reopen the period by which certain participants in the MQP will be able to complete their prescribed 2022 and 2023 CE.[8]

FINRA Rule 1240.01, as described in Supplementary Material .01 to IEX Rule 2.160(p)(c), extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to March 15, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (''FSAWP'')[9] pursuant to Supplementary Material .01 to Rule 2.160(g) immediately prior to March 15, 2022 (collectively, ''Look-Back Individuals'').[10] FINRA Rule 1240.01 provided two open enrollment periods for Look-Back Individuals to participate in the MQP (Supplementary Material .01 to IEX Rule 2.160(p)(c) provided one open enrollment period for Look-Back Individuals).[11] FINRA and IEX provided all Look-Back Individuals who had enrolled in the MQP until March 31, 2024, to complete any prescribed 2022 and 2023 CE content.[12] Look-Back Individuals who are enrolled in the MQP, similar to other MQP participants, are able to complete any prescribed CE and renew their annual MQP participation through their FINRA Financial Professional Gateway (''FinPro'') accounts.

On March 16, 2024, FINRA on its own behalf and on behalf of IEX, sent an email to Look-Back Individuals who had enrolled in the MQP but had not completed their prescribed CE to remind them of the March 31, 2024, deadline.[13] In the week leading up to the deadline, however, FINRA noticed that several thousand of those individuals were renewing their participation in the MQP for 2024 instead of completing their prescribed CE.[14] FINRA believes that some of those individuals may have been confused by the layout of their FinPro accounts.[15] Specifically, if they selected the 2024 renewal banner, which was prominently displayed on their FinPro accounts, and completed the renewal process, they would not have been automatically redirected to complete any prescribed CE. Therefore, individuals may have inadvertently assumed that completion of the renewal process alone would have satisfied all of the necessary requirements to continue their participation in the MQP.[16]

For these reasons, FINRA amended Rule 1240.01 to reopen the period by which certain participants in the MQP will be able to complete their prescribed 2022 and 2023 CE.[17] IEX now proposes to amend Supplementary Material .01 to IEX Rule 2.160(p)(c) to implement the reopening of the MQP completion period close in time with FINRA. Specifically, IEX is proposing to provide Look-Back Individuals enrolled in the MQP in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 CE content as of March 31, 2024, the opportunity to complete such content between the effective date of filing, and July 1, 2024, to be eligible to continue their participation in the MQP. IEX is also proposing to amend the rule to provide that any such individuals who will have completed their prescribed 2022 and 2023 CE content between March 31, 2024, and the effective date of filing, will be deemed to have completed such content by July 1, 2024, for purposes of the rule.

IEX has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. The operative date will be the date of the filing of the proposed rule change if the Commission grants the waiver.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Sections 6(b)[18] and 6(b)(5) of the Act,[19] in particular, in that it 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. IEX, like FINRA, believes that reopening the period by which Look-Back Individuals will be able to complete their prescribed 2022 and 2023 CE content is appropriate under the circumstances. IEX, like FINRA, believes that Look-Back Individuals who had enrolled in the MQP in 2022 and 2023 but had not completed their prescribed 2022 and 2023 CE content by the March 31, 2024, deadline may have been confused, as described above. IEX, like FINRA, continues to believe that participation in the MQP reduces unnecessary impediments to requalification without diminishing investor protection.[20] In addition, the MQP promotes other goals, such as diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, providing investors with

[8] *See* Securities Exchange Act Release No. 100067 (May 6, 2024) 89 FR 40520 (May 10, 2024) (SR–FINRA–2023–005) (''FINRA MQP Extension Filing'').

[9] The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. FINRA stopped accepting new participants for the FSAWP beginning on March 15, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

[10] Supplementary Material .01 to IEX Rule 2.160(p)(c) refers to FINRA's initial enrollment period for ''Look-Back Individuals'' who were registered in a representative or principal registration category with FINRA within two years immediately preceding March 15, 2022, but that initial enrollment period was not part of IEX's rule.

[11] In March 2023, FINRA amended Rule 1240.01 to provide Look-Back Individuals with a second opportunity to participate in the MQP for eligible persons who elected to participate between March 15, 2023 and December 31, 2023. *See* Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 28, 2023) (SR–FINRA–2023–005). In July 2023, IEX amended Supplementary Material .01 to IEX Rule 2.160(p)(c) to also offer a new enrollment period for eligible persons who elected to participate between July 13, 2023 and December 31, 2023. *See* Securities Exchange Act Release No. 97980 (July 25, 2023) 88 FR 49542 (July 31, 2023) (SR–IEX–2023–07).

[12] FINRA determined to treat the individuals who enrolled during the first period (between January 31, 2022, and March 15, 2022) the same as those who enrolled during the second period (between March 15, 2023, and December 31, 2023) for purposes of the March 31, 2024, deadline for completion of prescribed 2022 and 2023 CE content. This is because those who had enrolled in the MQP during the first period satisfied all of the eligibility criteria for enrollment during the second period and would have been able to complete their prescribed CE content by March 31, 2024, had they chosen to enroll during the second period instead of enrolling during the first period.

[13] As noted in the FINRA MQP Extension Filing, FINRA had sent multiple reminders prior to March 16, 2024, but the March 16, 2024, email was the last reminder that was sent prior to the March 31, 2024, deadline for completion of any prescribed 2022 and 2023 CE content.

[14] Look-Back Individuals who enrolled in the MQP have until December 31, 2024, to renew their participation in the MQP for 2024, provided that they complete their prescribed CE by the stated deadline.

[15] *See supra* note 8.

[16] A number of these individuals contacted FINRA to confirm whether they were required to satisfy any additional requirements other than completing the 2024 renewal. To provide FINRA with additional time to assess the situation, FINRA temporarily changed the March 31, 2024, due date for CE completion in its systems. This may have compounded the confusion because any Look-Back Individual who may have logged into their FinPro account during this time would have seen an interim CE completion date and would have been able to complete their prescribed CE content based on that interim CE completion date.

[17] In the FINRA MQP Extension Filing, FINRA described its plans to reach out to all impacted individuals and inform them of the new CE completion period. Additionally, FINRA made changes, and is also considering future changes, to the layout of FinPro to more effectively communicate the necessary steps that individuals must take to satisfy their MQP obligations.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] As of April 15, 2024, approximately 31,000 individuals, including approximately 20,000 Look-Back Individuals, have enrolled in the MQP, of which approximately 1,400 individuals have used the MQP to return to the industry without having to go through requalification.

the advantage of greater experience among the individuals working in the industry. IEX, like FINRA, believes that reopening the CE completion period, as proposed, will further these goals and objectives.

The Exchange believes the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[21] which requires, among other things, that Exchange Rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(c)(3) of the Act,[22] which authorizes the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange.

Finally, as described in the Purpose section, the proposed rule change seeks to align the Exchange Rules with changes to FINRA rules which have been allowed to take effect by the Commission.[23] Thus, this rule change raises no novel issues that have not already been considered by and accepted by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with rule changes adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6) thereunder.[25]

A proposed rule change filed under Rule 19b–4(f)(6)[26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. IEX, like FINRA, requests that the proposed rule change become operative as quickly as possible so that FINRA, on behalf of IEX, can communicate the rule change to impacted individuals in a timely manner. Waiver of the 30-day operative delay would also allow the Exchange to implement the reopening of the MQP completion period in time with FINRA, thereby substantially eliminating the existence of a regulatory gap between the FINRA and Exchange rules, providing more uniform standards across the securities industry, and helping to provide clarity and avoid ongoing confusion for Exchange Members[28] that are also FINRA members. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[29]

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 under Section 19(b)(2)(B)[30] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–IEX–2024–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–IEX–2024–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–IEX–2024–10 and should be submitted on or before July 1, 2024.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(c)(3).

[23] *See supra* note 8.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. IEX has satisfied this requirement.

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] *See* IEX Rule 1.160(s).

[29] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–12591 Filed 6–7–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, June 13, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b)

[31] 17 CFR 200.30–3(a)(12).

Dated: June 6, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–12741 Filed 6–6–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100272; File No. SR–NYSEAMER–2024–34]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 903

June 4, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 30, 2024, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 Rule 903 (Series of Options Open For Trading) and to make certain conforming changes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Rule 903 (Series of Options Open For Trading) to adopt a Monthly Options Series Program; to adopt a Low-Priced Strike Priced Interval Program; to permit the listing and trading of five additional classes with Short Term Option Daily Expirations; to permit Tuesday and Thursday expirations for certain classes with Short Term Option Daily Expirations; and to permit the listing of two Wednesday expirations for options on certain ETPs. Each of the proposed changes would align Exchange rules with already-approved and implemented rules in place on at least one other options exchange as noted herein.

Monthly Options Series Program

The Exchange proposes to amend its Rules to accommodate the listing of options series that would expire at the close of business on the last business day of a calendar month (''Monthly Options Series''). This is a competitive filing that is based on a proposal recently submitted Cboe Exchange, Inc (''CBOE'').[4]

Pursuant to proposed Commentary .11 to Rule 903 and Rule 903C(a)(v), the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on exchange-traded funds (''ETFs'').[5] In addition, the Exchange may also list Monthly Options Series on any options classes that are selected by other securities exchanges that employ a similar program under their respective rules.[6] The Exchange

[4] *See* Securities Exchange Act Release No. 98915 (Nov. 13, 2023) 88 FR 81495 (November 17, 2023 (SR–CBOE–2023–049) (Order Approving a Proposed Rule Change To Adopt Monthly Options Series). *See also* Cboe Rules 4.5, 4.11, 8.31, and 8.32.

[5] The Exchange proposes to amend Rule 903(h) to provide that new Commentary .11 to Rule 903 (which has been in Reserve) will describe how the Exchange will fix a specific expiration date and exercise price for Monthly Options Series and that proposed Commentary .11 to Rule 903 will govern the procedures for opening Monthly Options Series, respectively. This is consistent with language in current Rule 903 for other Short Term Options Series and Quarterly Options Series. Consistent with this proposal, the Exchange proposes to adopt a definition of Monthly options Series. *See* proposed Rule 1.1.

[6] The Exchange's proposal is based on CBOE's approved rule change, *see supra* note 4. The Exchange notes that other options exchanges have since adopted similar programs. *See, e.g.,* Securities Exchange Act Release No. 98973 (November 16, 2023) 88 FR 81495 (November 22, 2023) (SR–

Continued

may list 12 expirations for Monthly Options Series. Monthly Options Series need not be for consecutive months; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.[7] Other expirations in the same class are not counted as part of the maximum numbers of Monthly Options Series expirations for a class.[8] Monthly Options Series will be P.M.-settled.[9]

The strike price of each Monthly Options Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index or price of the underlying security at about the time that a Monthly Options Series is opened for trading on the Exchange. The Exchange will list strike prices for Monthly Options Series that are reasonably related to the current price of the underlying security or current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term ''reasonably related to the current price of the underlying security or index value of the underlying index'' means that the exercise price is within 30% of the current underlying security price or index value.[10] Additional Monthly Options Series of the same class may be open for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet ATP Holder demand,[11] or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices will be within 30% above or below the closing price of the underlying index or security on the preceding day. The Exchange may also open additional strike prices of Monthly Options Series that are more than 30% above or below the current price of the underlying security, provided that demonstrated ATP Holder interest exists for such series, as expressed by institutional, corporate, ATP Holder or their brokers. Market Makers trading for their own account will not be considered when determining ATP Holder interest under this provision. The opening of the new Monthly Options Series will not affect the series of options of the same class previously opened.[12] The interval between strike prices on Monthly Options Series will be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.[13]

By definition, Monthly Options Series can never expire in the same week that a standard options series that expires on the third Friday of a month in the same class expires. The same, however, is not the case with respect to Short Term Options Series or Quarterly Options Series. Therefore, to avoid any confusion in the marketplace, the Exchange proposes to amend Rule 903(h) to provide that the Exchange will not list a Short Term Options Series in a class on a date on which a Monthly Options Series or Quarterly Options Series expires.[14] Similarly, proposed Commentary .11 to Rule 903 provide that no Monthly Options Series may expire on a date that coincides with an expiration date of a Quarterly Options Series in the same index or ETF class. In other words, the Exchange will not list a Short Terms Options Series on an index or ETF if a Monthly Options Series on that index or ETF were to expire on the same date, nor will the Exchange list a Monthly Options Series on an index or ETF if a Quarterly Options Series on that ETF were to expire on the same date to prevent the listing of series with concurrent expirations.[15]

With respect to Monthly Options Series added pursuant to proposed Commentary .11(a)–(f) to Rule 903, the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying index or security, and delist series with no open interest in both the put and the call series having a strike: (i) higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

MIAX–2023–44) (immediately effective filing to accommodate the listing of Monthly Options Series).

[7] The Exchange notes this provision considers consecutive monthly listings. In other words, as other expirations (such as Quarterly Options Series) are not counted as part of the maximum, those expirations would not be considered when considering when the last expiration date would be if the maximum number were listed consecutively. For example, if it is January 2024 and the Exchange lists Quarterly Options Series in class ABC with expirations in March, June, September, December, and the following March, the Exchange could also list Monthly Options Series in class ABC with expirations in January, February, April May, July, August, October, and November 2024 and January and February of 2025. This is because, if Quarterly Options Series, for example, were counted, the Exchange would otherwise never be able to list the maximum number of Monthly Options Series. This is consistent with the listing provisions for Quarterly Options Series, which permit calendar quarter expirations. The need to list series with the same expiration in the current calendar year and the following calendar year (whether Monthly or Quarterly expiration) is to allow market participants to execute one-year strategies pursuant to which they may not roll their exposures in the longer-dated options (*e.g.,* January 2025) prior to the expiration of the nearer dated option (*e.g.,* January 2024).

[8] *See* proposed Commentary .11(b) to Rule 903 and proposed Rule 903C(a)(v)(2).

[9] *See* proposed Commentary .11(c) to Rule 903 and proposed Rule 903C(a)(v)(3).

[10] *See* proposed Commentaries .11(d) to Rule 903 and proposed Rule 903C(a)(v)(4). The Exchange notes these proposed provisions are consistent with the initial series provision for the Quarterly Options Series program in Rule 903C(iv)(4). While different than the initial strike listing provision for the Quarterly Options Series program (set forth in Commentary .09(c) to Rule 903), the Exchange believes the proposed provision is appropriate, as it contemplates classes that may have strike intervals of $5 or greater. For consistency, the Exchange also proposes to amend Commentary .09(c) to Rule 903 to incorporate the same provision for initial series. The Exchange proposes a technical change to re-number the sub-paragraphs of Commentary .0(f) into separate paragraphs, which technical change would add clarity, transparency and internal consistent to Exchange rules. *See* proposed Commentary .09(f)–(h).

[11] An ''ATP'' is an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange. *See* Rule 900.2NY. An ''ATP Holder'' refers to a natural person, in good standing who has been issued an ATP and is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934. *Id.*

[12] *See* proposed Commentary .11(e) to Rule 903.

[13] *See* proposed Commentary .11(f) to Rule 903; *see also* Commentaries .05 and .06 to Rule 903 (permissible strike prices for ETF classes); and Commentary .05(a). and .13 (regarding ''$0.50 and $1 Strike Price Intervals for Options Used to Calculate Volatility Indexes'') to Rule 903. *See also* Commentary.04 to Rule 903C (permissible strike prices index options). The Exchange notes that there are two Commentaries .13 to Rule 903 and, to correct this duplicate and avoid confusion, the Exchange proposes to re-locate the text of Commentary .13 that relate to ''$0.50 and $1 Strike Price Intervals for Options Used to Calculate Volatility Indexes'' to Commentary .08, which is currently held as Reserved. *See* proposed Commentary .08. The Exchange notes that this proposed change is non-substantive and would add clarity and transparency to Exchange rules.

[14] *See* proposed Rule 903(h). The Exchange also proposes to make a non-substantive change throughout Rule 903(h) and Commentary .10(f) thereto to change current references to ''monthly options series'' to ''standard expiration options series'' (*i.e.,* series that expire on the third Friday of a month), to eliminate potential confusion. The current references to ''monthly options series'' are intended to refer to those series that expire on the third Friday of a month, which are generally referred to in the industry as standard expirations.

[15] The Exchange notes this would not prevent the Exchange from listing a P.M.-settled Monthly Options Series on an index with the same expiration date as an A.M.-settled Short Term Options Series on the same index, both of which may expire on a Friday. The Exchange believes this concurrent listing would provide investors with yet another hedging mechanism and is reasonable given these series would not be identical (unlike if they were both P.M.-settled). This could not occur with respect to ETFs, as all Short Term Options Series on ETFs are P.M.-settled.

Notwithstanding this delisting policy, ATP Holders requests to add strikes and/or maintain strikes in Monthly Options Series in series eligible for delisting will be granted. In connection with this delisting policy, if the Exchange identifies series for delisting, the Exchange will notify other options exchanges with similar delisting policies regarding eligible series for delisting and will work with such other exchanges to develop a uniform list of series to be delisted, to ensure uniform series delisting of multiply listed Monthly Options Series.[16]

The Exchange believes that Monthly Options Series will provide investors with another flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie options contracts. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Options Price Reporting Authority (''OPRA'') and the Exchange's quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

The Exchange also proposes to amend Rules 904C(b) and (c) to provide that positions in Monthly Options Series will be aggregated with positions in options contracts on the same underlying security or index.[17] This is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Options Series and Quarterly Options Series). Therefore, positions in options within class of index or ETF options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options.

The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. The Exchange currently lists Quarterly Options Series in certain ETF classes,[18] which expire at the close of business at the end of four calendar months (*i.e.,* the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Options Series and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same index or ETF) and reporting requirements—would continue to apply.

Low-Priced Stock Interval Program

Miami International Securities Exchange, LLC (''MIAX'') recently received approval to amend its Rule 404 to implement a new strike interval program for stocks that are priced less than $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the 3 preceding calendar months.[19] At this time, the Exchange proposes to adopt rules substantively identical to MIAX, which are set forth in proposed new Commentary .16 to Rule 903, and to make a conforming change to the table in Commentary .07 of Rule 903 to align that that table with the proposed rule text.

Background

Rule 903 describes the process and procedures for listing and trading series of options on the Exchange.[20] Rule 903 provides for a $2.50 Strike Price Program, where the Exchange may select up to 60 option classes on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25.00 but less than $50.00.[21] Rule 903 also provides for a $1 Strike Price Interval Program, where the interval between strike prices of series of options on individual stocks may be $1.00 or greater provided the strike price is $50.00 or less, but not less than $1.00.[22] Additionally, Rule 903 provides for a $0.50 Strike Program.[23] The interval of strike prices of series of options on individual stocks may be $0.50 or greater beginning at $0.50 where the strike price is $5.50 or less, but only for options classes whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of $0.50 strike prices is limited to options classes overlying no more than 20 individual stocks (the ''$0.50 Strike Program'') as specifically designated by the Exchange. The Exchange may list $0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $0.50 Strike Program under their respective rules. A stock will remain in the $0.50 Strike Program until otherwise designated by the Exchange.[24]

Proposal To Adopt Low-Priced Stock Interval Program

The Exchange proposes to adopt a new strike interval program for underlying stocks that are not in the aforementioned $0.50 Strike Program (or the Short Term Option Series Program) [25] and that close below $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months.[26] The $0.50 Strike Program considers stocks that have a closing price at or below $5.00 whereas the Exchange's proposal will consider

[16] *See* proposed Commentary .11(g) to Rule 903. Pursuant to Rule 905, exercise limits for impacted index and ETF classes would be equal to the applicable position limits.

[17] *See* proposed Rules 904C(b) (regarding position limits for broad-based index options) and 904C(c) (regarding position limits for industry index options). Consistent with the adoption of Monthly Options series for equity and index options, the Exchange proposes to adopt the definition of ''Monthly Option Series'' as relates to index options in proposed Rule 900C(b)(29).

[18] The Exchange notes it currently lists quarterly expirations on certain ETF options pursuant to Rule 903 Commentary .09.

[19] *See* Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361 (November 17, 2023) (SR–MIAX–2023–36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading). Other options exchanges have since adopted similar programs. *See also* MIAX Rule 404, Interpretations and Policies .11 and .12. The Exchange notes that other options exchanges have since adopted similar programs. *See, e.g.,* Securities Exchange Act Release No. 99113 (December 7, 2023) 88 FR 86413 (December 7, 2023) (SR–CBOE–2023–065) (immediately effective filing ''[t]o adopt a Low Priced Stock Strike Price Interval Program').

[20] Per Rule 1.1, ''series of options'' refers to ''all options contracts of the same class of options having the same expiration date and expiration price, and the same unit of trading.''

[21] *See* Commentary .07 to Rule 903.

[22] *See* Commentary .06 to Rule 903.

[23] *See* Commentary .13 to Rule 903 (regarding the ''$0.50 Strike Program'').

[24] *Id.*

[25] *See* Commentary .07 to Rule 903.

[26] *See* proposed Commentary .11 to Rule 903.

stocks that have a closing price below $2.50. Currently, there is a subset of stocks that are not included in the $0.50 Strike Program as a result of the limitations of that program which provides that the listing of $0.50 strike prices shall be limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months.[27] Therefore, the Exchange is proposing to implement a new strike interval program termed the ''Low-Priced Stock Strike Price Interval Program.'' [28]

To be eligible for the inclusion in the Low-Priced Stock Strike Price Interval Program, an underlying stock must (i) close below $2.50 in its primary market on the previous trading day; and (ii) have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program.

The Exchange also proposes that after a stock is added to the Low-Priced Stock Strike Price Interval Program, the Exchange may list $0.50 strike price intervals from $0.50 up to $2.00.[29] For the purpose of adding strikes under the Low-Priced Stock Strike Price Interval Program, the ''price of the underlying stock'' shall be measured in the same way as ''the price of the underlying security'' as set forth in Rule 903A(b)(i).[30] Further, no additional series in $0.50 intervals may be listed if the underlying stock closes at or above $2.50 in its primary market. Additional series in $0.50 intervals may not be added until the underlying stock again closes below $2.50.

The Exchange's proposal addresses a gap in strike coverage for low-priced stocks. The $0.50 Strike Program considers stocks that close below $5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the Exchange's proposal has a narrower focus, with respect to the underlying's stock price, and is targeted to those stocks that close below $2.50 and does not limit the number of stocks that may participate in the program (provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low-Priced Stock Strike Price Interval Program.

The Exchange believes that its average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options on equities, American Depository Receipts (''ADRs''), and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.[31] Rule 915(d) provides the criteria for listing options on ADRs if they meet certain criteria and guidelines set forth in Rule 915. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three (3) months preceding the selection of the ADR for options trading is 100,000 or more shares.[32] Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b–4(e) of the Act provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six-month period.[33]

Additionally, the Exchange proposes to amend the table in Commentary .11(e) to Rule 903 (the ''Table'') to insert a new column to harmonize the Exchange's proposal to the strike intervals for Short Term Options Series as described in proposed Commentary .16 to Rule 903. The Table is intended to limit the intervals between strikes for multiply listed equity options within the Short Term Options Series (''STOS'') Program that have an expiration date more than twenty-one days from the listing date. Specifically, the Table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.[34] However, the lowest share price column is titled ''Less than $25.'' The Exchange now proposes to insert a column titled ''Less than $2.50'' and to set the strike interval at $0.50 for each average daily volume tier represented in the Table. Also, the Exchange proposes to amend the heading of the column currently titled ''Less than $25,'' to ''$2.50 to less than $25'' as a result of the adoption of the new proposed column, ''Less than $2.50.'' The Exchange believes this change will remove any potential conflict between the strike intervals under the STOS Program and those described herein under the Exchange's proposal.

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort undertaken by the industry to curb strike proliferation. For example, the Exchange filed a proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the ''Strike Interval Proposal'').[35] The Strike Interval Proposal was intended to remove repetitive and unnecessary strike listings across the weekly expiries. Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.[36] The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes

[27] *See* Commentary .13 to Rule 903 (regarding the ''$0.50 Strike Program'').

[28] The Exchange proposes to include a hyphen to the modifier ''Low-Priced.'' *See* proposed Commentary .16 to Rule 903.

[29] While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program the Exchange will exercise its discretion and will not list strikes on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

[30] The Exchange notes this is the same methodology used in the $1 Strike Price Interval Program. *See* Commentary .06 to Rule 903.

[31] *See* Commentary .01(3) to Rule 915.

[32] *See* Commentary .03 Rule 915 .

[33] *See* Commentary .02(a)(7) to Rule 900C .

[34] *See* Securities Exchange Release Act No. 92336 (July 7, 2021), 86 FR 36827 (July 13, 2021) (SR–NYSEAMER–2021–32) (immediately effective filing to amend Rule 903 to limit Short Term Options Series intervals).

[35] *Id.*

[36] *Id.*

where there wasn't. At the time of its proposal, the Exchange estimated that the Strike Interval Proposal would reduce the number of strikes it listed by 81,000.[37] The Exchange proposes to amend the Table to define the strike interval at $0.50 for underlying stocks with a share price of less than $2.50.[38] The Exchange believes this amendment will harmonize the Exchange's proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available on the Exchange. However, the Exchange's proposal is designed to only add strikes where there is investor demand,[39] which will improve market quality.[40]

The Exchange does not believe that its proposal contravenes the industry's efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than $2.50 and that also meet the average daily trading volume requirement. Additionally, because the strike increment is $0.50 there are only a total of four strikes that may be listed under the program ($0.50, $1.00, $1.50, and $2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (*e.g.,* the $0.50 Strike Program or the $1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

The Exchange further believes that the Options Price Reporting Authority (''OPRA''), has the necessary systems capacity to handle any additional messaging traffic associated with this proposed rule change. The Exchange also believes that ATP Holders will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

Expand the STOS Program

Add Wednesday Expirations for Options on Certain ETPs

The Exchange proposes to amend Rule 903, Commentary .10(e) to expand the STOS Program to permit the listing of two Wednesday expirations for options on United States Oil Fund, LP (''USO''), United States Natural Gas Fund, LP (''UNG''), SPDR Gold Shares (''GLD''), iShares Silver Trust (''SLV''), and iShares 20+ Year Treasury Bond ETF (''TLT'') (collectively ''Exchange Traded Products'' or ''ETPs''). This is a competitive filing based on a rule change submitted by Nasdaq ISE, LLC (''Nasdaq ISE'') and approved by the Commission.[41]

Currently, as set forth in Rule 903(h), after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays on which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates''). The Exchange may have no more than a total of five Friday Short Term Option Expiration Dates (''Short Term Option Weekly Expirations''). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that Friday.

Additionally, the Exchange may open for trading series of options on the symbols provided in Table 1 of Commentary .10(f) to Rule 903 that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Short Term Option Daily Expirations''). For those symbols listed in Table 1, the Exchange may have no more than a total of two Short Term Option Daily Expirations for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.

At this time, the Exchange proposes to expand the Short Term Option Daily Expirations to permit the listing and trading of options on USO, UNG, GLD, SLV, and TLT expiring on Wednesdays. The Exchange proposes to permit two Short Term Option Expiration Dates beyond the current week for each Wednesday expiration at one time. In order to effectuate the proposed changes, the Exchange would add USO, UNG, GLD, SLV, and TLT to Table 1 of Commentary .10(f) to Rule 903, which specifies each symbol that qualifies as a Short Term Option Daily Expiration.[42]

The proposed Wednesday USO, UNG, GLD, SLV, and TLT expirations will be similar to the current Wednesday Short Term Option Daily Expirations on SPDR® S&P 500® ETF (''SPY''), PowerShares QQQ Trust (''QQQ''), and iShares Russell 2000 Index Fund (''IWM'') SPY, QQQ, and IWM, as set forth in Rule 903(h), such that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week) series of options on USO, UNG, GLD, SLV, and TLT to expire on any Wednesday of the month that is a business day and is not a Wednesday in which standard expiration option series, Monthly Options Series, or Quarterly Options Series expire (''Wednesday USO Expirations,'' ''Wednesday UNG Expirations,'' ''Wednesday GLD Expirations,'' ''Wednesday SLV Expirations,'' and ''Wednesday TLT Expirations'') (collectively, ''Wednesday

[37] *Id.*

[38] *See* proposed Commentary .11(e) to Rule 903.

[39] *See* proposed Commentary .16 to Rule 903, which requires that an underlying stock have an average daily trading volume of 1,000,000 shares for the three (3) preceding months to be eligible for inclusion in the Low-Priced Stock Strike Price Interval Program.

[40] For example, MIAX determined that, as of August 9, 2023, 106 symbols met the criteria of the Low-Priced Stock Program. Of those symbols 36 are currently in the $1 Strike Price Interval Program with $1.00 and $2.00 strikes listed. Further, MIAX determined that this would add the $0.50 and $1.50 strikes for these symbols for the current expiration terms. The remaining 70 symbols eligible under MIAX's proposal would have $0.50, $1.00, $1.50, and $2.00 strikes added to their current expiration terms. Therefore, for the 106 symbols eligible for the Low-Priced Stock Strike Price Interval Program on MIAX a total of approximately 3,250 options would be added. Finally, as of August 16, 2023, MIAX listed 1,090,414 options, therefore the additional options that would be listed under this proposal would represent a very minor increase of 0.298% in the number of options. *See* Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361, 80362 (November 17, 2023) (SR–MIAX–2023–36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading).

[41] *See* Securities Exchange Act Release No. 98905 (November 13, 2023) (SR–ISE–2023–11) (order approving expansion of Short Term Option Series Program to permit the listing of Wednesday Expirations for options on certain ETPs). *See also* Nasdaq ISE Supplementary Material to Options 4, Section 5. The Exchange notes that other options exchanges have since adopted similar rule changes. *See, e.g.,* Securities Exchange Act Release No. 99035 (November 29, 2023), 88 FR 84367 (December 5, 2023) (SR–Cboe–2023–062) (immediately effective filing to permit Wednesday expiration for options on certain ETPs).

[42] *See* proposed Commentary .10(f) to Rule 903 (updates to Table 1).

ETP Expirations'').[43] In the event Short Term Option Daily Expirations expire on a Wednesday and that Wednesday is the same day that a standard expiration option series, Monthly Options Series, or Quarterly Options Series or expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Wednesday expirations in SPY, QQQ, and IWM similarly skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Option Series.

The Exchange notes that USO, UNG, GLD, SLV, and TLT Friday expirations would continue to have a total of five Short Term Option Expiration Dates, provided those Friday expirations are not Fridays in which standard expiration option series, Monthly Options Series, or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates'').

Like Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within Rule 903(h) and Commentary .10(f) to that Rule, the Exchange proposes that it may open for trading on any Tuesday or Wednesday that is a business day series of options on USO, UNG, GLD, SLV, and TLT that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which standard expiration option series, Monthly Options Series, or Quarterly Options Series expire.

The interval between strike prices for the proposed Wednesday ETP Expirations will be the same as those for the current Short Term Option Series for Friday expirations applicable to the STOS Program.[44] Specifically, the Wednesday ETP Expirations will have a strike interval of $0.50 or greater for strike prices below $100, $1 or greater for strike prices between $100 and $150, and $2.50 or greater for strike prices above $150.[45] As is the case with other equity options listed pursuant to the STOS Program, the Wednesday ETP Expirations series will be P.M.-settled.

Pursuant to Rule 903(h), with respect to the STOS Program, a Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, *e.g.,* Tuesday of that week if the Wednesday is not a business day.

Currently, for each option class eligible for participation in the STOS Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[46] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[47] With the proposed changes, this thirty (30) series restriction would apply to Wednesday USO, UNG, GLD, SLV, and TLT Short Term Option Daily Expirations as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming that they file similar rules with the Commission to list Wednesday ETP Expirations.

With this proposal, Wednesday ETP Expirations would be treated similarly to existing Wednesday SPY, QQQ, and IWM Expirations.[48] With respect to standard expiration options series, Short Term Option Daily Expirations will be permitted to expire in the same week in which standard expiration option series, on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Wednesday ETP Expirations to expire on a business day in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a standard expiration option series, Monthly Options Series, or a Quarterly Options Series would expire because those options would be duplicative of each other.

The Exchange does not believe that any market disruptions will be encountered with the introduction of Wednesday ETP Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Wednesday ETP Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire on Wednesday for SPY, QQQ, and IWM and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Wednesday for SPY, QQQ, and IWM.

Add Tuesday and Thursday Expirations for Options on IWM

The Exchange proposes to expand the STOS Program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on IWM, specifically permitting two expiration dates for the proposed Tuesday and Thursday expirations in IWM. This is a competitive filing based on a rule change submitted by Nasdaq ISE and approved by the Commission.[49]

As noted above, Table 1 in Commentary .10(f) to Rule 903, specifies each symbol that currently qualifies as a Short Term Option Daily Expiration.[50] Today, Table 1 permits the listing and trading of Monday Short Term Option Daily Expirations and Wednesday Short Term Option Daily Expirations for IWM. At this time, the Exchange proposes to expand the Short Term Option Series

[43] While the relevant rule text in Commentary .10(f) to Rule 903 also indicates that the Exchange will not list such expirations on a Wednesday that is a business day in which standard expiration options series expire, practically speaking this would not occur.

[44] *See* Commentary .10(e) to Rule 903.

[45] *Id.*

[46] *See* Commentary .07(c) to Rule 903.

[47] *Id.*

[48] *See* proposed Commentary .10(f) to Rule 903. (proving that, with respect to Wednesday Expirations, the Exchange may open for trading on any Tuesday or Wednesday that is a business day series of options on the symbols provided in Table 1 above that expire at the close of business on each of the next two Wednesdays that are business days and are not business days on which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire'').

[49] *See* Securities Exchange Act Release No. 99946 (April 11, 2024), 89 FR 27471 (April 17, 2024) (SR–ISE–2024–06) (order approving expansion of Short Term Option Series Program to permit the listing of Tuesday and Thursday expirations in IWM). *See also* Nasdaq ISE Options 4, Section 5, Supplementary Material .03. The Exchange notes that other options exchanges have since adopted similar rule changes. *See, e.g.,* Securities Exchange Act Release No. 99981 (April 17, 2024), 89 FR 30425 (April 23, 2024) (SR–CboeEDGX–2024–022 (immediately effective filing to permit Tuesday and Thursday expiration for options on IWM).

[50] The Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which standard expiration options series, Monthly Options Series, or Quarterly Options Series. Of these series of options, the Exchange may have no more than a total of five Short Term Option Expiration Dates. In addition, the Exchange may open for trading series of options on certain symbols that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (''Short Term Option Daily Expirations''). *See* Commentary .10(f) to Rule 903.

Program to permit the listing and trading of no more than a total of two IWM Short Term Option Daily Expirations beyond the current week for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.[51] The listing and trading of Tuesday and Thursday Short Term Option Daily Expirations would be subject to Rule 903(h).

Today, Tuesday Short Term Option Daily Expirations in SPY and QQQ may open for trading on any Monday or Tuesday that is a business day series of options on the symbols provided in Table 1 that expire at the close of business on each of the next two Tuesdays that are business days and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (''Tuesday Short Term Option Expiration Date'').[52]

Also, today, Thursday Short Term Option Daily Expirations in SPY and QQQ may open for trading on any Tuesday or Wednesday that is a business day series of options on the symbols provided in Table 1 that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (''Wednesday Short Term Option Expiration Date'').[53] In the event that options on IWM expire on a Tuesday or Thursday and that Tuesday or Thursday is a business day in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. With this proposal, the Exchange would be able to open for trading series of options on IWM that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire.[54]

The interval between strike prices for the proposed Tuesday and Thursday IWM Short Term Option Daily Expirations will be the same as those for Tuesday and Thursday IWM Short Term Option Daily Expirations in SPY and QQQ, applicable to the Short Term Option Series Program.[55] Specifically, the Tuesday and Thursday IWM Short Term Option Daily Expirations will have a $0.50 strike interval minimum. As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Tuesday and Thursday IWM Short Term Option Daily Expiration series will be P.M.-settled.

Pursuant to Commentary .10(f) to Rule 903, with respect to the Short Term Option Series Program, a Tuesday or Thursday expiration series shall expire on the first business day immediately prior to that Tuesday or Thursday, *e.g.,* Monday or Wednesday of that week, respectively, if the Tuesday or Thursday is not a business day.

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[56] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[57] This thirty (30) series restriction would apply to Tuesday and Thursday IWM Short Term Option Daily Expiration series as well. With this proposal, Tuesday and Thursday IWM Expirations would be treated the same as Tuesday and Thursday Expirations in SPY and QQQ. With respect to monthly option series, Short Term Option Daily Expirations expire in the same week in which monthly option series on the same class expire.[58] Further, as is the case today with other Tuesday and Thursday Short Term Option Daily Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire.[59] Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire. The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Tuesday and Thursday IWM Short Term Option Daily Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Tuesday and Thursday Short Term Option Daily Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Tuesday and Thursday for SPY and QQQ and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Tuesday and Thursday for SPY and QQQ.

Impact of Proposal To Add Tuesday and Thursday Expirations for Options on IWM

The Exchange notes that listings in the Short Term Option Series Program comprise a significant part of the standard listing in options markets. The below table sets forth the percentage of weekly listings as compared to monthly (standard expiration), quarterly, and Long-Term Option Series in 2023 in the options industry.[60] The Exchange notes that during this time period all options exchanges mitigated weekly strike intervals.

NUMBER OF STRIKES—2023

Expiration	Percent of total series (%)
Monthly	62.82
Weekly	17.22
LEAP	17.77
Quarterly	2.20

Similar to SPY and QQQ, the Exchange would limit the number of Short Term Option Daily Expirations for IWM to two expirations for Tuesday and Thursday expirations while expanding the Short Term Option Series Program to permit Tuesday, and Thursday expirations for IWM. Expanding the Short Term Option Series Program to permit the listing of Tuesday and Thursday expirations in IWM will account for the addition of 6.77% of

[51] The Exchange proposes to amend the Tuesday and Thursday expirations for IWM from ''0'' to ''2'' to permit Tuesday and Thursday expirations for options on IWM listed pursuant to the Short Term Option Series. *See* proposed Commentary .10(f) to Rule 903.

[52] *See* Commentary .10(f) to Rule 903.

[53] *Id.*

[54] Today, IWM may trade on Mondays and Wednesdays, in addition to Fridays, as is the case for all options series.

[55] *See* Commentary .10(f) to Rule 903.

[56] *See* Commentary .10(a) to Rule 903.

[57] *See* Commentary .10(b) to Rule 903.

[58] *See* Commentary .10(e) to Rule 903.

[59] *See* Commentary .10(f) to Rule 903.

[60] Per Nasdaq ISE, this information was sourced from The Options Clearing Corporation (''OCC''). The information includes time averaged data for all 17 options markets through December 8, 2023. *See* Securities Exchange Act Release No. 99604 (February 26, 2024), 89 FR 15235 (March 1, 2024) (SR–ISE–2024–06).

strikes for IWM.[61] With respect to the impact to the Short Term Option Series Program on IWM overall, the impact would be a 20% increase in strikes.[62] With respect to the impact to the Short Term Options Series Program overall, the impact would be a 0.1% increase in strikes.[63] ATP Holders will continue to be able to expand hedging tools because all days of the week would be available to permit ATP Holders to tailor their investment and hedging needs more effectively in IWM.

NUMBER OF STRIKES—2023

Expiration	Percent of total series (%)
Monthly	35.13
Weekly	48.30
LEAP	12.87
Quarterly	3.70

Weeklies comprise 48.30% of the total volume of options contracts.[64] The Exchange believes that inner weeklies (first two weeks) represent high volume as compared to outer weeklies (the last three weeks) and would be more attractive to market participants. The introduction of IWM Tuesday and Thursday expirations will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that IWM Tuesday and Thursday expirations will allow market participants to purchase IWM options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[65] Specifically, the Exchange believes that its proposed rule change is consistent with Section 6(b)(5)[66] requirements in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, 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.

Monthly Options Series Program

The Exchange believes the introduction of Monthly Options Series will remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding hedging tools available to market participants. The Exchange believes the proposed monthly expirations will allow market participants to transact in the index and ETF options listed pursuant to the proposed rule change based on their timings as needed and allow them to tailor their investment and hedging needs more effectively. Further, the Exchange believes the availability of Monthly Options Series would protect investors and the public interest by providing investors with more flexibility to closely tailor their investment and hedging decisions in these options, thus allowing them to better manage their risk exposure.

The Exchange believes the Quarterly Options Series Program has been successful to date and the proposed Monthly Options Series program simply expands the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur at month's end in the same way the Quarterly Options Series Program has expanded the landscape of hedging for quarter-end news. Monthly Options Series will also complement Short Term Options Series, which will allow investors to hedge risk against events that occur throughout a month. The Exchange believes the availability of additional expirations should create greater trading and hedging opportunities for investors, as well as provide investors with the ability to tailor their investment objectives more effectively.

The Exchange notes the proposed terms of Monthly Options Series, including the limitation to five index and ETF option classes, are substantively the same as the current terms of Quarterly Options Series.[67] Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month. The proposed Monthly Options Series would fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes. As is the case with Quarterly Options Series, no Short Term Options Series may expire on the same day as a Monthly Options Series. Similarly, as proposed, no Monthly Options Series may expire on the same day as a Quarterly Options Series. The Exchange believes preventing listing series with concurrent expirations in a class will eliminate potential investors confusion and thus protect investors and the public interest. Given that Quarterly Options Series the Exchange currently lists are essentially Monthly Options Series that can expire at the end of only certain calendar months, the Exchange believes it is reasonable to list Monthly Options Series in accordance with the same terms, as it will promote just and equitable principles of trade. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Exchange and OPRA's quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

The Exchange further believes the proposed rule change regarding the treatment of Monthly Options Series with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Monthly Options Series will be aggregated with options overlying the same ETF or index for purposes of compliance with position (and exercise) limits, which is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Options Series and Quarterly Options Series). Therefore, options positions within ETF or index option classes for which Monthly Options Series are listed, regardless of their expirations, would

[61] Nasdaq ISE sourced this information, which are estimates, from LiveVol®. The information includes data for all 17 options markets as of January 3, 2024. *See id.*

[62] Nasdaq ISE sourced this information, which are estimates, from LiveVol®. The information includes data for all 17 options markets as of January 3, 2024. *See id.*

[63] Nasdaq ISE sourced this information, which are estimates, from LiveVol®. The information includes data for all 17 options markets as of January 3, 2024. *See id.*

[64] This table sets forth industry volume. Weeklies comprise 48.30% of volume while only comprising 17.22% of the strikes. Nasdaq ISE sourced this information from OCC. The information includes data for all 17 options markets through December 8, 2023. *See* Securities Exchange Act Release No. 99604 (February 26, 2024), 89 FR 15235 (March 1, 2024) (SR–ISE–2024–06).

[65] 15 U.S.C. 78f(b)

[66] 15 U.S.C. 78f(b)(5).

[67] *Compare* proposed Commentary .11 to Rule 903 *with* Commentary .09 to Rule 903.

continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options. The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. As mentioned above, the Exchange currently trades Quarterly Options Series in certain ETF classes, which expire at the close of business at the end of three calendar months (*i.e.,* the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Options Series, and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same ETF or index) and reporting requirements—would continue to apply.

Finally, the Exchange believes that the proposed technical change to Rule 903, Commentary.09 would add clarity, transparency and internal consistent to Exchange rules.

Low-Priced Stock Strike Price Interval Program

The Exchange believes the introduction of the Low-Priced Stock Strike Price Interval Program will remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding hedging tools available to market participants. In particular, the Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under $2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at $0.50 and had open interest of over 44,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[68] Currently the lowest strike listed is for $2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR, closed at $0.92 on August 9, 2023, and had open interest of 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[69] Similarly, the lowest strike listed is for $2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the-money puts. The Exchange's proposal will provide additional strikes in $0.50 increments from $0.50 up to $2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to any previous efforts to curb strike proliferation as those efforts focused on the removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below $2.50 to be eligible for the program.

The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is $0.50, there are only a maximum of four strikes that may be added ($0.50, $1.00, $1.50, and $2.00). Therefore, the Exchange does not believe that its proposal will undermine any previous efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that the proposed program's average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that the proposed program's average daily trading volume requirement is substantially greater than the average daily trading requirement currently in place on the Exchange for options on equity underlyings,[70] ADRs,[71] and broad-based indexes.[72]

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[73] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's ATP Holders and persons associated with its ATP Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its ATP Holders will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well as improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit investors by giving them increased opportunities to execute their investment and hedging decisions.

Finally, the Exchange believes its proposal is designed to prevent

[68] *See* Yahoo! Finance, *https://finance.yahoo.com/quote/SOND/history?p=SOND* (last visited August 10, 2023).

[69] *Id.*

[70] *See* Commentary .01(3) to Rule 915.

[71] *See* Commentary .03 to Rule 915.

[72] *See* Commentary .02(a)(7) to Rule 900C.

[73] 15 U.S.C. 78f(b)(1).

fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in Rule 915. Specifically, Rule 915 requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must be duly registered (with the Commission) and be an ''NMS stock'' (as defined in Rule 600 of Regulation NMS under the Act). Further, the underlying security is characterized by a substantial number of outstanding shares that are widely held and actively traded. In particular, Rule 915, provides that absent exceptional circumstances, an underlying security will not be selected for options transactions unless: (1) there are a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Act; and (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding 12 months. The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance with the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Rule 915 address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed average daily volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

Expand STOS Program

Add Wednesday Expirations for Options on Certain ETPs

The Exchange believes that the proposal to expand the STOS Program to allow the Wednesday ETP Expirations (subject to the proposed limitation of two expirations beyond the current week) is consistent with the Act for the following reasons. Like Wednesday expirations in SPY, QQQ, and IWM, the proposed Wednesday ETP Expirations would protect investors and the public interest by providing the investing public and other market participants more choice and flexibility to closely tailor their investment and hedging decisions in these options and allow for a reduced premium cost of buying portfolio protection, thus allowing them to better manage their risk exposure.

The Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Series for Wednesday SPY, QQQ and IWM expirations. The Exchange also represents that it has the necessary system capacity to support the new expirations. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of these option expirations. As discussed above, the Exchange believes that its proposal is a modest expansion of weekly expiration dates for GLD, SLV, USO, UNG, and TLT given that it will be limited to two Wednesday expirations beyond the current week. Lastly, the Exchange believes its proposal will not be a strain on liquidity providers because of the multi-class nature of GLD, SLV, USO, UNG, and TLT and the available hedges in highly correlated instruments, as described above.

The Exchange believes that the proposal is consistent with the Act as the proposal would overall add a small number of Wednesday ETP Expirations by limiting the addition of two Wednesday expirations beyond the current week. The addition of Wednesday ETP Expirations would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers to continue to deploy capital more efficiently and improve market quality. The Exchange believes that the proposal will allow market participants to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT as these funds are most likely to be utilized by market participants to hedge the underlying asset classes.

Similar to Wednesday SPY, QQQ, and IWM expirations, the introduction of Wednesday ETP Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively, thus 9 allowing them to better manage their risk exposure. Today, the Exchange lists Wednesday SPY, QQQ, and IWM Expirations.[74]

The Exchange believes the STOS Program has been successful to date and that Wednesday ETP Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the STOS Program has expanded the landscape of hedging. There are no material differences in the treatment of Wednesday SPY, QQQ, and IWM expirations compared to the proposed Wednesday ETP Expirations. Given the similarities between Wednesday SPY, QQQ, and IWM expirations and the proposed Wednesday ETP Expirations, the Exchange believes that applying the provisions in Commentary .10(f) to Rule 903, that currently apply to Wednesday SPY, QQQ, and IWM expirations is justified and will benefit investors and minimize investor confusion by providing such expirations in a continuous and uniform manner.

Add Tuesday and Thursday Expirations for Options on IWM

The Exchange believes that IWM Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase IWM options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the proposal to permit Tuesday and Thursday Short Term Daily Expirations for options on IWM listed pursuant to the Short Term Option Series Program, subject to the proposed limitation of two nearest expirations, would protect investors and the public interest by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in IWM options, thus allowing them to better manage their risk exposure. In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Tuesday and Thursday IWM against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Tuesday and Thursday IWM Short Term Daily Expirations should create greater trading and hedging opportunities and provide customers the flexibility to tailor their investment objectives more effectively. The Exchange currently lists SPY and QQQ

[74] *See* Commentary .10(f) to Rule 903.

Tuesday and Thursday Short Term Daily Expirations.[75]

With this proposal, Tuesday and Thursday IWM Expirations would be treated similar to existing Tuesday and Thursday SPY and QQQ Expirations and would expire in the same week that standard monthly options expire on Fridays.[76] Further, today, Tuesday and Thursday Short Term Option Daily Expirations do not expire on a business day in which monthly options series or Quarterly Options Series expire.[77] Today, all Short Term Option Daily Expirations expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire. There are no material differences in the treatment of Tuesday and Thursday SPY and QQQ Short Term Daily Expirations as compared to the proposed Tuesday and Thursday IWM Short Term Daily Expirations.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed Tuesday and Thursday IWM Short Term Daily Expirations, in the same way that it monitors trading in the current Short Term Option Series and trading in Tuesday and Thursday SPY and QQQ Expirations. The Exchange also represents that it has the necessary systems capacity to support the new options series. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of Tuesday and Thursday IWM Short Term Daily Expirations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed changes would allow the Exchange to compete on more equal footing with other options exchanges that have already adopted substantively identical rules as noted herein. Thus, the Exchange believes this proposal would encourage competition.

Monthly Options Series Program

The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as any Monthly Options Series the Exchange lists for trading will be available in the same manner for all market participants who wish to trade such options. The Exchange notes the proposed terms of the Monthly Options Series, including the limitation to five index and ETF option classes, are substantively the same as the current terms of Quarterly Options Series.[78] Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month, making the concept of Monthly Options Series in a limited number of index and ETF options not novel. The proposed Monthly Options Series will fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes. Monthly Options Series will trade on the Exchange in the same manner as other options in the same class.

The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as nothing prevents other options exchanges from proposing similar rules. As discussed above, the proposed rule change would permit listing of Monthly Options Series in five index or ETF options, as well as any other classes that other exchanges may list under similar programs. To the extent that the availability of Monthly Options Series makes the Exchange a more attractive marketplace to market participants at other exchanges, market participants are free to elect to become market participants on the Exchange.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. Similar to Short Term Options Series and Quarterly Options Series, the Exchange believes the introduction of Monthly Options Series will not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants. The Exchange believes Monthly Options Series will allow market participants to purchase options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposed rule change to provide positions in Monthly Options Series will be aggregated with positions in options contracts on the same underlying index or security for purposes of determining compliance with position (and exercise) limits will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it will apply in the same manner to all market participants. The Exchange proposes to apply position (and exercise) limits to Monthly Options Series in the same manner it applies position limits to series with other expirations (Short Term Options Series and Quarterly Options Series). Therefore, positions in options in a class of ETF or index options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. Additionally, the Exchange does not believe this proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will address potential manipulative schemes and adverse market impacts surrounding the use of options.

Consequently, the Exchange does not believe that the proposed change implicates competition at all. Additionally, and as stated above, this proposal to accommodate the listing of options series that would expire at the close of business on the last business day of a calendar month is substantively similar to that of at least one other options exchange.[79]

Low-Priced Stock Interval Program

The Exchange does not believe that its proposed rule change will impose any burden on intramarket competition as the Rules of the Exchange apply equally to all ATP Holders and all of whom may trade the new proposed strikes if they so choose. Instead, the Exchange believes that investors and market participants will significantly benefit from the availability of finer strike price intervals for stocks priced below $2.50, which will allow them to tailor their investment and hedging needs more effectively. The Exchange's proposal is substantively identical to MIAX Interpretations and Policies .11 and .12 to Rule 404.[80]

The Exchange does not believe that its proposed rule change will impose any

[75] *Id.*

[76] *Id.*

[77] *See* Rule 903(h).

[78] *See* Commentary .09 to Rule 903.

[79] *See supra* note 4 (regarding SR–CBOE–2023–049).

[80] *See supra* note 19 (regarding SR–MIAX–2023–36).

burden on intermarket competition, as nothing prevents other options exchanges from proposing similar rules to list and trade options on low priced stocks. Rather the Exchange believes that its proposal will promote intermarket competition, as the Exchange's proposal will result in additional opportunities for investors to achieve their investment and trading objectives, to the benefit of investors, market participants, and the marketplace in general.

Expand STOS Program

Add Wednesday Expirations for Options on Certain ETPs

The Exchange does not believe that its proposed rule change to permit Wednesday expirations in certain ETPs will impose any undue burden on competition. In this regard and as indicated above, the Exchange notes that this proposed rule change is being proposed as a competitive response to the already-approved rule change submitted by Nasdaq ISE.[81]

While the proposal will expand the Short Term Options Expirations to allow Wednesday ETP Expirations to be listed on the Exchange, the Exchange believes that this limited expansion for Wednesday expirations for options on USO, UNG, GLD, SLV, and TLT will not impose an undue burden on competition; rather, it will meet customer demand. The Exchange believes that market participants will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT given multi-class nature of these products and the available hedges in highly correlated instruments, as described above. Similar to Wednesday SPY, QQQ, and IWM expirations, the introduction of Wednesday ETP Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Wednesday ETP Expirations. Further, the Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal.

Add Tuesday and Thursday Expirations for Options on IWM

Similar to SPY and QQQ Tuesday and Thursday Expirations, the introduction of IWM Tuesday and Thursday Short Term Daily Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that IWM Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase IWM options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to list and trade Short-Term Option Series with Tuesday and Thursday Short Term Daily Expirations. The Exchange notes that having Tuesday and Thursday IWM expirations is not a novel proposal, as SPY and QQQ Tuesday and Thursday Expirations are currently listed on the Exchange.[82] Additionally, as noted above, the Commission recently approved a substantively identical proposal of another exchange.[83]

Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[84] and Rule 19b–4(f)(6) thereunder.[85]

A proposed rule change filed under Rule 19–4(f)(6)[86] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[87] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay would allow the Exchange to implement, without delay, its proposal to: (i) adopt a Monthly Option Series Program; (ii) adopt a Low-Priced Strike Priced Interval Program; (iii) permit the listing and trading of five additional classes with Short Term Option Daily Expirations, specifically, by permitting the listing of two Wednesday expirations for options on certain ETPs; and (iv) permit Tuesday and Thursday expirations on IWM. The Exchange further states the proposed rule change does not present any new or novel issues, as at least one other exchange permits each of the proposed programs and expirations.[88] Because the proposal does not raise any new or novel issues, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[89]

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

[81] *See supra* note 41 (regarding SR–ISE–2023–11).

[82] *See* Commentary .10(f) to Rule 903.

[83] *See supra* note 49 (regarding SR–ISE–2024–06).

[84] 15 U.S.C. 78s(b)(3)(A)(iii).

[85] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[86] 17 CFR 240.19b–4(f)(6).

[87] 17 CFR 240.19b–4(f)(6)(iii).

[88] *See supra* notes 4, 19, 41, and 49.

[89] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [90] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–34 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–NYSEAMER–2024–34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–34 and should be submitted on or before July 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[91]

Sherry R. Haywood,

Assistant Secretary.

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[90] 15 U.S.C. 78s(b)(2)(B).

[91] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100273; File No. SR–NYSEARCA–2024–43]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.4–O

June 4, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 30, 2024, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 Rule 6.4–O (Series of Options Open For Trading) and to make certain conforming changes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Rule 6.4–O (Series of Options Open For Trading) to adopt a Monthly Options Series Program; to adopt a Low-Priced Strike Priced Interval Program; to permit the listing and trading of five additional classes with Short Term Option Daily Expirations; to permit Tuesday and Thursday expirations for certain classes with Short Term Option Daily Expirations; and to permit the listing of two Wednesday expirations for options on certain ETPs. Each of the proposed changes would align Exchange rules with already-approved and implemented rules in place on at least one other options exchange as noted herein.

Monthly Options Series Program

The Exchange proposes to amend its Rules to accommodate the listing of options series that would expire at the close of business on the last business day of a calendar month (''Monthly Options Series''). This is a competitive filing that is based on a proposal recently submitted Cboe Exchange, Inc (''CBOE'').[4]

Pursuant to proposed Commentary .09 to Rule 6.4–O and Rule 5.19–O(a)(3)(B), the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on exchange-traded funds (''ETFs'').[5] In addition, the Exchange may also list Monthly Options Series on any options classes that are selected by other securities exchanges that employ a similar program under their respective rules.[6] The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 98915 (Nov. 13, 2023) 88 FR 81495 (November 17, 2023 (SR–CBOE–2023–049) (Order Approving a Proposed Rule Change To Adopt Monthly Options Series). *See also* Cboe Rules 4.5, 4.11, 8.31, and 8.32.

[5] The Exchange proposes to amend Rule 6.4–O(a) to provide that new Commentary .09 to rule 6.4–O (which has been held in Reserve) will describe how the Exchange will fix a specific expiration date and exercise price for Monthly Options Series and that proposed Commentary .09 to Rule 6.40–O will govern the procedures for opening Monthly Options Series, respectively. This is consistent with language in current Rule 6.4–O for other Short Term Options Series and Quarterly Options Series. Consistent with this proposal, the Exchange proposes to adopt a definition of Monthly options Series. *See* proposed Rules 1.1 and 5.19–O(b)(27).

[6] The Exchange's proposal is based on CBOE's approved rule change, *see supra* note 4. The

Continued

may list 12 expirations for Monthly Options Series. Monthly Options Series need not be for consecutive months; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.[7] Other expirations in the same class are not counted as part of the maximum numbers of Monthly Options Series expirations for a class.[8] Monthly Options Series will be P.M.-settled.[9]

The strike price of each Monthly Options Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index or price of the underlying security at about the time that a Monthly Options Series is opened for trading on the Exchange. The Exchange will list strike prices for Monthly Options Series that are reasonably related to the current price of the underlying security or current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term ''reasonably related to the current price of the underlying security or index value of the underlying index'' means that the exercise price is within 30% of the current underlying security price or index value.[10] Additional Monthly Options Series of the same class may be open for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet OTP Holder or OTP Firm (each an ''OTP'') demand,[11] or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices will be within 30% above or below the closing price of the underlying index or security on the preceding day. The Exchange may also open additional strike prices of Monthly Options Series that are more than 30% above or below the current price of the underlying security, provided that demonstrated interest of OTPs exists for such series, as expressed by institutional, corporate, OTPs or their brokers. Market Makers trading for their own account will not be considered when determining the interest of OTPs under this provision. The opening of the new Monthly Options Series will not affect the series of options of the same class previously opened.[12] The interval between strike prices on Monthly Options Series will be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.[13]

By definition, Monthly Options Series can never expire in the same week that a standard options series that expires on the third Friday of a month in the same class expires. The same, however, is not the case with respect to Short Term Options Series or Quarterly Options Series. Therefore, to avoid any confusion in the marketplace, the Exchange proposes to amend Commentary .07 to Rule 6.4–O to provide that the Exchange will not list a Short Term Options Series in a class on a date on which a Monthly Options Series or Quarterly Options Series expires.[14] Similarly, proposed Commentary .09 to Rule 6.4–O provide that no Monthly Options Series may expire on a date that coincides with an expiration date of a Quarterly Options Series in the same index or ETF class. In other words, the Exchange will not list a Short Terms Options Series on an index or ETF if a Monthly Options Series on that index or ETF were to expire on the same date, nor will the Exchange list a Monthly Options Series on an index or ETF if a Quarterly Options Series on that ETF were to expire on the same date to prevent the listing of series with concurrent expirations.[15]

With respect to Monthly Options Series added pursuant to proposed Commentary .09(a)–(f) to Rule 6.4–O, the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying index or security, and delist series with no open interest in both the put and the call series having a strike: (i) higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) lower than the lowest strike price with open interest in the put and/or call series for

Exchange notes that other options exchanges have since adopted similar programs. *See, e.g.,* Securities Exchange Act Release No. 98973 (November 16, 2023) 88 FR 81495 (November 22, 2023) (SR–MIAX–2023–44) (immediately effective filing to accommodate the listing of Monthly Options Series).

[7] The Exchange notes this provision considers consecutive monthly listings. In other words, as other expirations (such as Quarterly Options Series) are not counted as part of the maximum, those expirations would not be considered when considering when the last expiration date would be if the maximum number were listed consecutively. For example, if it is January 2024 and the Exchange lists Quarterly Options Series in class ABC with expirations in March, June, September, December, and the following March, the Exchange could also list Monthly Options Series in class ABC with expirations in January, February, April May, July, August, October, and November 2024 and January and February of 2025. This is because, if Quarterly Options Series, for example, were counted, the Exchange would otherwise never be able to list the maximum number of Monthly Options Series. This is consistent with the listing provisions for Quarterly Options Series, which permit calendar quarter expirations. The need to list series with the same expiration in the current calendar year and the following calendar year (whether Monthly or Quarterly expiration) is to allow market participants to execute one-year strategies pursuant to which they may not roll their exposures in the longer-dated options (*e.g.,* January 2025) prior to the expiration of the nearer dated option (*e.g.,* January 2024).

[8] *See* proposed Commentary .09(b) to Rule 6.4–O and proposed Rule 5.19–O(a)(3)(B)(2).

[9] *See* proposed Commentary .09(b) to Rule 6.4–O and proposed Rule 5.19–O(a)(3)(B)(3).

[10] *See* proposed Commentary .09(d) to Rule 6.4–O. The Exchange notes these proposed provisions are consistent with the initial series provision for the Quarterly Options Series program in Rule 5.19–O(a)(3)(B)(4). While different than the initial strike listing provision for the Quarterly Options Series program (per Commentary .08(ii)), the Exchange believes the proposed provision is appropriate, as it contemplates classes that may have strike intervals of $5 or greater. For consistency, the Exchange proposes to amend Commentary .08 to incorporate the same provision for initial series. *See* proposed Commentary .08(c). The Exchange proposes a technical change to re-number the paragraphs of Commentary .08 from (a) to (h), and to separate into two different paragraphs the requirements for ''Initial'' and ''Additional'' Quarterly Options Series in paragraphs (c) and (d), respectively, which technical change would add clarity, transparency, and internal consistent to Exchange rules. *See* proposed Commentary .08(a)–(g).

[11] An ''OTP'' is an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange. *See* Rule 1.1. An ''OTP Holder'' refers to a natural person, in good standing or a, who has been issued an OTP and an ''OTP Firm'' refers to a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP. *See id.* Both an OTP Holder and an OTP Firm must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934. *Id.*

[12] *See* proposed Commentary .09(e) to Rule 6.4–O.

[13] *See* proposed Commentary .09(f) to Rule 6.4–O; *see also* Commentaries .04 and .05 to Rule 6.4–O (permissible strike prices for ETF classes); and Commentaries .05(a) and .11 to Rule 6.4–O (permissible strike prices index options).

[14] *See* proposed Commentary .07 to Rule 6.4–O. The Exchange also proposes to make a non-substantive change throughout Commentary .07 to Rule 6.4–O to change current references to ''monthly options series'' to ''standard expiration options series'' (*i.e.,* series that expire on the third Friday of a month), to eliminate potential confusion. The current references to ''monthly options series'' are intended to refer to those series that expire on the third Friday of a month, which are generally referred to in the industry as standard expirations.

[15] The Exchange notes this would not prevent the Exchange from listing a P.M.-settled Monthly Options Series on an index with the same expiration date as an A.M.-settled Short Term Options Series on the same index, both of which may expire on a Friday. The Exchange believes this concurrent listing would provide investors with yet another hedging mechanism and is reasonable given these series would not be identical (unlike if they were both P.M.-settled). This could not occur with respect to ETFs, as all Short Term Options Series on ETFs are P.M.-settled.

a given expiration month. Notwithstanding this delisting policy, OTP requests to add strikes and/or maintain strikes in Monthly Options Series in series eligible for delisting will be granted. In connection with this delisting policy, if the Exchange identifies series for delisting, the Exchange will notify other options exchanges with similar delisting policies regarding eligible series for delisting and will work with such other exchanges to develop a uniform list of series to be delisted, to ensure uniform series delisting of multiply listed Monthly Options Series.[16]

The Exchange believes that Monthly Options Series will provide investors with another flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie options contracts. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Options Price Reporting Authority (''OPRA'') and the Exchange's quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

The Exchange also proposes to amend Rules 5.15–O and 5.15(a)–O to provide that positions in Monthly Options Series will be aggregated with positions in options contracts on the same underlying security or index.[17] This is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Options Series and Quarterly Options Series). Therefore, positions in options within class of index or ETF options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options.

The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. The Exchange currently lists Quarterly Options Series in certain ETF classes,[18] which expire at the close of business at the end of four calendar months (*i.e.,* the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Options Series and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same index or ETF) and reporting requirements—would continue to apply.

Low-Priced Stock Interval Program

Miami International Securities Exchange, LLC (''MIAX'') recently received approval to amend its Rule 404 to implement a new strike interval program for stocks that are priced less than $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the 3 preceding calendar months.[19] At this time, the Exchange proposes to adopt rules substantively identical to MIAX, which are set forth in proposed new Commentary .15 to Rule 6.4–O and to make a conforming change to the table in Commentary .07(f) of Rule 6.4–O to align that that table with the proposed rule text.

Background

Rule 6.4–O describes the process and procedures for listing and trading series of options on the Exchange.[20] Rule 6.4–O provides for a $2.50 Strike Price Program, where the Exchange may select up to 60 option classes on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25.00 but less than $50.00.[21] Rule 6.4–O also provides for a $1 Strike Price Interval Program, where the interval between strike prices of series of options on individual stocks may be $1.00 or greater provided the strike price is $50.00 or less, but not less than $1.00.[22] Additionally, Rule 6.4–O provides for a $0.50 Strike Program.[23] The interval of strike prices of series of options on individual stocks may be $0.50 or greater beginning at $0.50 where the strike price is $5.50 or less, but only for options classes whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of $0.50 strike prices is limited to options classes overlying no more than 20 individual stocks (the ''$0.50 Strike Program'') as specifically designated by the Exchange. The Exchange may list $0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $0.50 Strike Program under their respective rules. A stock will remain in the $0.50 Strike Program until otherwise designated by the Exchange.[24]

Proposal To Adopt Low-Priced Stock Interval Program

The Exchange proposes to adopt a new strike interval program for underlying stocks that are not in the aforementioned $0.50 Strike Program (or the Short Term Option Series Program) [25] and that close below $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months.[26] The $0.50 Strike Program considers stocks that have a closing price at or below $5.00 whereas the Exchange's proposal will consider stocks that have a closing price below

[16] *See* proposed Commentary .09(g) to Rule 6.4–O. Pursuant to Rule 6.9–O, exercise limits for impacted index and ETF classes would be equal to the applicable position limits.

[17] *See* proposed Rules 5.15–O (regarding position limits for broad-based index options) and 5.15(a)—O (regarding position limits for industry index options). Consistent with the adoption of Monthly Options series for equity and index options, the Exchange proposes to adopt the definition of ''Monthly Option Series'' as relates to index options in proposed Rule 5.10–O(b)(27).

[18] The Exchange notes it currently lists quarterly expirations on certain ETF options pursuant to Rule 6.4–O Commentary .08.

[19] *See* Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361 (November 17, 2023) (SR–MIAX–2023–36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading). Other options exchanges have since adopted similar programs. *See also* MIAX Rule 404, Interpretations and Policies .11 and .12. The Exchange notes that other options exchanges have since adopted similar programs. *See, e.g.,* Securities Exchange Act Release No. 99113 (December 7, 2023) 88 FR 86413 (December 7, 2023) (SR–CBOE–2023–065) (immediately effective filing ''[t]o adopt a Low Priced Stock Strike Price Interval Program').

[20] Per Rule 1.1, ''series of options'' refers to ''all options contracts of the same class of options having the same expiration date and expiration price, and the same unit of trading.''

[21] *See* Commentary .03 to Rule 6.4–O.

[22] *See* Commentary .04 to Rule 6.4–O.

[23] *See* Commentary .13 to Rule 6.4–O .

[24] *Id.*

[25] *See* Commentary .07 to Rule 6.4–O.

[26] *See* proposed Commentary .15 to Rule 6.4–O.

$2.50. Currently, there is a subset of stocks that are not included in the $0.50 Strike Program as a result of the limitations of that program which provides that the listing of $0.50 strike prices shall be limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months.[27] Therefore, the Exchange is proposing to implement a new strike interval program termed the ''Low-Priced Stock Strike Price Interval Program.'' [28]

To be eligible for the inclusion in the Low-Priced Stock Strike Price Interval Program, an underlying stock must (i) close below $2.50 in its primary market on the previous trading day; and (ii) have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program.

The Exchange also proposes that after a stock is added to the Low-Priced Stock Strike Price Interval Program, the Exchange may list $0.50 strike price intervals from $0.50 up to $2.00.[29] For the purpose of adding strikes under the Low-Priced Stock Strike Price Interval Program, the ''price of the underlying stock'' shall be measured in the same way as ''the price of the underlying security'' as set forth in Rule 6.4A–O(b)(i).[30] Further, no additional series in $0.50 intervals may be listed if the underlying stock closes at or above $2.50 in its primary market. Additional series in $0.50 intervals may not be added until the underlying stock again closes below $2.50.

The Exchange's proposal addresses a gap in strike coverage for low-priced stocks. The $0.50 Strike Program considers stocks that close below $5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the Exchange's proposal has a narrower focus, with respect to the underlying's stock price, and is targeted to those stocks that close below $2.50 and does not limit the number of stocks that may participate in the program (provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low-Priced Stock Strike Price Interval Program.

The Exchange believes that its average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options on equities, American Depository Receipts (''ADRs''), and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.[31] Rule 5.3–O(d) provides the criteria for listing options on ADRs if they meet certain criteria and guidelines set forth in Rule 5.3–O. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three (3) months preceding the selection of the ADR for options trading is 100,000 or more shares.[32] Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b–4(e) of the Act provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six-month period.[33]

Additionally, the Exchange proposes to amend the table in Rule 6.4–O Commentary .07(f) (the ''Table'') to insert a new column to harmonize the Exchange's proposal to the strike intervals for Short Term Options Series as described in proposed Rule 6.4–O Commentary .15. The Table is intended to limit the intervals between strikes for multiply listed equity options within the Short Term Options Series (''STOS'') Program that have an expiration date more than twenty-one days from the listing date. Specifically, the Table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.[34] However, the lowest share price column is titled ''Less than $25.'' The Exchange now proposes to insert a column titled ''Less than $2.50'' and to set the strike interval at $0.50 for each average daily volume tier represented in the Table. Also, the Exchange proposes to amend the heading of the column currently titled ''Less than $25,'' to ''$2.50 to less than $25'' as a result of the adoption of the new proposed column, ''Less than $2.50.'' The Exchange believes this change will remove any potential conflict between the strike intervals under the STOS Program and those described herein under the Exchange's proposal.

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort undertaken by the industry to curb strike proliferation. For example, the Exchange filed a proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the ''Strike Interval Proposal'').[35] The Strike Interval Proposal was intended to remove repetitive and unnecessary strike listings across the weekly expiries. Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.[36] The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes where there wasn't. At the time of its proposal, the Exchange estimated that

[27] *See* Commentary .13 to Rule 6.4–O.

[28] The Exchange proposes to include a hyphen to the modifier ''Low-Priced.'' *See* proposed Commentary .15 to Rule 6.4–O.

[29] While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program the Exchange will exercise its discretion and will not list strikes on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

[30] The Exchange notes this is the same methodology used in the $1 Strike Price Interval Program. *See* Commentary .04 to Rule 6.4–O.

[31] *See* Rule 5.3–O(a)(3).

[32] *See* Rule 5.3–O(d)(3).

[33] *See* Rule 5.12–O(a)(7).

[34] *See* Securities Exchange Release Act No. 92335 (July 7, 2021), 86 FR 36844 (July 13, 2021) (SR–NYSEArca–2021–55) (immediately effective filing to amend Rule 6.4–O to limit Short Term Options Series intervals).

[35] *Id.*

[36] *Id.*

the Strike Interval Proposal would reduce the number of strikes it listed by 81,000.[37] The Exchange proposes to amend the Table to define the strike interval at $0.50 for underlying stocks with a share price of less than $2.50.[38] The Exchange believes this amendment will harmonize the Exchange's proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available on the Exchange. However, the Exchange's proposal is designed to only add strikes where there is investor demand,[39] which will improve market quality.[40]

The Exchange does not believe that its proposal contravenes the industry's efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than $2.50 and that also meet the average daily trading volume requirement. Additionally, because the strike increment is $0.50 there are only a total of four strikes that may be listed under the program ($0.50, $1.00, $1.50, and $2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (*e.g.,* the $0.50 Strike Program or the $1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

The Exchange further believes that the Options Price Reporting Authority (''OPRA''), has the necessary systems capacity to handle any additional messaging traffic associated with this proposed rule change. The Exchange also believes that OTPs will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

Expand the STOS Program

Add Wednesday Expirations for Options on Certain ETPs

The Exchange proposes to amend Rule 6.4–O, Commentary .07 to expand the STOS Program to permit the listing of two Wednesday expirations for options on United States Oil Fund, LP (''USO''), United States Natural Gas Fund, LP (''UNG''), SPDR Gold Shares (''GLD''), iShares Silver Trust (''SLV''), and iShares 20+ Year Treasury Bond ETF (''TLT'') (collectively ''Exchange Traded Products'' or ''ETPs''). This is a competitive filing based on a rule change submitted by Nasdaq ISE, LLC (''Nasdaq ISE'') and approved by the Commission.[41]

Currently, as set forth in Rule 6.4–O Commentary .07, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays on which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates''). The Exchange may have no more than a total of five Friday Short Term Option Expiration Dates (''Short Term Option Weekly Expirations''). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that Friday.

Additionally, the Exchange may open for trading series of options on the symbols provided in Table 1 of Rule 6.4–O Commentary .07 that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Short Term Option Daily Expirations''). For those symbols listed in Table 1, the Exchange may have no more than a total of two Short Term Option Daily Expirations for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.

At this time, the Exchange proposes to expand the Short Term Option Daily Expirations to permit the listing and trading of options on USO, UNG, GLD, SLV, and TLT expiring on Wednesdays. The Exchange proposes to permit two Short Term Option Expiration Dates beyond the current week for each Wednesday expiration at one time. In order to effectuate the proposed changes, the Exchange would add USO, UNG, GLD, SLV, and TLT to Table 1 of Rule 6.4–O Commentary .07, which specifies each symbol that qualifies as a Short Term Option Daily Expiration.[42]

The proposed Wednesday USO, UNG, GLD, SLV, and TLT expirations will be similar to the current Wednesday Short Term Option Daily Expirations on SPDR® S&P 500® ETF (''SPY''), PowerShares QQQ Trust (''QQQ''), and iShares Russell 2000 Index Fund (''IWM'') SPY, QQQ, and IWM, as set forth in Rule 6.4–O Commentary .07, such that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week) series of options on USO, UNG, GLD, SLV, and TLT to expire on any Wednesday of the month that is a business day and is not a Wednesday in which standard expiration option series, Monthly Options Series, or Quarterly Options Series expire (''Wednesday USO Expirations,'' ''Wednesday UNG Expirations,'' ''Wednesday GLD Expirations,'' ''Wednesday SLV Expirations,'' and ''Wednesday TLT Expirations'') (collectively, ''Wednesday

[37] *Id.*

[38] *See* proposed Commentary .07(f) to Rule 6.4–O.

[39] *See* proposed Commentary .15 to Rule 6.4–O, which requires that an underlying stock have an average daily trading volume of 1,000,000 shares for the three (3) preceding months to be eligible for inclusion in the Low-Priced Stock Strike Price Interval Program.

[40] For example, MIAX determined that, as of August 9, 2023, 106 symbols met the criteria of the Low-Priced Stock Program. Of those symbols 36 are currently in the $1 Strike Price Interval Program with $1.00 and $2.00 strikes listed. Further, MIAX determined that this would add the $0.50 and $1.50 strikes for these symbols for the current expiration terms. The remaining 70 symbols eligible under MIAX's proposal would have $0.50, $1.00, $1.50, and $2.00 strikes added to their current expiration terms. Therefore, for the 106 symbols eligible for the Low-Priced Stock Strike Price Interval Program on MIAX a total of approximately 3,250 options would be added. Finally, as of August 16, 2023, MIAX listed 1,090,414 options, therefore the additional options that would be listed under this proposal would represent a very minor increase of 0.298% in the number of options. *See* Securities Exchange Act Release No. 98917 (November 13, 2023), 88 FR 80361, 80362 (November 17, 2023) (SR–MIAX–2023–36) (Order Approving a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading).

[41] *See* Securities Exchange Act Release No. 98905 (November 13, 2023) (SR–ISE–2023–11) (order approving expansion of Short Term Option Series Program to permit the listing of Wednesday Expirations for options on certain ETPs). *See also* Nasdaq ISE Supplementary Material to Options 4, Section 5. The Exchange notes that other options exchanges have since adopted similar rule changes. *See, e.g.,* Securities Exchange Act Release No. 99035 (November 29, 2023), 88 FR 84367 (December 5, 2023) (SR–Cboe–2023–062) (immediately effective filing to permit Wednesday expiration for options on certain ETPs).

[42] *See* proposed Commentary .07 to Rule 6.4–O (updates to Table 1).

ETP Expirations'').[43] In the event Short Term Option Daily Expirations expire on a Wednesday and that Wednesday is the same day that a standard expiration option series, Monthly Options Series, or Quarterly Options Series expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Wednesday expirations in SPY, QQQ, and IWM similarly skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Option Series.

The Exchange notes that USO, UNG, GLD, SLV, and TLT Friday expirations would continue to have a total of five Short Term Option Expiration Dates, provided those Friday expirations are not Fridays in which standard expiration option series, Monthly Options Series, or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates'').

Like Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within Rule 6.4–O Commentary .07, the Exchange proposes that it may open for trading on any Tuesday or Wednesday that is a business day series of options on USO, UNG, GLD, SLV, and TLT that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which standard expiration option series, Monthly Options Series, or Quarterly Options Series expire.

The interval between strike prices for the proposed Wednesday ETP Expirations will be the same as those for the current Short Term Option Series for Friday expirations applicable to the STOS Program.[44] Specifically, the Wednesday ETP Expirations will have a strike interval of $0.50 or greater for strike prices below $100, $1 or greater for strike prices between $100 and $150, and $2.50 or greater for strike prices above $150.[45] As is the case with other equity options listed pursuant to the STOS Program, the Wednesday ETP Expirations series will be P.M.-settled.

Pursuant to Rule 6.4–O Commentary .07, with respect to the STOS Program, a Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, *e.g.,* Tuesday of that week if the Wednesday is not a business day.

Currently, for each option class eligible for participation in the STOS Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[46] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[47] With the proposed changes, this thirty (30) series restriction would apply to Wednesday USO, UNG, GLD, SLV, and TLT Short Term Option Daily Expirations as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming that they file similar rules with the Commission to list Wednesday ETP Expirations.

With this proposal, Wednesday ETP Expirations would be treated similarly to existing Wednesday SPY, QQQ, and IWM Expirations.[48] With respect to standard expiration options series, Short Term Option Daily Expirations will be permitted to expire in the same week in which standard expiration option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Wednesday ETP Expirations to expire on a business day in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a standard expiration option series, Monthly Options Series, or a Quarterly Options Series would expire because those options would be duplicative of each other.

The Exchange does not believe that any market disruptions will be encountered with the introduction of Wednesday ETP Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Wednesday ETP Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire on Wednesday for SPY, QQQ, and IWM and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Wednesday for SPY, QQQ, and IWM.

Add Tuesday and Thursday Expirations for Options on IWM

The Exchange proposes to expand the STOS Program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on IWM, specifically permitting two expiration dates for the proposed Tuesday and Thursday expirations in IWM. This is a competitive filing based on a rule change submitted by Nasdaq ISE and approved by the Commission.[49]

As noted above, Table 1 in Commentary .07(g) to Rule 6.4–O, specifies each symbol that currently qualifies as a Short Term Option Daily Expiration.[50] Today, Table 1 permits the listing and trading of Monday Short Term Option Daily Expirations and Wednesday Short Term Option Daily Expirations for IWM. At this time, the

[43] While the relevant rule text in Rule 6.4–O, Commentary .07 also indicates that the Exchange will not list such expirations on a Wednesday that is a business day in which standard expiration options series expire, practically speaking this would not occur.

[44] *See* Rule 6.4–O Commentary .07(f).

[45] *See* Commentary .07(e)–(f) to Rule 6.4–O.

[46] *See* Rule 6.4–O, Commentary .07(c).

[47] *Id.*

[48] *See* proposed Rule 6.4–O, Commentary .07(g) (proving that, with respect to Wednesday Expirations, the Exchange may open for trading on any Tuesday or Wednesday that is a business day series of options on the symbols provided in Table 1 above that expire at the close of business on each of the next two Wednesdays that are business days and are not business days on which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire'').

[49] *See* Securities Exchange Act Release No. 99946 (April 11, 2024), 89 FR 27471 (April 17, 2024) (SR–ISE–2024–06) (order approving expansion of Short Term Option Series Program to permit the listing of Tuesday and Thursday expirations in IWM). *See also* Nasdaq ISE Options 4, Section 5, Supplementary Material .03. The Exchange notes that other options exchanges have since adopted similar rule changes. *See, e.g.,* Securities Exchange Act Release No. 99981 (April 17, 2024), 89 FR 30425 (April 23, 2024) (SR–CboeEDGX–2024–022 (immediately effective filing to permit Tuesday and Thursday expiration for options on IWM).

[50] The Exchange may open for trading on any Thursday or Friday that is a business day series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which standard expiration options series, Monthly Options Series, or Quarterly Options Series. Of these series of options, the Exchange may have no more than a total of five Short Term Option Expiration Dates. In addition, the Exchange may open for trading series of options on certain symbols that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (''Short Term Option Daily Expirations''). *See* Commentary .07(g) to Rule 6.4–O.

Exchange proposes to expand the Short Term Option Series Program to permit the listing and trading of no more than a total of two IWM Short Term Option Daily Expirations beyond the current week for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.[51] The listing and trading of Tuesday and Thursday Short Term Option Daily Expirations would be subject to Commentary .07(g) to Rule 6.4–O.

Today, Tuesday Short Term Option Daily Expirations in SPY and QQQ may open for trading on any Monday or Tuesday that is a business day series of options on the symbols provided in Table 1 that expire at the close of business on each of the next two Tuesdays that are business days and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (''Tuesday Short Term Option Expiration Date'').[52]

Also, today, Thursday Short Term Option Daily Expirations in SPY and QQQ may open for trading on any Tuesday or Wednesday that is a business day series of options on the symbols provided in Table 1 that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire (''Wednesday Short Term Option Expiration Date'').[53] In the event that options on IWM expire on a Tuesday or Thursday and that Tuesday or Thursday is a business day in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. With this proposal, the Exchange would be able to open for trading series of options on IWM that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire.[54]

The interval between strike prices for the proposed Tuesday and Thursday IWM Short Term Option Daily Expirations will be the same as those for Tuesday and Thursday IWM Short Term Option Daily Expirations in SPY and QQQ, applicable to the Short Term Option Series Program.[55] Specifically, the Tuesday and Thursday IWM Short Term Option Daily Expirations will have a $0.50 strike interval minimum. As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Tuesday and Thursday IWM Short Term Option Daily Expiration series will be P.M.-settled.

Pursuant to Commentary .07(g), with respect to the Short Term Option Series Program, a Tuesday or Thursday expiration series shall expire on the first business day immediately prior to that Tuesday or Thursday, *e.g.,* Monday or Wednesday of that week, respectively, if the Tuesday or Thursday is not a business day.

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[56] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[57] This thirty (30) series restriction would apply to Tuesday and Thursday IWM Short Term Option Daily Expiration series as well. With this proposal, Tuesday and Thursday IWM Expirations would be treated the same as Tuesday and Thursday Expirations in SPY and QQQ. With respect to monthly option series, Short Term Option Daily Expirations expire in the same week in which monthly option series on the same class expire.[58] Further, as is the case today with other Tuesday and Thursday Short Term Option Daily Expirations, the Exchange would not permit Tuesday and Thursday Short Term Option Daily Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire.[59] Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days beyond the current week and are not business days in which standard expiration options series, Monthly Options Series, or Quarterly Options Series expire. The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled Tuesday and Thursday IWM Short Term Option Daily Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Tuesday and Thursday Short Term Option Daily Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Tuesday and Thursday for SPY and QQQ and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Tuesday and Thursday for SPY and QQQ.

Impact of Proposal To Add Tuesday and Thursday Expirations for Options on IWM

The Exchange notes that listings in the Short Term Option Series Program comprise a significant part of the standard listing in options markets. The below table sets forth the percentage of weekly listings as compared to monthly (standard expiration), quarterly, and Long-Term Option Series in 2023 in the options industry.[60] The Exchange notes that during this time period all options exchanges mitigated weekly strike intervals.

NUMBER OF STRIKES—2023

Expiration	Percent of total series (%)
Monthly	62.82
Weekly	17.22
LEAP	17.77
Quarterly	2.20

Similar to SPY and QQQ, the Exchange would limit the number of Short Term Option Daily Expirations for IWM to two expirations for Tuesday and Thursday expirations while expanding the Short Term Option Series Program to permit Tuesday, and Thursday

[51] The Exchange proposes to amend the Tuesday and Thursday expirations for IWM in Table 1 from ''0'' to ''2'' to permit Tuesday and Thursday expirations for options on IWM listed pursuant to the Short Term Option Series. *See* proposed Commentary .07(g) to Rule 6.4–O.

[52] *See* Commentary .07(g) to Rule 6.4–O

[53] *Id.*

[54] Today, IWM may trade on Mondays and Wednesdays, in addition to Fridays, as is the case for all options series.

[55] *See* Commentary .07(f) to Rule 6.4–O

[56] *See* Commentary .07(c) to Rule 6.4–O

[57] *See* Commentary .07(d) to Rule 6.4–O.

[58] *See* Commentary .07(g) to Rule 6.4–O.

[59] *See* Commentary .07(g) to Rule 6.4–O.

[60] Per Nasdaq ISE, this information was sourced from The Options Clearing Corporation (''OCC''). The information includes time averaged data for all 17 options markets through December 8, 2023. *See* Securities Exchange Act Release No. 99604 (February 26, 2024), 89 FR 15235 (March 1, 2024) (SR–ISE–2024–06).

expirations for IWM. Expanding the Short Term Option Series Program to permit the listing of Tuesday and Thursday expirations in IWM will account for the addition of 6.77% of strikes for IWM.[61] With respect to the impact to the Short Term Option Series Program on IWM overall, the impact would be a 20% increase in strikes.[62] With respect to the impact to the Short Term Options Series Program overall, the impact would be a 0.1% increase in strikes.[63] OTPs will continue to be able to expand hedging tools because all days of the week would be available to permit OTPs to tailor their investment and hedging needs more effectively in IWM.

NUMBER OF STRIKES—2023

Expiration	Percent of total series (%)
Monthly	35.13
Weekly	48.30
LEAP	12.87
Quarterly	3.70

Weeklies comprise 48.30% of the total volume of options contracts.[64] The Exchange believes that inner weeklies (first two weeks) represent high volume as compared to outer weeklies (the last three weeks) and would be more attractive to market participants. The introduction of IWM Tuesday and Thursday expirations will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that IWM Tuesday and Thursday expirations will allow market participants to purchase IWM options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[65] Specifically, the Exchange believes that its proposed rule change is consistent with Section 6(b)(5) [66] requirements in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, 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.

Monthly Options Series Program

The Exchange believes the introduction of Monthly Options Series will remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding hedging tools available to market participants. The Exchange believes the proposed monthly expirations will allow market participants to transact in the index and ETF options listed pursuant to the proposed rule change based on their timings as needed and allow them to tailor their investment and hedging needs more effectively. Further, the Exchange believes the availability of Monthly Options Series would protect investors and the public interest by providing investors with more flexibility to closely tailor their investment and hedging decisions in these options, thus allowing them to better manage their risk exposure.

The Exchange believes the Quarterly Options Series Program has been successful to date and the proposed Monthly Options Series program simply expands the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur at month's end in the same way the Quarterly Options Series Program has expanded the landscape of hedging for quarter-end news. Monthly Options Series will also complement Short Term Options Series, which will allow investors to hedge risk against events that occur throughout a month. The Exchange believes the availability of additional expirations should create greater trading and hedging opportunities for investors, as well as provide investors with the ability to tailor their investment objectives more effectively.

The Exchange notes the proposed terms of Monthly Options Series, including the limitation to five index and ETF option classes, are substantively the same as the current terms of Quarterly Options Series.[67] Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month. The proposed Monthly Options Series would fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes. As is the case with Quarterly Options Series, no Short Term Options Series may expire on the same day as a Monthly Options Series. Similarly, as proposed, no Monthly Options Series may expire on the same day as a Quarterly Options Series. The Exchange believes preventing listing series with concurrent expirations in a class will eliminate potential investors confusion and thus protect investors and the public interest. Given that Quarterly Options Series the Exchange currently lists are essentially Monthly Options Series that can expire at the end of only certain calendar months, the Exchange believes it is reasonable to list Monthly Options Series in accordance with the same terms, as it will promote just and equitable principles of trade. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Exchange and OPRA's quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

The Exchange further believes the proposed rule change regarding the treatment of Monthly Options Series with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Monthly Options Series will be aggregated with options overlying the same ETF or index for purposes of compliance with position (and exercise) limits, which is consistent with how position (and exercise) limits are currently imposed on series with other

[61] Nasdaq ISE sourced this information, which are estimates, from LiveVol®. The information includes data for all 17 options markets as of January 3, 2024. *See id.*

[62] Nasdaq ISE sourced this information, which are estimates, from LiveVol®. The information includes data for all 17 options markets as of January 3, 2024. *See id.*

[63] Nasdaq ISE sourced this information, which are estimates, from LiveVol®. The information includes data for all 17 options markets as of January 3, 2024. *See id.*

[64] This table sets forth industry volume. Weeklies comprise 48.30% of volume while only comprising 17.22% of the strikes. Nasdaq ISE sourced this information from OCC. The information includes data for all 17 options markets through December 8, 2023. See Securities Exchange Act Release No. 99604 (February 26, 2024), 89 FR 15235 (March 1, 2024) (SR–ISE–2024–06).

[65] 15 U.S.C. 78f(b).

[66] 15 U.S.C. 78f(b)(5).

[67] *Compare* proposed Commentary .09 to Rule 6.4–O *with* Commentary .08 to Rule 6.4–O

expirations (Short Term Options Series and Quarterly Options Series). Therefore, options positions within ETF or index option classes for which Monthly Options Series are listed, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options. The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. As mentioned above, the Exchange currently trades Quarterly Options Series in certain ETF classes, which expire at the close of business at the end of three calendar months (*i.e.,* the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Options Series, and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same ETF or index) and reporting requirements—would continue to apply.

Finally, the Exchange believes that the proposed technical change to Rule 6.4–O, Commentary.08 would add clarity, transparency and internal consistent to Exchange rules.

Low-Priced Stock Strike Price Interval Program

The Exchange believes the introduction of the Low-Priced Stock Strike Price Interval Program will remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding hedging tools available to market participants. In particular, the Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under $2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at $0.50 and had open interest of over 44,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[68] Currently the lowest strike listed is for $2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR, closed at $0.92 on August 9, 2023, and had open interest of 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[69] Similarly, the lowest strike listed is for $2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the-money puts. The Exchange's proposal will provide additional strikes in $0.50 increments from $0.50 up to $2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to any previous efforts to curb strike proliferation as those efforts focused on the removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below $2.50 to be eligible for the program.

The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is $0.50, there are only a maximum of four strikes that may be added ($0.50, $1.00, $1.50, and $2.00). Therefore, the Exchange does not believe that its proposal will undermine any previous efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that the proposed program's average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that the proposed program's average daily trading volume requirement is substantially greater than the average daily trading requirement currently in place on the Exchange for options on equity underlyings,[70] ADRs,[71] and broad-based indexes.[72]

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[73] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's OTPs and persons associated with its OTPs with the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its OTPs will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well as improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit

[68] *See* Yahoo! Finance, *https://finance.yahoo.com/quote/SOND/history?p=SOND* (last visited August 10, 2023).

[69] *Id.*

[70] *See* Rule 5.3–O(a)(3).

[71] *See* Rule 5.3–O(d)(3).

[72] *See* Rule 5.3–O(a)(7).

[73] 15 U.S.C. 78f(b)(1).

investors by giving them increased opportunities to execute their investment and hedging decisions.

Finally, the Exchange believes its proposal is designed to prevent fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in 5.3–O. Specifically, Rule 5.3–O(a) requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must be duly registered (with the Commission) and be an ''NMS stock'' (as defined in Rule 600 of Regulation NMS under the Act). Further, the underlying security is characterized by a substantial number of outstanding shares that are widely held and actively traded. In particular, Rule 5.3–O, provides that absent exceptional circumstances, an underlying security will not be selected for options transactions unless: (1) there are a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Act; and (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding 12 months. The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance with the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Rule 5.3–O address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed average daily volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

Expand STOS Program

Add Wednesday Expirations for Options on Certain ETPs

The Exchange believes that the proposal to expand the STOS Program to allow the Wednesday ETP Expirations (subject to the proposed limitation of two expirations beyond the current week) is consistent with the Act for the following reasons. Like Wednesday expirations in SPY, QQQ, and IWM, the proposed Wednesday ETP Expirations would protect investors and the public interest by providing the investing public and other market participants more choice and flexibility to closely tailor their investment and hedging decisions in these options and allow for a reduced premium cost of buying portfolio protection, thus allowing them to better manage their risk exposure.

The Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Series for Wednesday SPY, QQQ and IWM expirations. The Exchange also represents that it has the necessary system capacity to support the new expirations. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of these option expirations. As discussed above, the Exchange believes that its proposal is a modest expansion of weekly expiration dates for GLD, SLV, USO, UNG, and TLT given that it will be limited to two Wednesday expirations beyond the current week. Lastly, the Exchange believes its proposal will not be a strain on liquidity providers because of the multi-class nature of GLD, SLV, USO, UNG, and TLT and the available hedges in highly correlated instruments, as described above.

The Exchange believes that the proposal is consistent with the Act as the proposal would overall add a small number of Wednesday ETP Expirations by limiting the addition of two Wednesday expirations beyond the current week. The addition of Wednesday ETP Expirations would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers to continue to deploy capital more efficiently and improve market quality. The Exchange believes that the proposal will allow market participants to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT as these funds are most likely to be utilized by market participants to hedge the underlying asset classes.

Similar to Wednesday SPY, QQQ, and IWM expirations, the introduction of Wednesday ETP Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively, thus allowing them to better manage their risk exposure. Today, the Exchange lists Wednesday SPY, QQQ, and IWM Expirations.[74]

The Exchange believes the STOS Program has been successful to date and that Wednesday ETP Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the STOS Program has expanded the landscape of hedging. There are no material differences in the treatment of Wednesday SPY, QQQ, and IWM expirations compared to the proposed Wednesday ETP Expirations. Given the similarities between Wednesday SPY, QQQ, and IWM expirations and the proposed Wednesday ETP Expirations, the Exchange believes that applying the provisions in Commentary .07 to Rule 6.4–O that currently apply to Wednesday SPY, QQQ, and IWM expirations is justified and will benefit investors and minimize investor confusion by providing such expirations in a continuous and uniform manner.

Add Tuesday and Thursday Expirations for Options on IWM

The Exchange believes that IWM Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase IWM options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the proposal to permit Tuesday and Thursday Short Term Daily Expirations for options on IWM listed pursuant to the Short Term Option Series Program, subject to the proposed limitation of two nearest expirations, would protect investors and the public interest by providing the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in IWM options, thus allowing them to better manage their risk exposure. In particular, the Exchange believes the Short Term Option Series Program has been successful to date and that Tuesday and Thursday IWM against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. Similarly, the Exchange believes Tuesday and Thursday IWM Short Term Daily Expirations should

[74] *See* Commentary .07(g) to Rule 6.4–O, Table 1.

create greater trading and hedging opportunities and provide customers the flexibility to tailor their investment objectives more effectively. The Exchange currently lists SPY and QQQ Tuesday and Thursday Short Term Daily Expirations.[75]

With this proposal, Tuesday and Thursday IWM Expirations would be treated similar to existing Tuesday and Thursday SPY and QQQ Expirations and would expire in the same week that standard monthly options expire on Fridays.[76] Further, today, Tuesday and Thursday Short Term Option Daily Expirations do not expire on a business day in which monthly options series or Quarterly Options Series expire.[77] Today, all Short Term Option Daily Expirations expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire. There are no material differences in the treatment of Tuesday and Thursday SPY and QQQ Short Term Daily Expirations as compared to the proposed Tuesday and Thursday IWM Short Term Daily Expirations.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed Tuesday and Thursday IWM Short Term Daily Expirations, in the same way that it monitors trading in the current Short Term Option Series and trading in Tuesday and Thursday SPY and QQQ Expirations. The Exchange also represents that it has the necessary systems capacity to support the new options series. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of Tuesday and Thursday IWM Short Term Daily Expirations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed changes would allow the Exchange to compete on more equal footing with other options exchanges that have already adopted substantively identical rules as noted herein. Thus, the Exchange believes this proposal would encourage competition.

Monthly Options Series Program

The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as any Monthly Options Series the Exchange lists for trading will be available in the same manner for all market participants who wish to trade such options. The Exchange notes the proposed terms of the Monthly Options Series, including the limitation to five index and ETF option classes, are substantively the same as the current terms of Quarterly Options Series.[78] Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month, making the concept of Monthly Options Series in a limited number of index and ETF options not novel. The proposed Monthly Options Series will fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes. Monthly Options Series will trade on the Exchange in the same manner as other options in the same class.

The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as nothing prevents other options exchanges from proposing similar rules. As discussed above, the proposed rule change would permit listing of Monthly Options Series in five index or ETF options, as well as any other classes that other exchanges may list under similar programs. To the extent that the availability of Monthly Options Series makes the Exchange a more attractive marketplace to market participants at other exchanges, market participants are free to elect to become market participants on the Exchange.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. Similar to Short Term Options Series and Quarterly Options Series, the Exchange believes the introduction of Monthly Options Series will not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants. The Exchange believes Monthly Options Series will allow market participants to purchase options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposed rule change to provide positions in Monthly Options Series will be aggregated with positions in options contracts on the same underlying index or security for purposes of determining compliance with position (and exercise) limits will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as it will apply in the same manner to all market participants. The Exchange proposes to apply position (and exercise) limits to Monthly Options Series in the same manner it applies position limits to series with other expirations (Short Term Options Series and Quarterly Options Series). Therefore, positions in options in a class of ETF or index options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. Additionally, the Exchange does not believe this proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will address potential manipulative schemes and adverse market impacts surrounding the use of options.

Consequently, the Exchange does not believe that the proposed change implicates competition at all. Additionally, and as stated above, this proposal to accommodate the listing of options series that would expire at the close of business on the last business day of a calendar month is substantively similar to that of at least one other options exchange.[79]

Low-Priced Stock Interval Program

The Exchange does not believe that its proposed rule change will impose any burden on intramarket competition as the Rules of the Exchange apply equally to all OTPs and all of whom may trade the new proposed strikes if they so choose. Instead, the Exchange believes that investors and market participants will significantly benefit from the availability of finer strike price intervals for stocks priced below $2.50, which will allow them to tailor their investment and hedging needs more effectively. The Exchange's proposal is substantively identical to MIAX

[75] *Id.*

[76] *Id.*

[77] *See* Commentary .07(g) to Rule 6.4–O.

[78] *See* Commentary .08 to Rule 6.4–O.

[79] *See supra* note 4 (regarding SR–CBOE–2023–049).

Interpretations and Policies .11 and .12 to Rule 404.[80]

The Exchange does not believe that its proposed rule change will impose any burden on intermarket competition, as nothing prevents other options exchanges from proposing similar rules to list and trade options on low priced stocks. Rather the Exchange believes that its proposal will promote intermarket competition, as the Exchange's proposal will result in additional opportunities for investors to achieve their investment and trading objectives, to the benefit of investors, market participants, and the marketplace in general.

Expand STOS Program

Add Wednesday Expirations for Options on Certain ETPs

The Exchange does not believe that its proposed rule change to permit Wednesday expirations in certain ETPs will impose any undue burden on competition. In this regard and as indicated above, the Exchange notes that this proposed rule change is being proposed as a competitive response to the already-approved rule change submitted by Nasdaq ISE.[81]

While the proposal will expand the Short Term Options Expirations to allow Wednesday ETP Expirations to be listed on the Exchange, the Exchange believes that this limited expansion for Wednesday expirations for options on USO, UNG, GLD, SLV, and TLT will not impose an undue burden on competition; rather, it will meet customer demand. The Exchange believes that market participants will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT given multi-class nature of these products and the available hedges in highly correlated instruments, as described above. Similar to Wednesday SPY, QQQ, and IWM expirations, the introduction of Wednesday ETP Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Wednesday ETP Expirations. Further, the Exchange does not believe the proposal will impose any burden on intra-market competition, as all market participants will be treated in the same manner under this proposal.

Add Tuesday and Thursday Expirations for Options on IWM

Similar to SPY and QQQ Tuesday and Thursday Expirations, the introduction of IWM Tuesday and Thursday Short Term Daily Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and continue the reduction of the premium cost of buying protection. The Exchange believes that IWM Tuesday and Thursday Short Term Daily Expirations will allow market participants to purchase IWM options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to list and trade Short-Term Option Series with Tuesday and Thursday Short Term Daily Expirations. The Exchange notes that having Tuesday and Thursday IWM expirations is not a novel proposal, as SPY and QQQ Tuesday and Thursday Expirations are currently listed on the Exchange.[82] Additionally, as noted above, the Commission recently approved a substantively identical proposal of another exchange.[83]

Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[84] and Rule 19b–4(f)(6) thereunder.[85]

A proposed rule change filed under Rule 19b–4(f)(6)[86] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[87] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay would allow the Exchange to implement, without delay, its proposal to: (i) adopt a Monthly Option Series Program; (ii) adopt a Low-Priced Strike Priced Interval Program; (iii) permit the listing and trading of five additional classes with Short Term Option Daily Expirations, specifically, by permitting the listing of two Wednesday expirations for options on certain ETPs; and (iv) permit Tuesday and Thursday expirations on IWM. The Exchange further states the proposed rule change does not present any new or novel issues, as at least one other exchange permits each of the proposed programs and expirations.[88] Because the proposal does not raise any new or novel issues, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[89]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[80] *See supra* note 19 (regarding SR–MIAX–2023–36).

[81] *See supra* note 41 (regarding SR–ISE–2023–11).

[82] *See* Commentary .07(g) to Rule 6.4–O.

[83] *See supra* note 49 (regarding SR–ISE–2024–06).

[84] 15 U.S.C. 78s(b)(3)(A)(iii).

[85] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[86] 17 CFR 240.19b–4(f)(6).

[87] 17 CFR 240.19b–4(f)(6)(iii).

[88] *See supra* notes 4, 19, 41, and 49.

[89] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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) [90] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–43 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–NYSEARCA–2024–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–43 and should be submitted on or before July 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[91]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–12593 Filed 6–7–24; 8:45 am]

BILLING CODE 8011–01–P

[90] 15 U.S.C. 78s(b)(2)(B).

[91] 17 CFR 200.30–3(a)(12), (59).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before August 9, 2024.

ADDRESSES: Send all comments to, Allison Richards, Director, Shuttered Venue Operators Grant (SVOG) Program Office of Disaster Recovery and Resilience, Small Business Administration.

FOR FURTHER INFORMATION CONTACT: Allison Richards, Director, Shuttered Venue Operators Grant (SVOG), *Allison.richards@sba.gov,* 202–205–9168. Curtis B. Rich, Agency Clearance Officer, *curtis.rich@sba.gov,* 202–205–7030.

SUPPLEMENTARY INFORMATION: SBA will collect the information from small businesses and non-profits organizations that are eligible to apply for the Shuttered Venue Operator Grant program as authorized by section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116–260). SBA will use this information collection to make a threshold eligibility determination for the grant.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

PRA Control Number: 3245–0420.

(1) Title: Grant for Shuttered Venue Operators.

Description of Respondents: Small businesses and non-profits organizations.

Form Number: SBA Form 3515.

Total Estimated Annual Responses: 10,000.

Total Estimated Annual Hour Burden: 20,000.

Curtis B. Rich,

Agency Clearance Officer.

[FR Doc. 2024–12661 Filed 6–7–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2024–1064]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Operation of Small Unmanned Aircraft Systems Over People

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (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 to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 2, 2024. The collection involves persons who submit a means of compliance (MOC) or declaration of compliance (DOC) for FAA acceptance. The collection also involves development of remote pilot operating instructions, labeling, and retaining maintenance records. The information to be collected will be used to comply with the

requirements for small unmanned aircraft operations over people.

DATES: Written comments should be submitted by July 10, 2024.

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: Benjamin Walsh by email at: *ben.walsh@faa.gov;* phone: 202–267–8233.

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.

OMB Control Number: 2120–0775.

Title: Operation of Small Unmanned Aircraft Systems over People.

Form Numbers: N/A.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 2, 2024 (89 FR 22764). Under the authority of 49 U.S.C. 44807, the FAA is requiring that persons submit a means of compliance or declaration of compliance for FAA-acceptance to demonstrate compliance with the requirements in 14 CFR part 107, supbart D for small UAS operations over people. Persons may submit a means of compliance by providing the information required in part 107 to the email address listed on the FAA website at *uasdoc.faa.gov.* Persons may submit a declaration of compliance using the online form at *uasdoc.faa.gov.* Persons must also develop remote pilot operating instructions and provide labels for small UAS with a declaration of compliance for operations in Category 2 or 3 of part 107, subpart D. Operators of small UAS issued an airworthiness certificate under 14 CFR part 21 must retain records of all maintenance performed on their aircraft and records documenting the status of life-limited parts, compliance with airworthiness directives, and inspection status of the aircraft.

Respondents: Any person can submit a means of compliance for FAA acceptance. Manufacturers and persons who design or modify a small UAS to meet the requirements of part 107, subpart D, can submit a declaration of compliance. The FAA estimates that a total of 8 means of compliance and declarations of compliance will be submitted per year. Persons who submit a declaration of compliance for small UAS operated in Categories 2 or 3 are required to develop remote pilot operating instructions and label their small UAS in accordance with the requirements in part 107. Operators of small UAS that have a part 21 airworthiness certificate must retain certain maintenance records when operated under part 107, subpart D.

Frequency: On occasion.

Estimated Average Burden per Response: For submission of means of compliance or declaration of compliance: 50 hours per response. For remote pilot operating instructions: 150 hours per response. For labelling of small UAS: 2 hours per response. For part 107, Category 4 maintenance records: 1 hour per response.

Estimated Total Annual Burden: For means of compliance and declarations of compliance, the FAA estimates a total of 8 means of compliance and declarations of compliance submitted per year for an annual burden of 400 hours. The FAA estimates there will be one re-submission of a declaration of compliance for a total of 50 hours. For remote pilot operating instructions, the FAA estimates 8 instructions developed per year, for a total annual burden of 1,200 hours. For unmanned aircraft labels, the FAA estimates 8 labels designed per year, for a total annual burden of 16 hours. For part 107, Category 4 maintenance records, the FAA estimates 100 records per year, for a total annual burden of 100 hours.

Issued in Washington, DC, on June 5, 2024.

Joseph Morra,

Manager, Emerging Technologies Division, AFS–700.

[FR Doc. 2024–12665 Filed 6–7–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2024–0869]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: General Operating and Flight Rules

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The reporting and recordkeeping requirements of this collection are related to FAA rules governing the operation of aircraft (other than moored balloons, kites, rockets, unmanned free balloons, and small unmanned aircraft) within the United States. These reporting and recordkeeping requirements are necessary for the FAA to assure compliance with these provisions.

DATES: Written comments should be submitted by July 10, 2024.

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: John H. Attebury by email at: *john.h.attebury@faa.gov;* phone: (281) 929–7078.

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 the FAA's performance; (b) the accuracy of the estimated burden; (c) ways for the 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.

OMB Control Number: 2120–0005.

Title: General Operating and Flight Rules.

Form Numbers: N/A.

Type of Review: Renewal.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 20, 2024 (89 FR 19946). The reporting and recordkeeping requirements of 14 CFR part 91, General Operating and Flight Rules, are authorized by part A of subtitle VII of the revised title 49 of the United States Code. Part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets, unmanned free balloons and small unmanned aircraft) within the United States. The reporting and recordkeeping requirements prescribed by various sections of part 91 are necessary for FAA to assure compliance with these provisions. The information collected becomes a part of FAA's official records and is used only by the FAA for certification, compliance and enforcement, and when accidents, incidents, reports of noncompliance, safety programs, or other circumstances require reference to records. Without this information, the FAA would be unable to control and maintain the consistently high level of civil aviation safety we enjoy.

Respondents: Approximately 21,200 airmen, state or local governments, and businesses.

Frequency: On Occasion.

Estimated Average Burden per Response: 0.5 hours.

Estimated Total Annual Burden: 282,129 hours.

Issued in Washington, DC, on June 5, 2024.

D.C. Morris,

Aviation Safety Analyst, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2024–12657 Filed 6–7–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2024–0051; Summary Notice No. 2024–24]

Petition for Exemption; Summary of Petition Received; University of Alaska Anchorage

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 1, 2024.

ADDRESSES: Send comments identified by docket number FAA–2024–0051 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alexander Kem at (202) 267–7571, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 4, 2024.

Dan A. Ngo,

Manager, Part 11 Petitions Branch, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2024–0051.

Petitioner: University of Alaska Anchorage.

Section(s) of 14 CFR Affected: § 61.195(f).

Description of Relief Sought: Petitioner seeks relief from 14 CFR part 61.195(f) to allow University of Alaska Anchorage (UAA) flight instructors who have obtained at least 5 flight hours of pilot-in-command time in either Piper PA–30 Twin Comanche modified in accordance with a supplemental type certificate for counter rotating propellers or a Piper PA–39 Twin Comanche to give training required for the issuance of a certificate or rating in a multiengine airplane.

[FR Doc. 2024–12622 Filed 6–7–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0030]

Massachusetts Bay Transportation Authority'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 May 30, 2024, Massachusetts Bay Transportation Authority (MBTA) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP) in order to update its Positive Train Control (PTC) Onboard Computer (OBC) to Software Version 11.6. As this RFA involves a request for FRA's approval of proposed material modifications to an FRA-certified PTC system, including changes to address known software errors, FRA is publishing this notice and inviting public comment on MBTA's RFA to its PTCSP.

DATES: FRA will consider comments received by July 1, 2024. 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–2010–0030. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* 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 or train control system. Accordingly, this notice informs the public that, on May 30, 2024, MBTA submitted an RFA to its PTCSP for its Advanced Civil Speed Enforcement System II (ACSES II), which seeks FRA's approval to update its PTC OBC to Software Version 11.6 to address known functional errors in the OBC software. That RFA is available in Docket No. FRA–2010–0030.

Interested parties are invited to comment on MBTA's RFA to its PTCSP by submitting written comments or data. During FRA's review of MBTA'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. 2024–12587 Filed 6–7–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2024–0045]

Notice of Availability of a Final General Conformity Determination for the California High-Speed Rail System, Palmdale to Burbank Project Section

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: FRA is issuing this notice to advise the public that it is making a Final General Conformity Determination for the Palmdale to Burbank Project Section of the California High-Speed Rail (HSR) System.

FOR FURTHER INFORMATION CONTACT: Lana Lau, Supervisory Environmental Protection Specialist, Environmental Policy, Office of Environmental Program Management, telephone: (202) 923–5314, email: *Lana.Lau@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 23 U.S.C. 327 (section 327), the California High-Speed Rail Authority (CHSRA or Authority) has assumed FRA's environmental review responsibilities under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). However, under section 327, FRA remains responsible for compliance with the Clean Air Act General Conformity requirements. In compliance with NEPA and the California Environmental Quality Act (CEQA), the Authority published a Final Environmental Impact Record/Final Environmental Impact Statement (EIR/EIS) for the Palmdale to Burbank Project Section of the California High-Speed Rail (HSR) System on May 24, 2024.

FRA prepared a Draft General Conformity Determination, pursuant to 40 CFR part 93, subpart B, which establishes the process for complying with the General Conformity requirements of the Clean Air Act. FRA published a notice in the **Federal Register** on April 2, 2024 at 89 FR 22766, advising the public of the availability of the Draft Conformity Determination for a 30-day review and comment period. The Draft Conformity Determination was published at *http://www.regulations.gov,* Docket No. FRA–2024–0045. The comment period of the Draft Conformity Determination closed on May 2, 2024. FRA received one non-substantive comment on the Draft General Conformity Determination that was not germane to FRA's air quality analysis or determination.

FRA prepared the Final General Conformity Determination pursuant to 40 CFR part 93 subpart B and based on the Authority's coordination with the U.S. Environmental Protection Agency (USEPA) and South Coast Air Quality Management District (SCAQMD). The Authority has also consulted with the USEPA on the overall approach to General Conformity. FRA's analysis of the Project's potential emissions, completed in close collaboration with CHSRA, found that construction period emissions would exceed the General Conformity *de minimis* threshold for nitrogen oxides (NO_X) and carbon monoxide (CO) in certain calendar years. However, operation of the Project would result in an overall reduction of regional emissions of all applicable air pollutants and would not cause a localized exceedance of an air quality standard (during operations). Consistent with the General Conformity Rule, the Authority will ensure all remaining emissions that exceed *de minimis* thresholds, after implementation of impact avoidance and minimization features and onsite mitigation measures will be completely mitigated to zero through agreements with the applicable air districts. In addition, FRA concluded the Project would conform to the approved state implementation plan (SIP), based on localized CO modeling that shows that construction emissions exceeding the CO *de minimis* thresholds

will not result in a violation of the National Ambient Air Quality Standards. Based on this commitment and the localized CO modeling, FRA determined the Project will conform to the requirements in the approved SIP.

The Final General Conformity Determination is available at *http://www.regulations.gov,* Docket No. FRA–2024–0045, and FRA's website at *https://railroads.dot.gov/environment/environmental-reviews/clean-air-act-california-general-conformity-determinations.*

Issued in Washington, DC.

Marlys Ann Osterhues,

Director, Office of Environmental Program Management.

[FR Doc. 2024–12646 Filed 6–7–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Public Transportation on Indian Reservations Program; Tribal Transit Program; Response to Comments

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Responses to the request for comments and in-person and virtual consultations.

SUMMARY: This notice summarizes and responds to comments the Federal Transit Administration (FTA) received in response to an August 15, 2023, **Federal Register** notice, a September 25, 2023, in-person consultation session, and a November 2, 2023, virtual consultation session regarding how the FTA Tribal Transit competitive program and technical assistance should be provided to Tribes.

DATES: *Applicable date:* June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Elan Flippin-Jones, Office of Program Management, (202) 366–3800 or email *TribalTransit@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Program Overview

Federal public transportation law (49 U.S.C. 5338(a)(2)(F) and 49 U.S.C. 5311(j)), as amended by the Infrastructure Investment and Jobs Act (Pub. L. 117–58, the Bipartisan Infrastructure Law or BIL), authorizes the Public Transportation on Indian Reservations Program (the Tribal Transit Program or TTP) for Fiscal Years (FY) 2022–2026. The TTP is funded as a takedown from the FTA's Formula Grants for Rural Areas Program under 49 U.S.C. 5311. Eligible direct recipients are federally recognized American Indian Tribes and Alaskan Native Villages, groups and communities providing public transportation in rural areas, as identified by the U.S. Department of the Interior (DOI) Bureau of Indian Affairs (BIA) and published in the **Federal Register** (89 FR 944). The TTP funds are allocated for grants to eligible recipients for any purpose eligible under 49 U.S.C. 5311 including capital, operating, and planning projects. The TTP includes a formula component and a competitive component. BIL authorizes a total of $229 million over five years, of which $183.3 million is for the TTP formula program, and $45.8 million for the TTP competitive grant program.

Based on the published solicitation of comments, and in-person and virtual consultations referenced in this notice, FTA is announcing certain policy changes to the TTP competitive program that may significantly affect Tribes. Pursuant to USDOT Order 5301.1A Department of Transportation Tribal Consultation Policy and Procedures, (*https://www.transportation.gov/mission/department-transportation-tribal-consultation-policy-and-procedures*) FTA, as an operating administration (OA) of the United States Department of Transportation (USDOT), is committed to fostering and facilitating positive government-to-government consultations with federally recognized Indian Tribes before implementing any changes to FTA policies, programs, or services that may have Tribal implications.

This notice is consistent with the policies and directives of Executive Order (E.O.) 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249). The Federal Government's commitment to implement E.O. 13175 is reaffirmed in the Biden Administration's January 26, 2021, Presidential Memo on Tribal Consultation and Strengthening Nation-to-Nation Relationships (*https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/*) and the November 30, 2022, Presidential Memo on Uniform Standards for Tribal Consultation (*https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/*).

The TTP has been administered under the results of the previous consultation for over a decade. During this time frame, funding and the number of Tribes participating in the TTP has increased, and Tribes have dealt with unforeseen circumstances related to the COVID–19 pandemic, supply chain disruptions, and increases in the cost of goods and services. For example, with the authorization of BIL, the funding amount made available under the TTP competitive program increased by 83 percent over levels authorized under the Fixing America's Surface Transportation (FAST) Act. Furthermore, since FY 2013, the number of Tribes receiving funding under the TTP formula program has grown from 110 Tribes to 132 Tribes in FY 2024. Therefore, in light of these changing circumstances, FTA consulted with Tribal recipients to ensure the TTP policies are being administered in effective and beneficial ways.

B. Outreach and Consultation Activities in 2023

1. Outreach and Meetings

An in-person consultation was held in conjunction with the National Transportation in Indian Country Conference (NTICC) in Anchorage, Alaska on September 25, 2023.

Additionally, a virtual consultation was on held on November 2, 2023. Tribes that are eligible recipients of FTA's TTP were encouraged to attend one or both of these meetings. Comments made at these meetings informed FTA's decision-making.

2. Consultation Activities in 2023

- In-Person listening session at the Department of Transportation Tribal Transit Symposium held in Oklahoma City: May 24–25, 2023.
- Publication of a **Federal Register** notice with proposed program changes to the TTP competitive program: August 15, 2023 at 88 FR 55498.
- In-person consultation meeting at the NTICC: September 25, 2023.
- Virtual outreach meeting: November 2, 2023.

C. Changes to the Competitive Program: Comments and Responses

A total of $45,812,610 is authorized for FY 2022–2026 for the TTP competitive grant program. Funds may be awarded to federally recognized Indian Tribes for any purpose authorized by 49 U.S.C. 5311. The

outcome of this consultation will impact the administration of TTP competitive funding awarded for FY 2024–2026. For FY 2024–2026, a total of $28,123,961 is made available under the TTP competitive program.

Funding program	FY 2024	FY 2025	FY 2026
Tribal Transit Competitive Program	$9,169,076	$9,358,487	$9,596,398

Program requirements for the TTP can be found in the FTA Circular 9040.1G: Formula Grants for Rural Areas: Program Guidance and Application Instructions (*https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/formula-grants-rural-areas-program-guidance-and-application*).

FTA received 29 comments from Tribes and other stakeholders and organizations from the in-person and virtual consultations, and through the docket opened for response to the August 15, 2023, **Federal Register** notice. The comments received from the Tribes and Tribal organizations were generally favorable to FTA's proposed implementation of the TTP. This section outlines the specific questions FTA asked during the consultations, the comment responses received, and FTA's response.

1. Should TTP competitive program funds continue to support capital, operating and planning projects? These types of projects are currently eligible under the program. Limitations on certain activities will leave more funding available for the other types of activities. For example, limiting or removing operating projects as an eligible project type will leave more funding available for capital and planning projects.

Comments: Several Tribes commented that capital and operating assistance are important for their Tribe's specific transit needs. One Tribe commented that capital funds are needed for the replacement of vehicles. Another Tribe commented that capital funds are vital to focus on climate change.

Response: FTA will continue to support eligible capital, operating, and planning projects under the TTP competitive program. Additionally, Tribes are eligible to receive funding under other FTA programs such as the Buses and Bus Facilities Competitive Program (49 U.S.C. 5339(b)), which makes Federal resources available to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, including technological changes or innovations to modify low or no emission vehicles or facilities.

2. Should operating assistance under the TTP competitive program be limited based on the amount of TTP formula allocation received? Prior to the pandemic, FTA limited operating assistance to applicants who receive less than $20,000 under the TTP formula program. This threshold preserves TTP competitive funds for larger capital projects. Increasing or removing this threshold would potentially reduce the amount of funding available for capital projects.

Comments: No comments were received for this question.

Response: As in recent years, FTA will continue to allow all eligible Tribes to apply for operating assistance with no threshold implemented under the TTP competitive program.

3. Should the TTP competitive program funds continue to support start-up, expansion, and replacement capital projects? These projects are currently eligible under the program. Should FTA prioritize start-up projects in order to advance Tribal transit providers into the formula program? Once a Tribal transit provider begins operating service and providing service data to the National Transit Database, the provider will be eligible to receive TTP formula funds.

Comments: Two Tribes commented that FTA should establish separate TTP competitive programs that support planning, operating, capital, and start-up projects.

Response: Separating start-up projects from existing systems into two separate competitive programs would not increase the available funding. FTA will continue to administer the TTP competitive program as such and support eligible start-up, expansion, and replacement capital projects, as well as support planning and operating projects. This approach gives FTA maximum flexibility to award funding where it is needed most in a particular fiscal year under the TTP competitive program.

4. Should FTA establish a minimum and/or maximum grant amount under the TTP competitive program? Currently, there is no minimum or maximum set for allocations under this program. However, planning grants are capped at $25,000. Establishing a maximum grant amount would preserve funds for additional projects but may prevent larger projects from being funded at the full request.

Comments: One Tribe commented that establishing a minimum or maximum grant amount under the TTP competitive program is too restrictive and there should be no funding request limits.

Response: There will be no set minimum or maximum grant award amount for capital or operating projects. FTA will fund capital and operating projects based on the merit of the application and the Tribe's ability to successfully address all evaluation criteria.

5. Should FTA continue to cap planning grants at $25,000 under the TTP competitive program? Should FTA retain the cap for planning grants but set it at a different amount? This cap preserves TTP competitive funds for larger capital projects.

Comments: Many Tribes commented that there should be an increase to the cap on planning grants under the TTP competitive program. Several Tribes commented that the cap for planning grants should be increased to $50,000.

Response: Starting in FY 2024, FTA will increase the cap on planning grants to $50,000 under the TTP competitive program.

6. Should FTA require a local match of 10 percent of total project costs for both capital and operating assistance projects under the TTP competitive program? If so, should FTA continue to include an option for Tribes to submit a local match waiver request? In recent years, there has been no match required for either the TPP competitive or formula programs. However, in the past, a 10 percent match was required on TTP competitive program projects, unless the Tribe applied for a hardship waiver. Requiring a local match would allow for more projects to be funded but may discourage some Tribes from applying for funding.

Comments: Several Tribes commented in favor of eliminating the local match requirement or expanding the hardship waiver. One Tribe commented that it is difficult to obtain a match for smaller Tribal communities. Another Tribe commented that the local match hinders the Tribe's ability to apply for funds for needed programs. Another Tribe stated that it is discouraged from applying for grants where local match is required because of the administrative factor.

Response: FTA will not require a local match for either capital or operating assistance projects under the TTP

competitive program. FTA already does not require a match for planning projects. FTA will still permit Tribes to voluntarily provide local match or contribute to their projects with eligible matching funds.

7. Should FTA retain the condition that indirect costs not exceed 10 percent of each TTP competitive grant allocation? Providing a cap on the percentage of a grant that can be applied to indirect costs reserves more funding for capital projects but may underestimate the true amount of indirect costs attributable to a project.

Comments: One Tribe commented that the 10 percent is limited, while indirect cost expenses are significantly greater. Two Tribes commented to eliminate indirect cost eligibility. Another Tribe supported retaining the 10 percent indirect cost cap.

Response: FTA will retain the condition that indirect costs do not exceed 10 percent of each TTP competitive grant allocation. This will ensure the limited competitive resources are spent on tangible transit services and equipment.

8. Should FTA continue to provide Tribes 90 days to submit applications under the TTP competitive program Notice of Funding Opportunity? In the past, FTA has had either a 60-day or a 90-day deadline for application submission under the TTP competitive program.

Comments: Two Tribes commented that FTA should maintain the 90-day window to submit proposals.

Response: Since 2022, proposals under the TTP competitive program have been required to be submitted within 90 days. FTA will continue to provide Tribes 90 days to submit proposals under the TTP competitive program Notice of Funding Opportunity.

9. Should FTA examine or alter any other aspect of the TTP competitive program?

Comments: Several comments were received from Tribes requesting additional funding be made available under the TTP competitive program. One Tribe commented that FTA should consider listing examples of applications that were not funded.

Response: In FY 2023, FTA allocated $9.9 million for capital, operating, and planning projects. The BIL includes nearly $46 million in competitive funding over five years for the TTP, an increase of nearly 83 percent. FTA will continue to offer debrief meetings to unsuccessful applicants. During the debrief, FTA explains why the competitive application was not funded and provides technical assistance that is intended to assist the Tribe in submitting a more competitive application in a subsequent competition. Since 2023, FTA has conducted approximately 20 debriefs for unsuccessful Tribal applicants.

FTA also asked whether any Tribes had comments about the administration of the TTP formula program, however no comments were received on that topic.

D. Tribal Transit Technical Assistance Improvements

Through the Tribal Transit Technical Assistance Assessments Initiative, FTA collaborates with TTP recipients to review processes and identify areas in need of improvement, and then assists by offering solutions to address these needs—all in a supportive manner that results in technical assistance. These assessments include discussions of compliance areas pursuant to FTA's Master Agreement (*https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements*), site visits, promising practices reviews, and technical assistance from FTA and its contractors. These assessments also provide FTA with opportunities to learn more about Tribal perspectives. To date, FTA has conducted 105 assessments and will conduct 34 additional assessments by the end of the FY 2024 assessment cycle.

FTA also offers technical assistance to Tribes through its National Rural Transit Assistance Program (National RTAP) (*https://www.nationalrtap.org/*) and FTA Regional Offices (*https://www.transit.dot.gov/about/regional-offices/regional-offices*) provide direct technical assistance to Tribal recipients in their respective regions. FTA sought comments on its technical assistance efforts through the following question:

1. How can FTA improve its technical assistance efforts for Tribal recipients?

Comments: Two commenters requested more training resources for TrAMS and National Transit Database reporting. Two Tribes commented that more training should be available for transit planning and resources for the implementation of start-up transit services.

Response: FTA will continue to improve, enhance, and expand technical assistance efforts for TrAMS and NTD. National RTAP offers resources for Tribal and rural transit providers and will continue to offer those resources and expand their technical assistance to include trainings on the implementation of a Tribal transit system. Some of the currently available National RTAP resources can be found at: *https://www.nationalrtap.org/Toolkits/Transit-Managers-Toolkit/Tribal-Transit/Welcome.*

Veronica Vanterpool,

Acting Administrator.

[FR Doc. 2024–12607 Filed 6–7–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Meeting of the Transit Advisory Committee for Safety

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The Federal Transit Administration (FTA) announces a public meeting of the Transit Advisory Committee for Safety (TRACS).

DATES: The TRACS meeting will be held on June 24, 2024, from 10:00 a.m. to 4:30 p.m. Eastern Time and June 25, 2024, from 9:00 a.m. to 2:00 p.m. Eastern Time. Requests to attend the meeting in person or virtually must be received no later than June 17, 2024. Requests for disability accommodations must be received no later than June 17, 2024. Requests to verbally address the committee during the meeting must be submitted with a written copy of the remarks to the U.S. Department of Transportation (DOT) no later than June 17, 2024. Requests to submit written materials to be reviewed during the meeting must be received no later than June 17, 2024.

ADDRESSES: The meeting will be held in person at DOT Headquarters, 1200 New Jersey Avenue SE, Washington, District of Columbia, 20590 and virtually via Zoom for Government. Any committee related requests should be sent by email to *TRACS@dot.gov.* The virtual meeting's online access link and a detailed agenda will be provided upon registration. They will also be posted on the TRACS web page at: *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs* one week in advance of the meeting. A copy of the meeting minutes and other TRACS related information will also be available on the TRACS web page.

FOR FURTHER INFORMATION CONTACT: Joseph DeLorenzo, TRACS Designated Federal Officer, Associate Administrator, FTA Office of Transit Safety and Oversight, (202) 366–1783, *Joseph.DeLorenzo@dot.gov;* or Bridget Zamperini, TRACS Program Manager,

FTA Office of Transit Safety and Oversight, *TRACS@dot.gov.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., ch. 10). TRACS is composed of up to 25 members representing a broad base of perspectives on transit safety necessary to discharge its responsibilities. Please see the TRACS web page for additional information at *https://www.transit.dot.gov/regulations-and-guidance/safety/transit-advisory-committee-safety-tracs.*

I. Background

The U.S. Secretary of Transportation (Secretary) established TRACS in accordance with FACA to provide information, advice, and recommendations to the Secretary and FTA Administrator on matters relating to the safety of public transportation systems.

II. Agenda

TRACS Meeting—Monday, June 24, 2024 (Day One, 10 a.m.–4:30 p.m. ET):

1. 10:00 a.m.–10:15 a.m. ET: Welcoming Remarks from Bridget Zamperini, TRACS Program Manager
2. 10:15 a.m.–10:25 a.m. ET: TRACS Designated Federal Office (DFO) Remarks from Joe DeLorenzo, Associate Administrator for Transit Safety and Oversight (TSO) and Chief Safety Officer
3. 10:25 a.m.–10:40 a.m. ET: Introduction from Veronica Vanterpool, FTA Deputy Administrator
4. 10:40 a.m.–10:50 a.m. ET: Break
5. 10:50 a.m.–11:00 a.m. ET: Updates from TRACS Chairperson and Vice Chairperson, Jim Keane and Lisa Staes
6. 11:00 a.m.–11:30 a.m. ET: Update from Advancing Rider and Worker Safety Subcommittee Lead, Raymond Lopez
7. 11:30 a.m.–12:00 p.m. ET: Update from Reducing Bus Collisions, Subcommittee Lead, Santiago Osorio
8. 12:00 p.m.–1:00 p.m. ET: Lunch
9. 1:00 p.m.–1:30 p.m. ET: Update from Cyber and Data Security Systems Subcommittee Lead, Brian Alberts
10. 1:30 p.m.–4:10 p.m. ET: Subcommittee Breakout Working Sessions
11. 4:10 p.m.–4:30 p.m. ET: Summary of Deliverables and Concluding Remarks

TRACS Meeting—Tuesday, June 25, 2024 (Day Two, 9 a.m.–2 p.m. ET):

1. 9:00 a.m.–9:15 a.m. ET: Welcoming Remarks from Bridget Zamperini, TRACS Program Manager
2. 9:15 a.m.–11:30 a.m. ET: Subcommittee Breakout Working Sessions
3. 11:30 a.m.–12:15 p.m. ET: Lunch
4. 12:15 p.m.–12:45 p.m. ET: Advancing Rider and Worker Safety Subcommittee Presentation and Discussion
5. 12:45 p.m.–1:15 p.m. ET: Reducing Bus Collisions Subcommittee Presentation and Discussion
6. 1:15 p.m.–1:45 p.m. ET: Cyber and Data Security Systems Subcommittee Presentation and Discussion
7. 1:45 p.m.–1:55 p.m. ET: Public Comments
8. 1:55 p.m.–2:00 p.m. ET: Summary of Deliverables, Next Steps, and Concluding Remarks

III. Public Participation

The meeting will be open to the public. Members of the public who wish to participate are asked to register via email by submitting their name and affiliation to the email address listed in the **ADDRESSES** section.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the email address listed in the **ADDRESSES** section.

There will be a total of 30 minutes allotted for oral comments from members of the public at the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request with the individual's name, address, and organizational affiliation to the email address listed in the **ADDRESSES** section.

Written and oral comments for consideration by TRACS during the meeting must be submitted no later than the deadline listed in the **DATES** section to ensure transmission to TRACS members prior to the meeting. Comments received after that date will be distributed to the members but may not be reviewed prior to the meeting.

Joseph P. DeLorenzo,

Associate Administrator for Transit Safety and Oversight.

[FR Doc. 2024–12586 Filed 6–7–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2024–0042]

Privacy Act of 1974; System of Records

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, DOT.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation (DOT) proposes to update and reissue a Privacy Act System of Records (hereafter referred to as ''Notice'') titled, ''Department of Transportation, Federal Aviation Administration DOT/FAA 847 Aviation Records on Individuals.'' This Notice covers records the FAA maintains for airman certification and training, safety inspections performed by the FAA, and actions under the FAA's compliance and enforcement program that are initiated against individuals who violate FAA statutes and regulations.

DATES: Submit comments on or before July 10, 2024. The Department may publish an amended Systems of Records Notice (hereafter ''Notice'') in light of any comments received. This modified system will be effective immediately and the modified routine uses will be effective July 10, 2024.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2024–0042 by any of the following methods:

- *Federal e-Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2024–0042. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if

submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Karyn Gorman, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or 202.366–3140.

SUPPLEMENTARY INFORMATION:

Notice Updates

This Notice update includes substantive changes to: system location, system manager, authorities, categories of individuals, categories of records, record source categories, routine uses of records maintained in the system, policies and practices for the retrieval of records, policies, and practices for retention and disposal of records, and record access procedures; and non-substantive changes to: administrative, technical and physical safeguards, contesting record procedures, and notification procedures. Additional updates include editorial changes to simplify and clarify language, reformatting the text of the previously published Notice to align with the requirements of the Office of Management and Budget Circular (OMB) A–108, and to ensure consistency with other notices issued by the DOT.

Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Federal Aviation Administration (FAA) proposes to update and reissue a DOT Privacy Act System of Records titled, ''DOT/FAA 847 Aviation Records on Individuals.'' To provide the public with greater transparency and accountability to its business processes and data collection, the FAA updated this Notice to group records more precisely and consolidate records with similar purposes, authorities, categories of individuals, categories of records, records sources, and retention timeframes. Consequently, this Notice now covers only those records the FAA maintains for airman certification and training, including credentials for individuals such as Air Traffic Control Specialists (ATCSs); safety inspections performed by the FAA; and compliance and enforcement actions initiated against individuals who violate FAA statutes and regulations. Additionally, copies of records maintained in systems that are owned and managed by the FAA are also included in this Notice but not referenced specifically as they are not the source systems. Previously, this Notice also covered airmen's medical records and records pertaining to accidents, incidents, and investigations. These records are now covered by two separate and new Systems of Records Notices (SORNs). As for the two new SORNs, the FAA published DOT/FAA 856 (''Airmen Medical Records'') [1] which covers records maintained for the required airmen medical certification process initiated through the airmen medical certificate application. Additionally, the FAA published DOT/FAA 857 (''Accidents, Incidents and Investigations'') [2] which covers records of certificated airmen, remote pilots in command (PICs), non-certificated individuals, and non-airmen, who have been involved in transportation incidents and/or accidents. The breakout of the notices will enable the FAA to provide a more detailed and nuanced description of these records in the respective notices.

This Notice covers the airmen records for the following processes:

Certification and Training

Airmen certification is the process, as defined by 49 United States Code (U.S.C.) 44703, by which the FAA issues certificates as evidence that an individual is authorized to exercise certain privileges, such as flying aircraft of specific categories. The certification process begins when an individual submits an airman certification application to the FAA for review. For each certificate application type, the individual who is submitting the application must submit the required documentation in accordance with the applicable parts of 14 Code of Federal Regulations (CFR). Once the FAA receives the application, a certifying official will identify the applicant in accordance with the procedures described in the Drug Enforcement Assistance Act of 1988, Public Law 100–690, 102 Stat. 4181 (1988). The certifying official determines if the applicant meets the requested certification type's regulatory eligibility requirements. The certifying official identifies the applicant by viewing the applicant's driver's license, passport, military identification, or other government-issued identification, as provided in applicable parts of 14 CFR. If copies of identification are presented, these records become part of the applicant's file and are retained per the applicable records retention schedule. Thereafter, the certifying official assigns the applicant practical tests, as required, and records the test results. Once the certifying official signs off on the test results and approves the application, the FAA's Airmen Certification Branch reviews all airmen certificate applications and supporting documents and issues certificates to airmen.

A related process is the credentialing of ATCSs (FAA and Department of Defense). Credentialing refers to the ability of these individuals to be rated and hold job positions such as radar and tower specialists. The credentialing process for these ATCSs is governed by FAA Order 8000.90, ''Air Traffic Safety Oversight Credentialing and Control Tower Operator Certification Programs'' and FAA Order 7720.1, ''Certification and Rating Procedures for Department of Defense (DoD) Personnel.'' [3] The individuals hired into the FAA for these two job categories are further evaluated by their FAA Proficiency Managers (PMs) and Designated Examiners (DEs) to determine if they can be rated. These individuals provide their name, birth month, work location, and work email before being assigned a credential number by the FAA. If these individuals fail to be rated, they are dismissed from the selection program and their credentials are made inactive. Ratings are valid for not more than two years and are typically renewed during the credential holder's birth month. If ratings are not renewed or individuals are dismissed, the credentials are made inactive and records are retained per the applicable records retention schedule.

Safety Inspections

To achieve safety in civil aeronautics, the FAA established regulatory standards and requirements, found in 14 CFR parts 1–199, under the statutory authority in 49 U.S.C. subtitle VII. As part of its aviation oversight responsibilities, the FAA monitors and tracks oversight, inspections, and certification of organizations and individuals. Moreover, the agency captures the overall results of the Aviation Safety Inspectors' (ASIs) inspections and surveillance work.

[1] Department of Transportation DOT/FAA 856 Airmen Medical Records (88 FR 37301—July 7, 2023).

[2] Department of Transportation DOT/FAA 857 Accidents, Incidents and Investigations (88 FR 73070—November 24, 2023).

[3] Orders & Notices (*faa.gov*).

During the inspection/surveillance, the ASIs observe adherence to instructions, procedures, and operations using the relevant federal aviation regulations. The inspections could originate from the ASIs' observations of unsafe practices and discrepancies, notifications by third parties of unsafe operations, or routine surveillance activities.

FAA personnel, such as managers, supervisors, principal inspectors, and others are able to effectively plan the required annual work programs, to prioritize activities and specific job tasks, and to analyze the safety and compliance status of various elements throughout the air transportation industry. The data collected during these inspections may include the airman's full name, address, phone number, fax number, email address, and Airman Certificate Number, which could be the airman's social security number.

The FAA additionally provides safety courses, flight instruction, flight training, seminars, and awards to members of the aviation industry, including airmen (pilots including remote pilots and Aviation Maintenance Technicians), with the aim of lowering the nation's aviation accident rate. The trainings are part of voluntary pilot proficiency and aviation maintenance programs and are provided by industry volunteers as well as FAA personnel.

Enforcement Actions

Generally, enforcement actions begin when investigative personnel issue a Letter of Investigation (LOI) to an individual when it appears that enforcement action is warranted to address that individual's apparent statutory or regulatory violation. The FAA issues LOIs to certificated individuals and to uncertificated individuals (*e.g.,* passengers). An LOI provides the individual with notice that the individual is under investigation for an apparent statutory or regulatory violation. Additionally, an LOI provides the individual with an opportunity to respond to the contents of the letter. Generally, an individual is not required to respond.

Information that the individual provides is included in the Enforcement Investigative Report (EIR) generated by the investigating office. The EIR provides a means to assemble, organize, and present all information relevant to apparent violations and sanction determinations obtained during an investigation in matters for which EIRs are applicable. The investigating office creates the EIR using FAA Form 2150–5. The EIR contains specific information about the alleged violator, which includes their name, mailing address, date of birth, gender, certification number, certificate type, and employer name. The investigating office manually enters details about the alleged violation into the Enforcement Information System (EIS), or the EIS receives this information from other FAA systems. If the investigating office determines that legal enforcement action is required, it electronically transfers the matter, including the EIR, to the FAA Office of the Chief Counsel (AGC) to determine the appropriate course of action. AGC stores the EIR in its Case and Document Management System (CDMS).

Stakeholder Feedback Tracking

FAA employees and external individuals can provide feedback on any Office of Aviation Safety (AVS) business process to the FAA via the following website: *https://www.faa.gov/about/office_org/headquarters_offices/avs/stakeholder_feedback.* The stakeholder feedback form is used by different organizations within AVS. Only feedback records forwarded to the Quality Assurance Reporting program are covered under this Notice as they are retrievable by an identifier. Other feedback records are not covered under this Notice. Of the quality assurance records covered by this Notice, the personal information included in the feedback could consist of name, phone number, and email address. For example, information provided could be that a specific named employee at a repair station was especially helpful. This could also include the name and contact information of external witnesses to issues that are reported.

Flight Standards Service Document Repository

FAA's Flight Standards Service (FS) and the Office of Hazardous Materials Safety (AXH) will maintain a single data repository to store documents associated with continued operational safety, certification, oversight management, enforcement, and other business processes. Certificate holders' records including manuals and airmen check ride submissions, as well as EIRs are the types of records that would be covered under this Notice. Other records, such as documents related to Accidents and Incidents, would be covered under the Accidents, Incidents and Investigations SORN. Similarly, there may be additional SORNs that apply to the documents maintained in this repository. The types of personal information that could be covered under this Notice consist of but are not limited to, the individual's name, address, phone number, past employment history, and education.

SORN Update

The previous version of this SORN covered additional categories of information and individuals. For purposes of transparency, the FAA removed those categories of records from this updated SORN and has developed two new SORNs (the ''Airmen Medical Records'' SORN and the ''Accidents, Incidents and Investigations'' SORN) to better group categories of records. The ''Airmen Medical Records'' SORN covers all records related to airmen medical certification, including applications and subsequent approvals and rejections. Additionally, it includes drug and alcohol testing records and records relating to test results and refusals to submit to testing. The ''Accidents, Incidents and Investigations'' SORN covers all records related to general aviation accident/incident records and air carrier incident records. The FAA is updating this existing Notice to remove all references to these records and to make the following substantive changes:

1. System Location: This Notice updates the system location for all of the systems covered by this Notice. All of the addresses listed in the current Notice are hereby removed. However, copies of records may be maintained in hard copy or within systems owned and managed by the FAA.

2. System Manager: This Notice updates the system manager to include relevant contact information for all systems covered under this Notice.

3. Authorities: This Notice updates the authorities to reflect those pertaining to the certification and training, safety inspections, and enforcement action records being covered under this Notice. Additionally, this notice updates the authorities to reflect records collected for stakeholder feedback tracking and the Flight Standards document repository. This update removes the following authorities: 49 United States Code (U.S.C.) 45101, 49 U.S.C. 45102; 49 U.S.C. 45103; 49 U.S.C. 45104; and 49 U.S.C. 45105. This Notice adds the following authorities: 49 Code of Federal Regulations (CFR) part 175.31; and 14 CFR parts 61 and 65.

4. Categories of Individuals: This Notice updates the categories of individuals to reflect the individuals associated with the certification and training, safety inspections, and actions under the FAA's compliance and enforcement program being covered under this Notice. This includes individuals who provide feedback to the

FAA on its employees and business processes. This Notice removes any references to individuals who are deceased, individuals now covered by the two new SORNs, and individuals who are not the subjects of the data collection (*i.e.,* employees of drug and alcohol testing facilities, witnesses) who do not have Privacy Act rights to information covered under this SORN.

5. Categories of Records: This Notice updates the categories of records to remove the Compliance and Enforcement Tracking System (CETS) records since they do not require coverage under this or any other Privacy Act Notice as those records are not retrieved by personal identifiers. Other records being removed include those related to drug and alcohol testing, the physical and mental well-being of airmen, reports of fatal accidents, and accident investigations. The Notice additionally removes reference to the Safety Performance Analysis System (SPAS) since the system contains copies of records contained in other systems. The records added to this Notice are the contact information of the airmen's U.S. designated agents for service. These records are not referenced separately but are included under the categories of name, address, email, telephone, and fax number. Additionally, personal information on individuals providing feedback to the FAA is not referenced separately and is included under the categories of name, telephone number, email address, employer name, mailing address, and tracking number. Finally, copies of identifying documents retained in airmen files are added to this Notice.

6. Record Source Categories: This Notice updates the record source categories to reflect only those record sources of airmen certification and training, safety inspections, and compliance and enforcement records. The record sources being removed from this Notice include those pertaining to medical records and drug and alcohol testing records and test results, and those pertaining to aviation accident/incident records. This Notice adds the Office of Commercial Space Transportation personnel and Office of Airports personnel as new sources of compliance and enforcement action records. Additionally, the Notice adds individuals providing feedback to the FAA.

7. Routine Use: The Notice updates the routine uses to remove the following system-specific routine uses because they are no longer applicable to this Notice:

(a) Use contact information to inform airmen of meetings and seminars conducted by the FAA regarding aviation safety; and

(b) Provide information about airmen through the airmen registry certification system to the Department of Health and Human Services, Office of Child Support Enforcement, and the Federal Parent Locator Service that locates non-custodial parents who owe child support. Records in this system are used to identify airmen to the child support agencies nationwide in enforcing child support obligations, establishing paternities, establishing and modifying support orders, and location of obligors. Records named within the section on Categories of Records will be retrieved using ''Connect: Direct'' through the Social Security Administration's secure environment.

The routine uses transferred to the Airmen Medical Records SORN and removed from this Notice are as follows:

(a) Providing the following categories of information to the public upon request:

- Information relating to an individual's physical status or condition used to determine statistically the validity of FAA medical standards;

(b) Information relating to an individual's eligibility for medical certification, requests for exemption from medical requirements, and requests for review of certificate denials;

(c) Make records of an individual's positive drug test result, alcohol test result of 0.04 or greater breath alcohol concentration, or refusal to submit to testing required under a DOT-required testing program, available to third parties, including employers and prospective employers of such individuals. Such records will also contain the names and titles of individuals who, in their commercial capacity, administer the drug and alcohol testing programs of aviation entities;

(d) Make personally identifiable information about airmen available to other Federal agencies for the purpose of verifying the accuracy and completeness of medical information provided to FAA in connection with applications for airmen medical certification; and

(e) Make records of past airman medical certification history data available to Aviation Medical Examiners (AMEs) on a routine basis so that AMEs may render the best medical certification decision.

The routine use transferred to the Accidents, Incidents and Investigations SORN and removed from this Notice is as follows:

- Make airman, aircraft, and operator record elements available to users of FAA's Skywatch system, including the Department of Defense (DoD), the Department of Homeland Security (DHS), the Department of Justice (DOJ) and other authorized government users, for their use in managing, tracking, and reporting aviation-related security events.

DOT has included Departmental general routine uses in this Notice, as they align with the purpose of this system of records to support decision-making and regulatory enforcement activities related to medical certification of airmen. As recognized by the Office of Management and Budget (OMB) in its Privacy Act Implementation Guidance and Responsibilities (65 FR 19746 (July 9, 1975)), the routine uses include proper and necessary uses of information in the system, even if such uses occur infrequently.

8. Records Retrieval: This notice updates the retrievability of records to remove docket number, medical identification number, accident number and/or incident number, and add retrievability by FAA Tracking Number (FTN) and credential number.

9. Retention and Disposal: This Notice updates retention requirements to add all retention schedules for the systems requiring coverage. It removes the reference to FAA Order 1350.15C, Records Organization, Transfer and Destruction Standards in the current Notice.

10. Records Access: This Notice updates records access procedures to reflect that signatures on signed requests for records must either be notarized or accompanied by a statement made under penalty of perjury in compliance with 28 U.S.C. 1746.

The following non-substantive changes to the administrative, technical, and physical safeguards, contesting records procedures, and notification procedures have been made to improve the clarity and readability of the Notice.

1. Administrative, Technical and Physical Safeguards: This Notice updates the administrative, technical, and physical safeguards to align with the requirements of OMB Circular A–108 and for consistency with other DOT/FAA SORNs.

2. Contesting Records: This Notice updates the procedures for contesting records to refer the reader to the record access procedures section rather than the ''System Manager.''

3. Notification: This Notice updates the notification procedures to refer the reader to the record access procedures section rather than the ''System Manager.''

Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records Notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information). In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Transportation, Federal Aviation Administration, DOT/FAA 847—Aviation Records on Individuals.

SECURITY CLASSIFICATION:

Sensitive, unclassified

SYSTEM LOCATION:

1. Air traffic safety specialist credentialing records: FAA Cloud Services Amazon Web Services (FCS AWS) East West Public Cloud and the Office of Information and Technology Services Enterprise Data Center (AIT EDC) Mike Monroney Aeronautical Center (MMAC), 6500 South MacArthur Boulevard, Oklahoma City, OK 73169;

2. Airmen testing records: PSI Services LLC's DataBank Data Center at 731 W. Henry Street, Indianapolis, IN 46225;

3. Airmen certification records: Civil Aviation Registry Applications, FAA Enterprise Data Center (EDC) Airmen Records Building (ARB) at the MMAC, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169 and in the Enterprise Architecture and Solutions Environment (EASE) Mainframe, which resides at the U.S. Department of Agriculture (USDA) National Information Technology Center (NITC) in Kansas City, MO 64114;

4. Enforcement Investigation Reports maintained by the Office of the Chief Counsel: located in the FAA Cloud Services Amazon Web Services (FCS AWS) East West Public Cloud;

5. Information on regulated entities such as air carriers, air agencies and various types of airmen: Office of Information and Technology Services Enterprise Data Center (AIT EDC) at the MMAC, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169;

6. Information on enforcement actions for statutory or regulatory violations concerning the operation and maintenance of aircraft, airports, and aircraft equipment by individual airman, air passengers, or certified companies: FAA Office of Information and Technology Services Enterprise Data Center (AIT EDC) at the MMAC, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169;

7. Information on individuals such as inspection authorization holders and airmen: FAA Office of Information and Technology Services Enterprise Data Center (AIT EDC) at the MMAC, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169;

8. Information on activity tracking of airmen performing flight safety operations such as flight crewmember qualifications: FAA Enterprise Data Center Airmen Records Building (EDCARB) at the MMAC, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169;

9. Training and awards records: FAA Office of Information and Technology Services Enterprise Data Center (AIT EDC) at the MMAC, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169;

10. Airmen certificate and registration document tracking records: FAA Office of Information and Technology Services Enterprise Data Center (AIT EDC) at the MMAC, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169;

11. Safety assurance records: MMAC, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169; AWS US East; and Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA 02142; and

12. Quality assurance reporting records: located in the FCS AWS East West Cloud.

SYSTEM MANAGER(S) AND ADRESSES:

1. Air traffic safety specialist credentialing records: System Manager, AOV–240, FAA Headquarters, 800 Independence Avenue SW, Washington, DC 20591, Email: *9-AVS-AOV-Support@faa.gov;*

2. Airmen testing records: ATLAS AAV System Manager, FAA Airman Testing Standards Branch, AFS–630, MMAC, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169, Email: *AirmanKnowledgeTesting@faa.gov;*

3. Airmen certification records: Civil Aviation Registry Applications, Manager, FAA Airmen Certification Branch, AFB–720 Federal Aviation Administration, MMAC, PO Box 25082, Oklahoma City, OK 73125, Email: *9-AMC-AFS760-Airmen@faa.gov;*

4. Enforcement Investigation Reports maintained by the Office of the Chief Counsel: Manager, FAA AGC–10 Operation Division, 1701 Columbia Avenue, College Park, GA 30337, Email: *9-AGC-IT@faa.gov;*

5. Information on regulated entities such as air carriers, air agencies and various types of airmen: Manager, FAA SASO Program Office, Safety Analysis and Promotion Division, 13873 Park Center Road, Suite 160, Herndon, VA 20171, Email: *9-AWA-AFS-900-SASO@faa.gov;*

6. Information about enforcement actions for statutory or regulatory violations concerning the operation and maintenance of aircraft, airports, and aircraft equipment by individual airman, air passengers, or certified companies: Manager, FAA Safety Analysis and Promotion Division, Automation Systems Management Branch, AFS–950, 13873 Park Center Road, Suite 160, Herndon, VA 20171, Email: *9-avs-afs-cpft@faa.gov;*

7. Information on individuals such as inspection authorization holders and airmen: Manager, FAA SASO Program Office, Safety Analysis and Promotion Division, 13873 Park Center Road, Suite 160, Herndon, VA 20171, Email: *9-AWA-AFS-900-SASO@faa.gov;*

8. Information on activity tracking of airmen performing flight safety operations such as flight crewmember qualifications: Manager, FAA—Air Traffic Organization Branch, AJF–2131 Federal Aviation Administration, Ronald Reagan Washington National Airport Hanger 6, 3201 Thomas Avenue, Washington, DC 20001, Email: *AMC-AJF-2131-FACTS@FAA.GOV;*

9. Training and awards records: FAA Flight Standards Service, FAA Office of Safety Standards, General Aviation and Commercial Division, Room 821, 800 Independence Avenue SW, Washington, DC 20591, Email: *faasafety@faa.gov;*

10. Airmen certificate and registration document tracking records: Manager, FAA Airmen Certification Branch Manager, 6425 South Denning Avenue, Oklahoma City, OK 73169, Email: *9-AMC-AFS760-Airmen@faa.gov;*

11. Safety assurance records: Information Technology (IT) Project Manager, FAA, 2245 Airport Boulevard, Santa Rosa, CA 95403, Email: *SAS-POC@faa.gov;* and

12. Quality assurance reporting records: System Manager, FAA Orlando FSDO, 8427 Southpark Circle, Orlando, FL 32819, Phone: 866–835–5322.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 40101; 49 U.S.C. 40113; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44703; 49 U.S.C. 44709; 49 U.S.C. 45106; 49 U.S.C. 46301; 49 CFR part 175.31; and 14 CFR parts 61 and 65.

PURPOSE(S) OF THE SYSTEM:

This system is the official repository of aviation records on individuals that are required to be maintained in connection with FAA's oversight and enforcement of compliance with safety regulations and statutes and orders issued thereunder.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who hold or previously held airmen certificates, and applicants for airmen certificates; Air traffic controllers and applicants for these positions; Individuals who submit feedback to the FAA; and Individuals against whom FAA has initiated informal action, compliance action, administrative action or legal enforcement action for violating safety regulations and statutes or orders issued thereunder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information records such as name, date of birth, place of residence, mailing address, email address, telephone number, fax number, employer name, signature, social security number, citizenship, nationality and country, gender, biometric information (height, weight, hair color, eye color), self-portrait image, educational records, employment records, criminal history, Taxpayer Identification Number (TIN)/Employer Identification Number (EIN), copies of identifying documents presented during the application process; Certification-related records such as applications for certification, airman certificate number, credential number, applications for tests, results of tests, applications for inspection authority, certificates held, ratings, certification dates, certification types, titles, stop orders, and requests for replacement certificates, contractor designator, designator examiner number; flight instructor number, training records, inspector's Flight Standards District Office (FSDO) code; Records concerning safety compliance notices, compliance actions, informal actions, warning notices, oral or written counseling, letters of correction, letters of investigation, notices of proposed legal enforcement action, final action legal documents in enforcement actions, and correspondence with the Office of the Chief Counsel and others in enforcement cases; and Other identifier records such as DoD identification number (ID), FTN, payment authorization code, generated control number, Office of Aviation System Standards Unique Identifier (AVN UID), tracking number and FAA ID.

RECORD SOURCE CATEGORIES:

Airmen certification records are obtained from the individual to whom the records pertain, FAA aviation safety inspectors and FAA designated representatives; Feedback received by the FAA are obtained from both employees and external individuals; and Records of informal action, compliance action, administrative action, and legal enforcement records are obtained from witnesses, the Office of the Chief Counsel, Office of Security and Hazardous Materials (ASH) personnel, Flight Standards personnel, Office of Aviation Safety (AVS) personnel, Office of Commercial Space Transportation personnel, Office of Airports personnel, Aeronautical Center personnel, and the National Transportation Safety Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside of DOT FAA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

SYSTEM SPECIFIC ROUTINE USES:

1. Provide basic airmen certification and qualification information to the public upon request; examples of basic information include:

- The type of certificates and ratings held;
- The date, class, and restrictions of the latest physical airman's certificate number;
- The status of the airman's certificate (*i.e.,* whether it is current or has been amended, modified, suspended or revoked for any reason);
- The airman's home address, unless requested by the airman to be withheld from public disclosure per 49 U.S.C. 44703(c); and
- Requests for review of certificate denials.

2. Disclose information to the National Transportation Safety Board (NTSB) in connection with its investigation responsibilities.

3. Provide information about airmen to Federal, State, local, and Tribal law enforcement agencies when engaged in an official investigation in which an airman is involved.

4. Provide information about enforcement actions or orders issued thereunder to government agencies, the aviation industry, and the public upon request;

5. Make records of delinquent civil penalties owed to the FAA available to the U.S. Department of the Treasury (Treasury) and the U.S. Department of Justice (DOJ) for collection pursuant to 31 U.S.C. 3711(g).

6. Make records of effective orders against the certificates of airmen available to their employers if the airmen use the affected certificates to perform job responsibilities for those employers.

7. Make airmen records available to users of FAA's Safety Performance Analysis System (SPAS), including the Department of Defense Commercial Airlift Division's Air Carrier Analysis Support System (ACAS) for its use in identifying safety hazards and risk areas, targeting inspection efforts for certificate holders of greatest risk, and monitoring the effectiveness of targeted oversight actions.

8. Provide information about airmen to Federal, State, local, and Tribal law enforcement, national security or homeland security agencies whenever such agencies are engaged in the performance of threat assessments affecting the safety of transportation or national security.

DEPARTMENTAL ROUTINE USES:

1. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

12a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof, in his/her official capacity, or (c) Any employee of DOT or any agency thereof, in his/her individual capacity where the Department of Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or

other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

12b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof in his/her official capacity, or (c) Any employee of DOT or any agency thereof in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

13. The information contained in this system of records will be disclosed to the Office of Management and Budget, OMB in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

14. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(a)(9).

15. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

16. Routine Use for disclosure to the Coast Guard and to the Transportation Security Administration. A record from this system of records may be disclosed as a routine use to the Coast Guard and to the Transportation Security Administration if information from this system was shared with either agency when that agency was a component of the Department of Transportation before its transfer to the Department of Homeland Security and such disclosure is necessary to accomplish a DOT, TSA or Coast Guard function related to this system of records.

17. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost-effectiveness, and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress, and the public, published by the Director, OMB, dated September 20, 1989.

18. It shall be a routine use of the information in any DOT system of records to provide to the Attorney General of the United States, or his/her designee, information indicating that a person meets any of the disqualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. In case of a dispute concerning the validity of the information provided by DOT to the Attorney General, or his/her designee, it shall be a routine use of the information in any DOT system of records to make any disclosures of such information to the National Background Information Check System, established by the Brady Handgun Violence Prevention Act, as may be necessary to resolve such dispute.

19a. To appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that there has been a breach of the system of records; (2) DOT has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOT (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

19b. To another Federal agency or Federal entity, when DOT determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

20. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

21. DOT may disclose records from this system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

22. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under section (b)(1) of the Privacy Act.

23. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or law enforcement information (Guideline 2 Report attached to White House Memorandum, ''Information Sharing Environment, November 22, 2006) to a Federal, State,

local, Tribal, Territorial, foreign government and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458) and Executive Order 13388 (October 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in file folders, on lists and forms, and in computer processing storage media. Records are also stored on microfiche, on roll microfilm, and as electronic images.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are primarily retrievable by name, birth date, social security number, airman certificate number, EIR number, FTN, credential number, email address, home address, or other identification numbers of the individual on whom the records are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention schedules for the individual systems are as follows:

Air traffic safety specialist credentialing records: the records are covered by retention schedule DAA–0237–2021–0007–0001 and destroyed 70 years at the end of the last credentialing certification, rating, training requirements, and skill evaluation; Airmen testing records: the FAA has proposed a replacement retention schedule to provide a longer retention period of five years for both airman test applications and completed tests. The current retention schedule, NC1–237–77–03, Items 21–23, requires retention for four years for applications and 60 days for completed tests. The FAA will comply with the current retention schedule until it receives approval of record disposition authority for the retention request; Airmen certification records: is designated as the permanent record for airmen certification information and, as such, records are covered by retention schedule N1–237–06–001 and destroyed after 60 years or when no longer needed, whichever is later; Enforcement Investigation Reports maintained by the Office of the Chief Counsel: these records are covered under N1–237–92–004 and transferred to the Federal Records Center (FRC) two years after cases are closed in EIS. The FRC destroys records five years after they are closed in EIS. Case files resulting in ''no action'' are destroyed 30 days (or no later than 90 days) after cases are closed in EIS. Case files resulting in an indefinite suspension of an airman certificate pending successful completion of reexamination or proof of qualification are destroyed one month after the date of successful completion of reexamination or proof of qualifications; Information on regulated entities such as air carriers, air agencies and various types of airmen: the records will be covered under retention schedule DAA–0237–2022–0005–0002 and retained for at least 30 years, but longer retention is authorized if necessary for business use; Information about enforcement actions for statutory or regulatory violations concerning the operation and maintenance of aircraft, airports, and aircraft equipment by individual airmen, air passengers, or certified companies: the FAA has drafted a retention schedule, DAA–0237–2021–0014, to provide a retention period of 99 years for airmen records. This schedule will replace the current schedule that allows destruction within a shorter timeframe. The FAA will maintain these records indefinitely until it receives an approval of record disposition authority for the retention request; Information on individuals such as inspection authorization holders and airmen: the FAA is developing a new retention schedule and will treat these records as permanent records until it receives an approval of record disposition authority for the retention request; Information on activity tracking of airmen performing flight safety operations such as flight crewmember qualifications: the records will be covered under retention schedule DAA–0237–2020–0029–0001. Pursuant to this schedule, the FAA maintains these records for three years after the relevant flight activity is no longer needed;

Training and awards records: the FAA is developing a new retention schedule and proposes to maintain the records for six years of inactivity. The FAA will treat these records as permanent records until it receives an approval of record disposition authority for the retention request;

Airmen certificate and registration document tracking records: is designated as the temporary repository for airmen registration and application data and, as such, the records are covered under retention schedule N1–237–09–014 and deleted/destroyed once the forms or related applications are superseded or obsolete; Safety assurance records: the FAA is developing a new retention schedule and will treat these records as permanent records until it receives an approval of record disposition authority for the retention request; and Quality assurance reporting records: the FAA is developing a new retention schedule and will treat these records as permanent records until it receives an approval of record disposition authority for the retention request.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT FAA automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of whether this system of records contains information about them may contact the System Manager at the address provided in the section ''System Manager.'' When seeking records about yourself from this system of records or any other Departmental system of records your request must conform to the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

CONTESTING RECORDS PROCEDURES:

See ''Record Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Records in this system that relate to administrative actions and legal enforcement actions are exempted from certain access and disclosure requirements of the Privacy Act of 1974, pursuant to 5 U.S.C. 552a(k)(2).[4]

[4] 49 CFR part 10, Appendix A.

HISTORY:

A full notice of this system of records, DOT/FAA 847—Aviation Records of Individuals, was published in the **Federal Register** on November 9, 2010 (75 FR 68849).

Issued in Washington, DC.

Karyn Gorman,

Departmental Chief Privacy Officer.

[FR Doc. 2024–12595 Filed 6–7–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2024–0067]

Notice To Renew the Advisory Committee on Transportation Equity (ACTE)

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of the charter renewal of the Advisory Committee on Transportation Equity (ACTE).

SUMMARY: DOT OST announces the charter renewal of ACTE. The Secretary has determined that renewing ACTE charter is necessary and is in the public interest.

DATES: The ACTE Charter will be effective for two years after date of publication of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Christopher Watkins, Designated Federal Officer, Departmental Office of Civil Rights, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–5990, *ACTE@dot.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the renewal of the DOT ACTE as a Federal Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act (FACA) as amended, 5 U.S.C. app. 2. The main objectives of the Committee are to provide advice and recommendations to inform the Department about efforts to: help inform the Secretary on promising practices to institutionalize equity into Agency programs, policies, regulations, and activities; strengthen and establish partnerships with overburdened and underserved communities who have been historically underrepresented in the Department's outreach and engagement; offer a forum for coordination and the exchange of information on equity concerns raised in local and regional transportation decisions; and provide added strength, objectivity, and confidence to management's decision-making process.

Dated: June 5, 2024.

Irene Marion,

Director, Departmental Office of Civil Rights.

[FR Doc. 2024–12635 Filed 6–7–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket: DOT–OST–2014–0031 BTS Paperwork Reduction Notice]

Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden.

DATES: Written comments should be submitted by July 10, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 OMB Approval No. 2138–0039 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access

An electronic copy of this rule, a copy of the notice of proposed rulemaking, and copies of the comments may be downloaded at *http://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

FOR FURTHER INFORMATION CONTACT: James Bouse, *james.bouse@dot.gov,* 202–366–3000, Office of Airline Information, RTS–42, Room E34, OST–R, 1200 New Jersey Avenue Street SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0039.

Title: Reporting Required for International Civil Aviation Organization (ICAO).

Form No.: BTS Form EF.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 34.

Number of Responses: 34.

Total Annual Burden: 23 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. carriers. Over 99% of the data filled with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to,

publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

A **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 19, 2024 (89 FR 19637). No comments were received.

Issued Washington, DC, June 4, 2024.

William Chadwick, Jr.

Director, Office of Airline Information, U.S. Department of Transportation.

[FR Doc. 2024–12614 Filed 6–7–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

Agency Information Collection Activity: Time Record (Work Study Program)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before August 9, 2024.

ADDRESSES: Comments must be submitted through *www.Regulations.gov*

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Nancy Kessinger, 202–632–8924, *nancy.kessinger@va.gov.*

VA PRA information: Maribel Aponte, 202–461–8900, *vacopaperworkreduact@va.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Time Record (Work Study Program), VA Form 22–8690.

OMB Control Number: 2900–0379. *https://www.reginfo.gov/public/do/PRASearch* (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: The VA uses the information collected on VA Form 22–8690 to ensure that the amount of benefits payable to the student who is pursuing Work Study is correct. Without this information, VA would not have a basis upon which to make the Work Study payment.

Affected Public: Individuals and Households.

Estimated Annual Burden: 6,022 hours.

Estimated Average Burden Time per Respondent: 5 minutes.

Frequency of Response: Occasionally.

Estimated Number of Respondents: 72,271.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–12632 Filed 6–7–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0149]

Agency Information Collection Activity Under OMB Review: Application for Conversion

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments and recommendations for proposed information collections should be sent within 30 days to *http://www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0149.''

FOR FURTHER INFORMATION CONTACT: *VA PRA information:* Maribel Aponte, (202) 461–8900, *vacopaperworkreduact@va.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Conversion, VA Form 29–0152.

OMB Control Number: 2900–0149 *https://www.reginfo.gov/public/do/PRASearch.*

Type of Review: Extension of a previously approved collection.

Abstract: This form is used by Veterans to convert to a permanent plan of insurance. The information on the form is required by law, U.S.C. 1904 and 1942.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 23087, April 3, 2024, pages 23087–23088.

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,125.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 4,500.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–12640 Filed 6–7–24; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0554]

Agency Information Collection Activity Under OMB Review: VA Homeless Providers Grant and Per Diem Program

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs (VA), will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain,* select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0554.''

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202–461–8900, *vacopaperworkreduact@va.gov*

SUPPLEMENTARY INFORMATION:

Title: VA Homeless Providers Grant and Per Diem Program.

OMB Control Number: 2900–0554 *https://www.reginfo.gov/public/do/PRASearch.*

Type of Review: Revision of a currently approved collection.

Abstract: Public Law 109–461 provided permanent authority for VA's Homeless Providers Grant and Per Diem (GPD) Program for homeless Veterans. The categories of grants include per diem for non-capital grants, special needs grants, and case management grants. The program will not be awarding capital grants in the coming years. This factor, along with historical program data on the actual number of applications received, has resulted in a decrease in the anticipated number of annual grant applications and associated annual burden hours. There are no changes to the information being collected.

Funds appropriated to the Department of Veterans Affairs (VA) for this program are expected to be significantly less than the total amount requested by applicants. Therefore, information must be collected to determine which applicants are eligible and to prioritize applications for determining who will be awarded funds. VA does not require applicants to use a VA Form to respond to the collection of information. Rather, VA requires applicants to respond to the collection of information as published in the Notice of Funding Opportunity (NOFO) in standard business format, and they may use the Federal-wide Standard Forms from the SF–424 family of forms. VA provides the outline for the collection in the NOFO and uses the standard business format to evaluate applicants for all the grant programs under the statutory authority for VA to make grants.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 23637, April 4, 2024.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden per Respondent: 20 hours.

Frequency of Response: Once annually.

Estimated Number of Respondents: 500.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–12629 Filed 6–7–24; 8:45 am]

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FEDERAL REGISTER

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Part II

Commodity Futures Trading Commission

17 CFR Part 40
Event Contracts; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 40

RIN 3038–AF14

Event Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing amendments to its rules concerning event contracts in certain excluded commodities. The Commission is proposing amendments to further specify types of event contracts that fall within the scope of section 5c(c)(5)(C) of the Commodity Exchange Act (CEA or the Act) and are contrary to the public interest, such that they may not be listed for trading or accepted for clearing on or through a CFTC-registered entity. Among other things, the Commission proposes to further specify the types of event contracts that involve ''gaming.'' The Commission also proposes to amend certain language in its event contract rules to further align with statutory text, and to make certain technical changes to its event contract rules in order to enhance clarity and organization.

DATES: Comments must be received on or before July 9, 2024.

ADDRESSES: You may submit comments, identified by ''Event Contracts'' and RIN number 3038–AF14, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this release and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. Submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the Commission's procedures established in 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

FOR FURTHER INFORMATION CONTACT: Grey Tanzi, Assistant Chief Counsel, (312) 596–0635, *gtanzi@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, 77 West Jackson Blvd., Suite 800, Chicago, Illinois 60604, Andrew Stein, Assistant Chief Counsel, (202) 418–6054, *astein@cftc.gov,* Lauren Bennett, Assistant Chief Counsel, (202) 418–5290, *lbennett@cftc.gov,* or Nora Flood, Chief Counsel, (202) 418–6059, *nflood@cftc.gov,* Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Overview of Proposed Changes to § 40.11

On July 27, 2011, the Commission published in the **Federal Register** final rules under part 40 of the Commission's regulations, including new § 40.11.[1] Commission Regulation 40.11 was promulgated pursuant to authority granted under section 5c(c)(5)(C) of the CEA,[2] which was added by section 745(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').[3] CEA section 5c(c)(5)(C) authorizes the Commission to prohibit certain ''event contracts'' from being listed or made available for clearing or trading on or through a

[1] *Provisions Common to Registered Entities,* 76 FR 44776 (July 27, 2011). Commission Regulation 40.11 was adopted as part of broader changes made to part 40 of the Commission's regulations to implement section 745 of the Dodd-Frank Act, which amended section 5c of the CEA. Section 5c(c) of the CEA, in particular, sets forth requirements relating to the listing for trading or making available for clearing of derivative contracts, and the implementation of rules and rule amendments, by ''registered entities.'' CEA section 1a(40), 7 U.S.C. 1a(40), defines the term ''registered entity'' to include any board of trade designated by the Commission as a contract market (''DCM''), and any derivatives clearing organization (''DCO''), swap execution facility (''SEF''), or swap data repository (''SDR'') registered by the Commission.

[2] 7 U.S.C. 7a–2(c)(5)(C).

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

registered entity,[4] if such contracts involve an activity that is enumerated in CEA section 5c(c)(5)(C) or ''other similar activity'' as determined by the Commission by rule or regulation, and the Commission determines that such contracts are contrary to the public interest.

While the term ''event contract'' is not defined in the CEA or the CFTC's regulations, event contracts are generally understood to be a type of derivative contract, typically with a binary payoff structure, based on the outcome of an underlying occurrence or event.[5] A registered entity that seeks to list event contracts for trading, or make event contracts available for clearing, must comply with the substantive and procedural requirements that apply, more generally, to the listing for trading, or making available for clearing, of derivative contracts. For example, CFTC-registered exchanges—namely, DCMs and SEFs—are subject to statutory requirements to only list or permit trading in derivative contracts that are not readily susceptible to manipulation; [6] to enforce compliance with contract terms and conditions; [7] and to monitor trading on the exchange in order to prevent manipulation, price distortion, and disruption of the settlement process through market surveillance, compliance, and enforcement practices and procedures.[8] In addition to the more generally applicable requirements to which registered entities are subject when listing derivative contracts for trading or making such contracts available for clearing, CEA section 5c(c)(5)(C) grants the Commission the authority to prohibit registered entities from listing for trading or making available for clearing particular types of event contracts, if the Commission determines that such contracts are contrary to the public interest.

Since 2021, the Commission has observed a significant increase in the number of event contracts listed for trading by CFTC-registered exchanges, as well as in the diversity of occurrences and events underlying such contracts.[9] The Commission has also observed recent applications for exchange registration, and expressions of interest regarding exchange registration, from entities that have indicated that they are interested primarily, or exclusively, in listing event contracts for trading.[10]

In light of these developments, the Commission proposes to amend § 40.11 to further specify types of event contracts that fall within the scope of CEA section 5c(c)(5)(C) and are contrary to the public interest. The Commission believes that these amendments would support efforts by registered entities to ensure compliance with the CEA by more clearly identifying the types of event contracts that may not be listed for trading or accepted for clearing. The Commission believes that these amendments would, correspondingly, assist registered entities, as well as applicants for registration, in making informed business decisions with respect to product design, which would help to support responsible market innovation.

The Commission believes that amending § 40.11 to further specify types of event contracts that may not be listed for trading or accepted for clearing would also benefit the Commission and its staff, by reducing the need to undertake individualized, resource-intensive contract reviews. As further discussed below, under § 40.11(c), the Commission may initiate a 90-day review to evaluate whether a particular event contract is of a type that may not be listed for trading or accepted for clearing. Further specifying, in § 40.11, the types of event contracts that may not be listed for trading or accepted for clearing should provide registered entities with a better understanding regarding appropriate event contract parameters and should, in turn, reduce the likelihood that contract filings that raise potential public interest concerns are submitted to the Commission. From a resource allocation perspective, this will be of significant benefit to the Commission and its staff, since, in the Commission's experience, a single § 40.11(c) review is resource-intensive and consumes hundreds of hours of staff time.

Finally, the Commission proposes to make certain amendments to § 40.11 to further align the language of the regulation with the statutory text of CEA section 5c(c)(5)(C), and also proposes to make certain technical amendments to the regulation in order to enhance clarity and organization.

B. Commission History With Event Contracts

CFTC-registered exchanges have listed a variety of event contracts for trading for several decades.[11] On February 18, 2004, the Commission designated the first contract market dedicated to trading event contracts.[12] In 2008, the Commission published a concept release (the ''2008 Concept Release''), requesting input from interested persons, and those with expertise, on the appropriate regulatory treatment of event contract markets.[13] The 2008 Concept Release was prompted by the Commission's receipt of a substantial number of requests for guidance related to application of the CEA to event contract markets.[14] The Commission sought both general input and responses to 24 enumerated questions. The Commission received 31 comments in response to the 2008

[4] *See* note 2, *supra.* CEA section 1a(40), 7 U.S.C. 1a(40), defines the term ''registered entity'' to include any DCM, and any DCO, SEF, or SDR registered by the Commission.

[5] Most event contracts that have traded or are currently trading on CFTC-registered exchanges are structured as binary options, which are generally understood as a type of option whose payout is either a fixed amount or zero.

[6] *See* Core Principle 3 for DCMs, CEA section 5(d)(3), 7 U.S.C. 7(d)(3), and Core Principle 3 for SEFs, CEA section 5h(f)(3), 7 U.S.C. 7b–3(f)(3).

[7] *See* Core Principle 2 for DCMs, CEA section 5(d)(2), 7 U.S.C. 7(d)(2), and Core Principle 2 for SEFs, CEA section 5h(f)(2), 7 U.S.C. 7b–3(f)(2).

[8] *See* Core Principle 4 for DCMs, CEA section 5(d)(4), 7 U.S.C. 7(d)(4), and Core Principle 4 for SEFs, CEA section 5h(f)(4), 7 U.S.C. 7b–3(f)(4).

[9] From 2006–2020, DCMs listed for trading an average of approximately five event contracts per year. In 2021, this number increased to 131, and the number of newly-listed event contracts per year has remained at a similar level in subsequent years. Since 2021, DCMs also have listed for trading a substantial number of event contracts not associated with traditional commodities, financial indices, or economic indicators. These have included event contracts based on the occurrence or non-occurrence of international events, natural disasters in specific U.S. cities, heating/cooling degree days and cumulative average temperature in specific cities, the timing of video game and album releases, Oscar award winners, COVID–19 case levels and restrictions, the outcome of cases pending before the Supreme Court of the United States, the passage of specific laws by the U.S. Congress, U.S. Presidential approval ratings, confirmation of U.S. executive branch officials, National Football League (''NFL'') television ratings, the discovery of exoplanets, and the occurrence of a National Aeronautics and Space Administration moon landing before a certain date.

[10] As of February 12, 2024, Commission staff were reviewing several pending applications for contract market designation from entities with a stated interest in offering event contracts for trading. Commission staff have received multiple additional inquiries from other entities indicating an interest in applying for exchange registration in order to offer event contracts for trading.

[11] Since 1992, CFTC-registered exchanges have listed for trading event contracts involving interests such as regional insured property losses, the count of bankruptcies, temperature volatilities, corporate mergers, and corporate credit events. *See Concept Release on Appropriate Regulatory Treatment of Event Contracts,* 73 FR 25669, 25671 (May 7, 2008).

[12] *See* CFTC Order of Designation for HedgeStreet, Inc. (''HedgeStreet'') (Feb. 20, 2004), *available at https://www.cftc.gov/sites/default/files/opa/press04/opa4894-04.htm* (last visited Mar. 7, 2024). HedgeStreet listed daily and weekly event contracts on various corporate mergers, weather events, and economic indicators. Effective June 21, 2009, HedgeStreet changed its name to North American Derivatives Exchange, Inc., or ''Nadex.'' Nadex continues to list event contracts on foreign exchange, equity indices, commodity prices, and digital assets.

[13] 73 FR 25669.

[14] *Id.*

Concept Release,[15] but ultimately did not take further action at that time. In 2010, Congress addressed the Commission's regulatory authority with respect to certain event contracts in section 745(b) of the Dodd-Frank Act, which added section 5c(c)(5)(C) to the CEA. Thereafter, in 2011, the Commission adopted § 40.11, which implements CEA section 5c(c)(5)(C).

As discussed above, in recent years, the Commission has observed applications for exchange registration, and expressions of interest regarding exchange registration, from entities that appear to be interested primarily, or exclusively, in listing event contracts for trading.[16] The Commission also has observed a significant increase in the number of event contracts listed for trading by registered entities, and in the diversity of occurrences and events underlying such contracts.

C. Statutory Authority and Prior Commission Action

1. CEA Section 5c(c)(5)(C)

As discussed above, a registered entity that seeks to list event contracts for trading, or accept such contracts for clearing, must comply with the substantive and procedural requirements that apply, more generally, to the listing for trading or acceptance for clearing of derivative contracts.[17] Notably, for example, a DCM or SEF is required to ensure that the derivative contracts that it lists or permits for trading are not readily susceptible to manipulation; to ensure enforcement of the terms and conditions of those contracts; and to monitor trading in those contracts in order to prevent manipulation, price distortion, and disruption of the settlement process.[18] CEA section 5c(c)(5)(C) further grants the Commission the authority to prohibit registered entities from listing or making available for clearing or trading certain event contracts that involve particular activities, if the Commission determines that such contracts are contrary to the public interest.

Section 5c(c)(5)(C) was added to the CEA by section 745(b) of the Dodd-Frank Act, which amended, more generally, the contract and rule submission requirements set forth in CEA section 5c(c). In a short colloquy with the late Senator Diane Feinstein on the Senate floor regarding the proposed Dodd-Frank Act provision that ultimately was enacted as CEA section 5c(c)(5)(C) (the ''2010 Colloquy''), Senator Blanche Lincoln, then-Chair of the Senate Committee on Agriculture, Nutrition, and Forestry—who is identified in the 2010 Colloquy as one of the authors of CEA section 5c(c)(5)(C)—stated that the provision was intended to assure that the Commission ''has the power to prevent the creation of futures and swaps markets that would allow citizens to profit from devastating events and also prevent gambling through futures markets.'' [19]

CEA section 5c(c)(5)(C)(i) provides that in connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities [20] that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section la(2)(i) of this title),[21] by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve—(I) activity that is unlawful under any Federal or State law; (II) terrorism; (III) assassination; (IV) war; (V) gaming; or (VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.[22]

CEA section 5c(c)(5)(C)(ii) provides that no agreement, contract or transaction [23] determined by the Commission to be contrary to the public interest under section 5c(c)(5)(C)(i) may be listed or made available for clearing or trading on or through a registered entity.[24]

The Commission interprets CEA section 5c(c)(5)(C) to contemplate that the Commission engage in a two-step

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[15] *See* Comment File for **Federal Register** Release 73 FR 25669, CFTC, *https://www.cftc.gov/LawRegulation/PublicComments/08-004.html* (last visited Mar. 7, 2024).

[16] The Commission's Division of Market Oversight (''DMO'') also has issued staff no-action positions to two academic institutions which provide that, subject to specified terms, DMO will not recommend to the Commission enforcement action against the academic institutions for operating, without registration as a DCM, SEF, or foreign board of trade (''FBOT''), small-scale, not-for-profit markets that offer trading in political and economic indicator event contracts for academic purposes. *See* CFTC Staff Letter No. 93–66 issued to the University of Iowa (June 18, 1993), *available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/93-66.pdf.* This no-action position superseded the operative terms of a more limited no-action position issued in 1992. *See also* CFTC Staff Letter No. 14–130 issued to Victoria University of Wellington, New Zealand (Oct. 29, 2014), *available at https://www.cftc.gov/csl/14-130/download.* The terms of these staff no-action positions contemplate that each event market will be operated by the relevant academic institution for academic purposes and without compensation. The terms of the no-action positions also contemplate limitations on, among other things, the number of market participants and the number of contracts that each market participant may hold. In issuing each of the no-action positions, DMO explicitly noted that it was not rendering an opinion on the legality of the academic institutions' activities under state law.

[17] Registered entities seeking to list event contracts for trading, or accept such contracts for clearing, must abide by the CEA and Commission regulations, including applicable statutory core principles. *See, e.g.,* CEA section 5(d), 7 U.S.C. 7(d) (Core Principles for DCMs); CEA section 5b(c)(2), 7 U.S.C. 7a–1(c)(2) (Core Principles for DCOs); CEA section 5h(f), 7 U.S.C. 7b–3(f) (Core Principles for SEFs). In addition, registered entities seeking to list event contracts for trading, or accept such contracts for clearing, must comply with the submission requirements set forth in CEA section 5c(c), 7 U.S.C. 7a–2(c)(1), and part 40 of the Commission's regulations.

[18] *See* Core Principle 3 for DCMs, CEA section 5(d)(3), 7 U.S.C. 7(d)(3), and Core Principle 3 for SEFs, CEA section 5h(f)(3), 7 U.S.C. 7b–3(f)(3); Core Principle 2 for DCMs, CEA section 5(d)(2), 7 U.S.C. 7(d)(2), and Core Principle 2 for SEFs, CEA section 5h(f)(2), 7 U.S.C. 7–b3(f)(2); and Core Principle 4 for DCMs, CEA section 5(d)(4), 7 U.S.C. 7(d)(4), and Core Principle 4 for SEFs, CEA section 5h(f)(4), 7 U.S.C. 7b–3(f)(4). For the avoidance of doubt, regardless of whether or not a particular event contract falls within the scope of CEA section 5c(c)(5)(C) and § 40.11, the DCM or SEF seeking to list the event contract for trading has a statutory obligation to ensure that the event contract is not readily susceptible to manipulation.

[19] 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statements of Sen. Diane Feinstein and Sen. Blanche Lincoln), *available at https://www.congress.gov/111/crec/2010/07/15/CREC-2010-07-15-senate.pdf* (last visited Mar. 7, 2024).

[20] The term ''excluded commodity'' is defined in CEA section 1a(19), 7 U.S.C. 1a(19), as: (i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure; (ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or (II) based solely on one or more commodities that have no cash market; (iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or (iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial, or economic consequence.

[21] There is no ''section 1a(2)(i)'' in the CEA. As discussed in section II.A.1.a, *infra,* the Commission believes that the reference in CEA section 5c(c)(5)(C)(i) to ''section 1a(2)(i)'' is a typographical or drafting error.

[22] CEA section 5c(c)(5)(C)(i); 7 U.S.C. 7a–2(c)(5)(C)(i).

[23] CEA section 5c(c)(5)(C)(i) applies in connection with the listing of agreements, contracts, transactions, or swaps by a DCM or SEF. 7 U.S.C. 7a–2(c)(5)(C)(i). The Commission notes that similar phrases both later in CEA section 5c(c)(5)(C)(i) and in CEA section 5c(c)(5)(C)(ii) refer only to ''agreements, contracts, or transactions . . . .'' The Commission interprets either phrase to encompass derivative contracts listed for trading on or through DCMs or SEFs, and for simplicity refers to ''agreements, contracts, transactions or swaps'' as ''contracts'' herein.

[24] CEA section 5c(c)(5)(C)(ii); 7 U.S.C. 7a–2(c)(5)(C)(ii).

inquiry. First, the Commission must assess whether a contract in a specified excluded commodity ''involve[s]'' an activity enumerated in CEA section 5c(c)(5)(C)(i)(I)–(V) (each, an ''Enumerated Activity'') or other similar activity as determined by the Commission by rule or regulation (''prescribed similar activity''). If the Commission determines that the contract involves such activity, the Commission must assess whether the contract is contrary to the public interest. The Commission interprets CEA section 5c(c)(5)(C) to provide that the contract may not be listed or made available for clearing or trading by a registered entity if the Commission finds both that (i) the contract involves an Enumerated Activity or prescribed similar activity, and (ii) the contract is contrary to the public interest.

2. Commission Regulation 40.11

In 2011, the Commission adopted § 40.11 to implement CEA section 5c(c)(5)(C) as part of broader changes to the Commission's part 40 regulations.[25] Commission Regulation 40.11(a)(1) provides that a registered entity shall not list for trading or accept for clearing on or through the registered entity an agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law.[26] Although they are not listed in precisely the same order, the activities enumerated in § 40.11(a)(1) are the same as the activities enumerated in CEA sections 5c(c)(5)(C)(i)(I)–(V) and are similarly referred to herein as the Enumerated Activities.

Consistent with CEA section 5c(c)(5)(C)(i)(VI), § 40.11(a)(2) provides that a registered entity shall not list for trading or accept for clearing on or through the registered entity an agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, that involves, relates to, or references an activity that is similar to an activity enumerated in § 40.11(a)(1), and that the Commission determines, by rule or regulation, to be contrary to the public interest.[27] To date, the Commission has not made any such determinations.

Pursuant to § 40.11(c), when a contract submitted to the Commission by a registered entity, pursuant to § 40.2 or § 40.3, may involve, relate to, or reference an activity enumerated in §§ 40.11(a)(1) or (2), the Commission is authorized to commence a 90-day review of the contract.[28] The Commission must issue an order approving or disapproving the contract by the end of the 90-day review period or, if applicable, at the conclusion of any extended period agreed to or requested by the registered entity.[29] Commission Regulation 40.11(c)(1) requires the Commission to request that the registered entity suspend the listing or trading of the contract during the 90-day review period.[30] The Commission also must post on its website a notification of the intent to carry out a 90-day review.[31]

The Commission did not, in § 40.11 or in the 2011 adopting release for the rule, define any of the Enumerated Activities. The Commission acknowledged, in the adopting release, a comment on the rule proposal that stated that the term ''gaming,'' in particular, should be further defined in order to enhance clarity regarding the scope of the prohibition set forth in § 40.11(a)(1).[32] The Commission expressed agreement with the interest to further define ''gaming'' for purposes of the prohibition,[33] and stated that the Commission might issue a future event contracts rulemaking that, among other things, addressed the appropriate treatment of event contracts involving gaming.[34] The Commission stated that, in the meantime, it had determined to adopt the prohibition set forth in § 40.11(a)(1) with respect to the Enumerated Activities, ''and to consider individual product submissions on a case-by-case basis under § 40.2 or § 40.3.'' [35]

3. Commission Determinations Pursuant to § 40.11

To date, the Commission has issued two final determinations pursuant to § 40.11. On January 3, 2012, the Commission commenced a 90-day review, under § 40.11(c), of certain event contracts on election outcomes that had been self-certified by Nadex.[36] On April 2, 2012, the Commission issued an order (the ''Nadex Order'') prohibiting the contracts from being listed or made available for clearing or trading, finding that the contracts involved the Enumerated Activity of

[25] Part 40 of the Commission's regulations, more generally, implements the contract and rule submission requirements for registered entities set forth in CEA section 5c(c). For example, § 40.2 sets forth the general process by which a DCM or SEF may list a new derivative contract for trading by providing the Commission with a written certification—a ''self-certification''—that the contract complies with the CEA, including the CFTC's regulations thereunder. *See also* CEA section 5c(c)(1), 7 U.S.C. 7a–2(c)(1). The Commission must receive the DCM's or SEF's self-certified submission at least one business day before the contract's listing. 17 CFR 40.2(a)(2). Commission Regulation 40.3 sets forth the general process by which a DCM or SEF may elect voluntarily to seek prior Commission approval of a derivative contract that the DCM or SEF seeks to list for trading. *See also* CEA sections 5c(c)(4)–(5), 7 U.S.C. 7a–2(c)(4)–(5). Amendments to an existing derivative contract also must be submitted to the Commission either by way of self-certification or for prior Commission approval. 17 CFR 40.5, 40.6.

[26] 17 CFR 40.11(a)(1).

[27] 17 CFR 40.11(a)(2). CEA section 5c(c)(5)(C) applies with respect to agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i)). There is no ''section 1a(2)(i)'' in the CEA, and the Commission believes the reference to this provision in CEA section 5c(c)(5)(C) is a typographical or drafting error. In adopting §§ 40.11(a)(1) and (2), as well as § 40.11(c), the Commission interpreted CEA section 5c(c)(5)(C) to apply with respect to the excluded commodities defined in CEA section 1a(19)(iv). *See* discussion in section II.A.1.a, *infra.*

[28] 17 CFR 40.11(c). Commission Regulation 40.11(c) states that the 90-day review period shall commence from the date the Commission notifies the registered entity of a potential violation of § 40.11(a).

[29] 17 CFR 40.11(c)(2).

[30] 17 CFR 40.11(c)(1).

[31] *Id.*

[32] Provisions Common to Registered Entities, 76 FR 44776, 44785 (July 27, 2011).

[33] *Id.*

[34] *Id.*

[35] *Id.* The Commission noted that a registered entity could receive a definitive resolution of any questions concerning the applicability of § 40.11(a)(1) by submitting a particular contract for Commission approval under § 40.3: if the submitted contract was approved by the Commission, the registered entity would have assurance that the Commission had reviewed and did not object to the submission based on the prohibitions in § 40.11(a). *Id.* at 44785–86. The Commission noted that, alternatively, a registered entity could self-certify a contract under § 40.2 and, if the Commission determined during its review of the contract ''that the submission may violate the prohibitions in § 40.11(a)(1)–(2), the Commission may request that the registered entity suspend the trading or clearing of the contract pending the completion of a 90-day . . . review.'' *Id.* at 44786. The Commission stated that, upon completion of that review, the Commission would be required to issue an order finding either that the contract violated, or did not violate, the prohibitions in § 40.11(a)(1)–(2). *Id.*

[36] *See https://www.cftc.gov/PressRoom/PressReleases/6163-12.* Nadex self-certified cash-settled, binary contracts on whether there would be a Democratic majority in the U.S. House of Representatives (''House''); whether there would be a Republican majority in the House; whether there would be a Democratic majority in the U.S. Senate (''Senate''); and whether there would be a Republican majority in the Senate. The contracts settled based on whether the named party held the majority of seats in the identified chamber of Congress on the expiration date. Nadex also self-certified ten cash-settled, binary contracts on the upcoming Presidential election. Each contract was based on one of the leading candidates for President and paid according to whether that candidate won the Presidency.

gaming and were contrary to the public interest.[37]

On June 23, 2023, the Commission commenced a 90-day review, under § 40.11(c), of certain event contracts self-certified by KalshiEX LLC (''Kalshi'') that were based on which political party controlled each chamber of Congress.[38] On September 22, 2023, the Commission issued an order (the ''Kalshi Order'') prohibiting the contracts from being listed or made available for clearing or trading, finding that the contracts involved the Enumerated Activities of gaming and activity that is unlawful under State law, and that the contracts were contrary to the public interest.[39] The Kalshi Order is currently under judicial review in the U.S. District Court for the District of Columbia.[40]

The Commission has exercised its authority to commence a 90-day review of event contracts, pursuant to § 40.11(c), on two additional occasions.[41] On December 23, 2020, the Commission commenced a 90-day review of certain event contracts that had been self-certified by Eris Exchange, LLC (''ErisX''), that were based on the moneyline, the point spread, and the total points for individual NFL games.[42] On August 26, 2022, the Commission commenced a 90-day review of certain Congressional control event contracts submitted for Commission approval by Kalshi.[43] In both of these instances, the submitting parties withdrew their respective contracts from consideration before the Commission issued a final determination pursuant to § 40.11.

II. Proposed Amendments to § 40.11

In light of (i) the significant increase that the Commission has observed in the number and diversity of event contracts listed for trading by Commission-registered exchanges, and (ii) the increased interest that the Commission has observed, among applicants and prospective applicants for exchange registration, in operating exchanges that would primarily or exclusively offer event contracts for trading, the Commission is proposing to amend § 40.11 to, among other things, further specify types of event contracts that fall within the scope of CEA section 5c(c)(5)(C) and are contrary to the public interest, such that they may not be listed for trading or accepted for clearing on or through a registered entity. As discussed above, the Commission believes that these proposed amendments would support efforts by registered entities to ensure compliance with the CEA, and would, correspondingly, assist registered entities, as well as applicants for registration, in making informed business decisions with respect to product design, thereby helping to support responsible market innovation. The Commission further believes that, by helping to delineate appropriate event contract parameters, the proposed amendments would reduce the frequency of event contract submissions to the Commission that raise potential public interest concerns, which would allow for more efficient use of Commission and staff resources by reducing the need to conduct individualized event contract reviews pursuant to § 40.11(c). It may also yield efficiencies for registered entities by helping to avoid situations where they expend resources to develop and submit a contract that the Commission subsequently determines, following a § 40.11(c) review, may not be listed for trading or accepted for clearing.

In addition, the Commission is proposing to make certain amendments to § 40.11 to further align the language of the regulation with the statutory text of CEA section 5c(c)(5)(C), and also is proposing to make certain technical amendments to the regulation to enhance clarity and organization.

A. Amendments to Further Align With Statutory Language

1. Description of Excluded Commodities

(a) Proposed Amendments

CEA section 5c(c)(5)(C) applies with respect to agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i)).[44] There is no ''section 1a(2)(i)'' in the CEA, and the Commission believes the reference to this provision in CEA section 5c(c)(5)(C) is a typographical or drafting error.[45] In adopting § 40.11, the Commission interpreted the ''excluded commodities'' falling within the scope of CEA section 5c(c)(5)(C) to be those set forth in CEA section 1a(19)(iv), and accordingly referenced CEA section 1a(19)(iv) in §§ 40.11(a)(1)–(2) and § 40.11(c).[46]

With the aim of adhering as closely as possible to the statutory text—while, by necessity, having to account for the errant reference in CEA section 5c(c)(5)(C) to ''section 1a(2)(i),'' which is not a provision in the statute—the Commission is proposing to amend §§ 40.11(a)(1)–(2) and § 40.11(c) to refer to agreements, contracts, transactions, or swaps in excluded commodities based on the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(19)(i) of the Act). These proposed amendments would achieve two purposes. First, the proposed amendments would remove from the relevant rules the current reference to CEA section 1a(19)(iv) and would more precisely track the text of CEA section 5c(c)(5)(C). Second, the proposed amendments would clarify the Commission's interpretation that the

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[37] *See* CFTC Release No. 6224–12 *CFTC Issues Order Prohibiting North American Derivatives Exchange's Political Event Derivatives Contracts* (Apr. 2, 2012), *available at https://www.cftc.gov/PressRoom/PressReleases/6224-12.*

[38] *See* CFTC Release No. 8728–23, *CFTC Announces Review of Kalshi Congressional Control Contracts and Public Comment Period* (June 23, 2023), *available at https://www.cftc.gov/PressRoom/PressReleases/8728-23.* The Kalshi contracts were cash-settled, binary contracts that settled based on the party affiliation of the leader of the identified chamber of Congress on the expiration date. The Kalshi contracts differed from the Nadex contracts that the Commission had previously disapproved, in that the Nadex contracts settled based on the number of seats in the House or Senate held by a given political party, while the Kalshi contracts settled based on the party affiliation of the leader of the House (the Speaker) or the leader of the Senate (the President Pro Tempore).

[39] *See* CFTC Release No. 8780–23, *CFTC Disapproves KalshiEX LLC's Congressional Control Contracts* (Sept. 22, 2023), *available at https://www.cftc.gov/PressRoom/PressReleases/8780-23.*

[40] *KalshiEx LLC* v. *Commodity Futures Trading Commission,* 1:23–cv–03257 (filed Nov. 1, 2023) (D.D.C.).

[41] In so doing, the Commission found, pursuant to § 40.11(c), that the subject contracts ''may'' involve an Enumerated Activity. 17 CFR 40.11(c).

[42] *See* CFTC Release No. 8345–20, *CFTC Announces Review of RSBIX NFL Futures Contracts Proposed by Eris Exchange, LLC* (Dec. 23, 2020), *available at https://www.cftc.gov/PressRoom/PressReleases/8345-20.*

[43] *See* CFTC Release No. 8578–22, *CFTC Announces Review and Public Comment Period of KalshiEx Proposed Congressional Control Contracts Under CFTC Regulation 40.11, available at https://www.cftc.gov/PressRoom/PressReleases/8578-22.*

[44] CEA section 5c(c)(5)(C)(i); 7 U.S.C. 7a–2(c)(5)(C)(i).

[45] CEA section 1a(2), 7 U.S.C. 1a(2), defines an ''appropriate Federal banking agency,'' which is not relevant to the excluded commodity definition.

[46] While the adopting release did not discuss the basis for this interpretation, it is likely that the Commission assumed that Congress intended to incorporate the statutory language of the ''excluded commodity'' definition set forth in CEA section 1a(19)(iv), since CEA section 5c(c)(5)(C) tracks the language of CEA section 1a(19)(iv) to a large extent. The ''excluded commodity'' definition set forth in CEA section 1a(19)(iv) is as follows: an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial, or economic consequence. ''[C]lause (i)'' refers to CEA section 1a(19)(i).

reference to ''section 1a(2)(i)'' in CEA section 5c(c)(5)(C) was intended by Congress to refer to the excluded commodities described in CEA section 1a(19)(i), namely, an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure. This interpretation carves out from the scope of CEA section 5c(c)(5)(C) event contracts based on a change in the price, rate, value, or levels of these measures, indices, and instruments.

The measures, indices, and instruments described in CEA section 1a(19)(i) served as underlyings for a range of derivative contracts that were broadly traded on CFTC-registered exchanges at the time of enactment of CEA section 5c(c)(5)(C).[47] As such, the Commission believes that it is unlikely that Congress intended the heightened authority granted to the Commission in CEA section 5c(c)(5)(C) to apply with respect to event contracts based on changes in the price, rate, value or levels of these measures, indices, and instruments.[48] The Commission notes that it has not historically recognized these types of event contracts as falling within the scope of CEA section 5c(c)(5)(C) and, by extension, § 40.11.

(b) Illustrative Examples of Event Contracts Not Within the Scope of CEA Section 5c(c)(5)(C) and § 40.11

The Commission believes that registered entities and market participants would benefit from the Commission providing examples of the types of event contracts that, in the Commission's view, fall outside of the scope of CEA section 5c(c)(5)(C) and, by extension, § 40.11.[49] The Commission believes that, among other things, this will assist registered entities, as well as applicants for registration, in making informed business decisions with respect to product design, thereby supporting responsible innovation. The Commission believes that this also will support the more efficient use of CFTC staff resources in connection with the review of event contract submissions.

While the Commission cannot anticipate every contract design, the Commission believes that event contracts based on a change in the price, rate, value, or levels of the following would generally fall outside of the scope of CEA section 5c(c)(5)(C) and § 40.11:

- Economic indicators, including the CPI and other price indices; the U.S. trade deficit with another country; measures related to GDP, jobless claims, or the unemployment rate; and U.S. new home sales;
- Financial indicators, including the federal funds rate; total U.S. credit card debt; fixed-rate mortgage averages (*e.g.,* the 30-year fixed-rate mortgage interest rate); and end of day, week, or month values for broad-based stock indexes; and
- Foreign exchange rates or currencies.

Request for Comment

The Commission requests comment on all aspects of its proposal to amend the language of §§ 40.11(a)(1)–(2) and 40.11(c) to more precisely track, in the description of ''excluded commodities,'' the text of CEA section 5c(c)(5)(C). In particular, the Commission requests comment on its interpretation that the reference to ''section 1a(2)(i)'' in the parenthetical in CEA section 5c(c)(5)(C)(i) is a typographical or drafting error, and that the intention was to refer to the excluded commodities described in CEA section 1a(19)(i).

The Commission further requests comment on the examples provided of event contracts that the Commission believes would generally fall outside of the scope of CEA section 5c(c)(5)(C) and § 40.11. In particular, the Commission requests comment on the following questions:

- Are there additional types of event contracts that should be explicitly identified by the Commission in the non-exclusive list of contract types that would generally fall outside of the scope of CEA section 5c(c)(5)(C) and § 40.11?
- What indices or measures are ''other macroeconomic index[es] or measure[s]'' for purposes of CEA section 1a(19)(i)? Are tax rates (*e.g.,* corporate and capital gains tax rates) among such macroeconomic measures?

2. Contracts That ''Involve'' an Enumerated Activity

CEA section 5c(c)(5)(C) applies with respect to event contracts in certain excluded commodities that ''involve'' one of the Enumerated Activities or a prescribed similar activity. In adopting § 40.11, the Commission described the types of event contracts that may not be listed for trading or accepted for clearing as contracts that involve, relate to, or reference one of the Enumerated Activities or a prescribed similar activity.[50] Commission Regulation 40.11(c) further provides that the Commission may engage in a 90-day review of an event contract if the contract may involve, relate to, or reference an Enumerated Activity or a prescribed similar activity.[51]

In order to further align the language of the regulation with the statutory text of CEA section 5c(c)(5)(C), the Commission proposes to amend § 40.11 to remove the terms ''relate to'' and ''reference'' wherever they appear and to simply refer to event contracts that ''involve'' an Enumerated Activity or prescribed similar activity. The proposed amendments would reaffirm the scope of the Commission's prohibition authority and the standard of review that applies with respect to an event contract pursuant to § 40.11. The proposed amendments would also be consistent with the determinations made by the Commission in the Nadex Order and the Kalshi Order, both of which focused on whether the event contracts in question ''involved'' an Enumerated Activity.[52] The proposed amendments are not intended to alter the scope of the Commission's prohibition authority or the nature of the Commission's analysis to determine whether a particular event contract falls within the ambit of CEA section 5c(c)(5)(C) and § 40.11.

The term ''involve'' is not defined in the CEA, so the Commission gives the term its ordinary meaning.[53] Definitions of ''involve'' include ''to relate to or affect,'' ''to relate closely,'' to ''entail,'' or to ''have as an essential feature or consequence.'' [54] In this regard, the

[47] These included derivative contracts based on changes in the Consumer Price Index (''CPI''), home price indices for various U.S. cities, U.S. Initial Jobless Claims, and Gross Domestic Product (''GDP'').

[48] Consistent with the Commission's view that the reference to ''section 1a(2)(i)'' in CEA section 5c(c)(5)(C) was intended by Congress to refer to the excluded commodities described in CEA section 1a(19)(i), section 201(b) of the CFTC Reauthorization Act of 2019 included, as a technical correction to the CEA, the replacement of the reference to ''section la(2)(i)'' with a reference to ''section 1a(19)(i).'' CFTC Reauthorization Act of 2019, H.R. 6197, 116th Cong. (2d. Sess. 2020).

[49] For the avoidance of doubt, with respect to these types of event contracts, a registered entity still must comply with the substantive and procedural requirements that apply, more generally, to the listing for trading or acceptance for clearing of derivative contracts, including, for DCMs and SEFs, the statutory requirement to ensure that such contracts are not readily susceptible to manipulation.

[50] 17 CFR 40.11(a)(1) and (2). While there are no prescribed similar activities at this juncture, the Commission retains its authority under CEA section 5c(c)(5)(C)(i)(VI) and § 40.11(a)(2) to prescribe similar activities in future rules or regulations.

[51] 17 CFR 40.11(c).

[52] *See* Kalshi Order at 5–7; Nadex Order at 2.

[53] *See Asgrow Seed Co.* v. *Winterboer,* 513 U.S. 179, 187, 115 S.Ct. 788 (1995); *see also Morrisette* v. *United States,* 342 U.S. 246, 263, 72 S.Ct. 240 (1952) (holding that undefined statutory words that are not terms of art are given their ordinary meanings, frequently derived from the dictionary).

[54] *See* ''involve'' definition, *Merriam-Webster.com, available at https://www.merriam-webster.com/dictionary/involve* (last visited Mar. 7, 2024); Random House College Dictionary 703

Continued

Commission reiterates that a contract may ''involve'' an Enumerated Activity, or prescribed similar activity, in circumstances where such activity is not, itself, the contract's underlying.[55] By its plain meaning, a contract ''involves'' its underlying, but it also involves other characteristics. Further, where the CEA specifies a contract's underlying, it uses the word ''underlying,'' [56] or, as syntax requires, it refers to what the contract is ''based on'' [57] or ''based upon.'' [58]

Beyond the plain meaning of ''involve,'' the full text of CEA section 5c(c)(5)(C)(i) demonstrates that a contract ''involve[s]'' more than just its underlying: the provision uses the terms ''based upon'' and ''involve'' in the same sentence and differentiates between the two. First, CEA section 5c(c)(5)(C)(i) states that the provision applies with respect to agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency.[59] In other words, the contract's underlying must be an event. Then, just a few words later, CEA section 5c(c)(5)(C)(i) states that ''such agreements, contracts, or transactions'' must ''involve'' an Enumerated Activity or prescribed similar activity. In context, ''based upon'' and ''involve'' must have different meanings, with ''based upon'' referring to the underlying, and requiring only that it be an event, and ''involve'' retaining its broader ordinary meaning and referring not just to the underlying, but to ''such agreements, contracts, or transactions'' as a whole.

In effect, Congress's choice of the broader term ''involve'' means that CEA section 5c(c)(5)(C) encompasses both event contracts whose underlying is an Enumerated Activity or prescribed similar activity, and event contracts with a different connection to an Enumerated Activity or prescribed similar activity, because, for example, they ''relate closely'' to, ''entail,'' or ''have as an essential feature or consequence'' such activity.

The legislative history of CEA section 5c(c)(5)(C) supports the plain meaning of the statutory text in this regard. During the 2010 Colloquy, Senator Lincoln stated that, among other things, CEA section 5c(c)(5)(C) was intended to ''prevent gambling through futures markets'' and to restrict derivatives exchanges from ''construct[ing] an 'event contract' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament.'' [60] None of the Super Bowl, the Kentucky Derby, or the Masters Golf Tournament are, of themselves, ''gaming.'' [61] Rather, the statement of Senator Lincoln—who, as noted above, is identified in the 2010 Colloquy as one of the authors of CEA section 5c(c)(5)(C)—focuses on the overall characteristics of the contract. As noted in the Nadex Order and the Kalshi Order, this legislative history supports the plain meaning of the term ''involve,'' and indicates that the question for the Commission in evaluating whether a contract ''involves'' an Enumerated Activity or prescribed similar activity is whether the contract, considered as a whole, involves one of those activities.[62]

Request for Comment

The Commission requests comment on all aspects of its proposal to amend § 40.11 to remove the terms ''relate to'' and ''reference'' wherever they appear, and to refer in the regulation only to event contracts that ''involve'' an Enumerated Activity or prescribed similar activity.

B. The Enumerated Activities

1. Gaming

(a) Background

Neither the CEA nor current § 40.11 define ''gaming'' or any of the other Enumerated Activities. While acknowledging, in the adopting release for § 40.11, the interest expressed by certain commenters to further define the term ''gaming'' for purposes of the regulation, the Commission deferred at the time from doing so, indicating that it would instead ''consider individual product submissions on a case-by-case basis under § 40.2 or § 40.3.'' [63]

Since the adoption of § 40.11 in 2011, as part of the agency's standard product review process, CFTC staff have evaluated whether event contracts in certain excluded commodities may implicate CEA section 5c(c)(5)(C) and § 40.11, and in four instances the Commission has commenced a review pursuant to § 40.11(c) to evaluate whether event contracts implicated one of the Enumerated Activities. In each of these four instances, a § 40.11(c) review was commenced, in part, to evaluate whether the event contracts in question implicated gaming.[64]

Based upon its experience administering CEA section 5c(c)(5)(C) pursuant to § 40.11, the Commission believes that defining the term ''gaming'' within § 40.11 will assist in establishing a common understanding and more uniform application of the term. It will thereby assist registered entities, and applicants for registration, in their product design efforts, and benefit market participants and the public by helping to ensure that event contracts listed for trading and accepted for clearing by registered entities are consistent with the requirements of the CEA and § 40.11. The Commission notes that there may continue to be instances where contract-specific reviews are commenced pursuant to § 40.11(c) in order to evaluate whether a contract involves ''gaming,'' as proposed to be defined. However, the Commission expects that establishing a definition, and thereby a common understanding of the term, will help to reduce the frequency of these reviews.

(b) Proposed Gaming Definition

The Commission proposes to define ''gaming'' in new § 40.11(b)(1) as the staking or risking by any person of something of value upon: (i) the outcome of a contest of others; (ii) the outcome of a game involving skill or chance; (iii) the performance of one or more competitors in one or more contests or games; or (iv) any other occurrence or non-occurrence in connection with one or more contests or games.[65] This proposed definition is

(Revised ed. 1979); Riverside University Dictionary 645 (1983) 645; *see also* Roget's International Thesaurus 1040 (7th ed. 2010) (giving as synonyms ''entail'' and ''relate to'').

[55] *See* Kalshi Order at 5–7; Nadex Order at 2.

[56] *E.g.,* 7 U.S.C. 6c(d)(2)(A)(i), 20(e), 25(a)(1)(D)(ii).

[57] *E.g.,* 7 U.S.C. 2(a)(1)(C)(i)(I), 2(a)(1)(C)(iv), 6b(e).

[58] *E.g.,* 7 U.S.C. 2(a)(1)(C)(ii).

[59] 7 U.S.C. 7a–2(c)(5)(C).

[60] *See* 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statements of Sen. Diane Feinstein and Sen. Blanche Lincoln).

[61] As noted in the Kalshi Order, it is difficult to conceive of a contract whose underlying event, itself, is ''gaming.'' If ''involve'' were to refer only to a contract's underlying, contracts based on sporting events such as horse races and football games would not qualify, because sports typically are not understood to be ''gaming''—they are understood to be ''games.'' In effect, if ''involve'' were to refer only to a contract's underlying, the scope of certain prongs of CEA section 5c(c)(5)(C) could effectively be limited to a null set of event contracts, which could not have been Congress's intent. Kalshi Order at 7, note 18.

[62] Nadex Order at 2; Kalshi Order at 7. For example, giving the term its ordinary meaning, a contract ''involves'' an Enumerated Activity or prescribed similar activity if trading in the contract amounts to such activity. *Id.* at 7, note 19.

[63] Provisions Common to Registered Entities, 76 FR 44776, 44785 (July 27, 2011).

[64] *See https://www.cftc.gov/PressRoom/PressReleases/6163-12* (2011 Nadex contracts); *https://www.cftc.gov/PressRoom/PressReleases/8345-20* (2020 ErisX contracts); *https://www.cftc.gov/PressRoom/PressReleases/8578-22* (2022 Kalshi contracts); *https://www.cftc.gov/PressRoom/PressReleases/8728-23* (2023 Kalshi contracts).

[65] The Commission considers the term ''contest'' to have its ordinary meaning, and to encompass a

consistent with the Commission's interpretation of the term ''gaming'' in the Nadex Order and the Kalshi Order,[66] and draws upon the ordinary meaning of the term[67] and relevant state and federal statutory definitions, as discussed below. The Commission wishes to make it clear that its proposed definition of ''gaming'' would not have applicability beyond the CFTC's administration of CEA section 5c(c)(5)(C) and § 40.11.

The proposed definition recognizes—as the Commission did in the Nadex Order and the Kalshi Order[68]—that the terms ''gaming'' and ''gambling'' are used interchangeably in common usage and dictionary definitions.[69] The proposed definition further recognizes that, under a number of state statutes, ''gambling,'' ''betting,'' or ''wagering'' is recognized to include a person staking or risking something of value upon a game or contest, or the performance of competitors in a game or contest.[70] Further, a federal statute, the Unlawful internet Gambling Enforcement Act (''UIGEA''), defines the term ''bet or wager'' as the staking or risking by any person of something of value on the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.[71]

Accordingly, the Commission believes that it is appropriate, for purposes of defining ''gaming'' within § 40.11, to focus on the staking or risking of something of value upon a contest of others or a game, including the outcome of such contest or game, the performance of competitors in such contest or game,[72] or other occurrences or non-occurrences in connection with such contest or game. As noted above, this proposed approach draws upon the approach taken in relevant state and federal statutes to defining the terms ''gambling,'' ''betting,'' and ''wagering.'' In this regard, the proposed approach is consistent with indications of the intent of the drafters of CEA section 5c(c)(5)(C). In the 2010 Colloquy, Senator Lincoln stated that the provision was intended, in part, to assure that the Commission had the authority to ''prevent gambling through futures markets.'' [73]

The Commission acknowledges that several state statutes recognize ''gambling,'' ''betting,'' or ''wagering,'' to encompass, more broadly, a person staking or risking something of value upon the outcome of any contingent event not in the person's influence or control—and not just a game or a contest of others.[74] The Commission is not proposing to define ''gaming'' in this manner. The Commission recognizes that this broader definition could encompass event contracts that were not intended by Congress to be subject to the Commission's heightened authority pursuant to CEA section 5c(c)(5)(C), including the types of event contracts described in section II.A.1.b, *supra.* To avoid going beyond what Congress may have intended with respect to the ''gaming'' category, the Commission is proposing to use the narrower definition discussed herein. The Commission is, however, proposing to define ''gaming'' to include the staking or risking of something of value on a contingent event in connection with a game or contest, which the Commission believes would be as much of a wager or bet on the game or contest as staking or risking something of value on the outcome of the game or contest would be.

(c) Illustrative Examples of Gaming

In order to provide additional guidance to registered entities and market participants, the Commission proposes to set forth in new § 40.11(b)(2) a non-exclusive list of examples of activities that constitute ''gaming,'' as proposed to be defined. Proposed § 40.11(b)(2) states that ''gaming'' includes, but is not limited to, the staking or risking by any person of something of value upon: (i) the outcome of a political contest, including an election or elections; (ii) the outcome of an awards contest; (iii) the outcome of a game in which one or more athletes compete; or (iv) an occurrence or non-occurrence in connection with such a contest or game, regardless of whether it directly affects the outcome. The Commission emphasizes that the list of examples provided in proposed § 40.11(b)(2) is non-exclusive. To the extent that other activity falls within the definition of ''gaming'' set forth at proposed § 40.11(b)(1), such activity would also constitute ''gaming.''

The first three examples in the non-exclusive list reflect types of games or contests which, when something of value is staked or risked upon their outcome, have been recognized as

''competition.'' *See, e.g., MERRIAM–WEBSTER.COM, available at https://www.merriam-webster.com/dictionary/contest* (last visited Mar. 7, 2024) (defining the noun ''contest'' as: ''1) a struggle for superiority or victory: competition; 2) a competition in which each contestant performs without direct contact with or interference from competitors'').

[66] *See* Nadex Order at 2–3; Kalshi Order at 8–10.

[67] *See* note 70, *infra.*

[68] Nadex Order at 2–3; Kalshi Order at 8–9.

[69] For example, Dictionary.com defines ''gaming'' as, *e.g.,* ''gambling.'' *See* ''gaming'' definition, *Dictionary.com, https://www.dictionary.com/browse/gaming* (last visited Feb. 2, 2024). Black's Law Dictionary also refers to ''gambling'' as ''gaming'' and cross-refers the definition of gaming to gambling. *See* ''GAMING Definition & Legal Meaning,'' Black's Law Dictionary, 2nd Ed., *available at https://thelawdictionary.org/gaming/* (last visited Mar. 22, 2024). Further, many state agencies that regulate gambling are known as ''gaming'' commissions. *See, e.g.,* Nevada Gaming Commission and Nevada Gaming Control Board, *https://gaming.nv.gov/* (last visited Mar. 7, 2024); New York State Gaming Commission, *https://www.gaming.ny.gov/* (last visited Mar. 1, 2024); Illinois Gaming Board, *https://www.igb.illinois.gov/* (last visited Mar. 7, 2024).

[70] *See, e.g.,* Ga. Code Ann. section 16–12–21(a)(1) (West 2020) (A person commits the offense of gambling when he makes a bet upon the partial or final result of any game or contest or upon the performance of any participant in such game or contest.); Tex. Penal Code Ann. section 47.02(a) (West 2019) (A person commits an offense of gambling if he: (1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest''). *See also* note 75, *infra.*

[71] 31 U.S.C. 5362(1)(A). The UIGEA, 31 U.S.C. 5361–5367 (2006), prohibits gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the internet and that is unlawful under any federal or state law. Unlike the Wire Act, 28 U.S.C. 1084 (1961), the UIGEA defines a ''bet'', but it criminalizes it only if it is connected with unlawful internet gambling that violates any federal or state law. *See* 31 U.S.C. 5362. The UIGEA does not alter the definitions in other federal and state laws and expressly excludes any transaction conducted on or subject to the rules of a registered entity or exempt board of trade under the CEA from the definition of ''bet or wager.'' *See id.* at section 5362(1)(E).

[72] This would include the performance of one or more athletes in one or more games, as well as the performance of one or more competitors in one or more auto, drone, boat, horse, or similar competitions. In addition, this would include performance in any ''fantasy'' or simulated contest or league in which participants own or manage an imaginary or theoretical team and compete against other participants based on the performance of such teams or team members.

[73] *See* 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statement of Sen. Blanche Lincoln).

[74] *See, e.g.,* N.Y. Penal Law section 225.00(2) (McKinney 2015) (A person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.); Mich. Comp. Laws section 750.301 (2023) (Any person or his or her agent or employee who, directly or indirectly, takes, receives, or accepts from any person any money or valuable thing with the agreement, understanding or allegation that any money or valuable thing will be paid or delivered to any person where the payment or delivery is alleged to be or will be contingent upon the result of any race, contest, or game or upon the happening of any event not known by the parties to be certain.); Va. Code Ann. section 18.2–325(1) (West 2022) (Illegal gambling means the making, placing, or receipt of any bet or wager of money or other consideration or thing of value, made in exchange for a chance to win a prize, stake, or other consideration or thing of value, dependent upon the result of any game, contest, or any other event the outcome of which is uncertain or a matter of chance.).

gambling, betting, or wagering under relevant state and federal statutes, and would constitute ''gaming'' under the proposed definition in § 40.11(b)(1).[75] The first example reflects the Commission's prior determinations that ''gaming'' includes the staking of something of value upon the outcome of a political contest, including an election.[76] The Commission's prior determinations reflect, in turn, that several state statutes, on their face, link the terms ''gaming'' or ''gambling'' to betting or wagering on elections.[77]

For purposes of proposed § 40.11(b), the Commission would consider a political contest to include, but not to be limited to, a federal, state, or municipal election or primary contest for any political office, as well as any political contest in a foreign jurisdiction, including any political subdivision thereof, or in a supranational organization. For the avoidance of doubt, the Commission would consider an event contract to ''involve'' gaming if the contract is premised on the outcome of one or more political contests, or would otherwise amount to the staking or risking of something of value upon the outcome of one or more political contests.[78]

The inclusion of the staking or risking of something of value upon the outcome of a political contest as an example of ''gaming'' in proposed § 40.11(b)(2) highlights that the Commission's proposed definition is not limited to sporting events or other games. This reflects the similar approach taken in numerous state gambling statutes [79] as well as in the UIGEA, which defines a ''bet or wager'' to mean, in relevant part, the staking or risking by any person of something of value on the outcome of a contest of others, a sporting event, or a game subject to chance.[80] The separate ''contest of others'' category in the UIGEA definition demonstrates that ''betting or wagering'' (and, by extension, gaming) is recognized within a federal statutory framework as extending beyond sporting events and games of chance.

In this regard, in its non-exclusive list of examples of ''gaming'' at proposed § 40.11(b)(2), the Commission includes the staking or risking of something of value upon the outcome of an awards contest. This would encompass, among other things, the staking or risking of something of value upon the outcome of entertainment award contests such as the Emmys, the Oscars, or the Grammys; athletics award contests such as the Heisman Trophy; or achievement award contests such as the Nobel Prize or the Pulitzer Prize. The Commission further includes as an example of ''gaming'' in proposed § 40.11(b)(2) the staking or risking of something of value upon the outcome of a game in which one or more athletes participate. This would encompass, among other things, the staking or risking of something of value upon the outcome of a professional or amateur (including scholastic) sports game.

Finally, the Commission includes as an example of ''gaming'' in proposed § 40.11(b)(2) the staking or risking of something of value upon an occurrence or non-occurrence in connection with any of the previously described examples of contests or games—regardless of whether such occurrence or non-occurrence directly affects the outcome of such contest or game. As discussed above, the Commission is proposing to define ''gaming'' to mean—in addition to the staking or risking of something of value upon the outcome of a contest of others or a game of skill or chance, or the performance of one or more competitors in such contest or game—the staking or risking of something of value upon any other occurrence or non-occurrence in connection with a contest or game. The Commission makes clear, in proposed § 40.11(b)(2), that it is of no import whether or not such occurrence or non-occurrence directly affects the outcome of a contest or game. Such an occurrence or non-occurrence would encompass, for example: (i) whether a particular candidate enters or withdraws from a political contest, or polls above or below a certain threshold; (ii) whether a particular individual is nominated for an award or attends an award ceremony; and (iii) in the context of an athletic game, the score or individual player or team statistics at given intervals during the game, whether a particular player will participate in a game, and whether a particular individual will attend a game.

The Commission notes that a number of states prohibit betting or wagering on a variety of occurrences or non-occurrences associated with athletic games,[81] as well as non-sporting events.[82] This highlights that in some

[75] *See* section II.B.1.b, *supra.*

[76] In the Nadex Order, which addressed certain event contracts on election outcomes, the Commission found that state gambling definitions of ''wager'' and ''bet'' were analogous to the act of taking a position in the subject contracts. Additionally, the Commission cited to the UIGEA definition of the term ''bet or wager,'' and found that taking a position in the subject contracts ''fit[] the plain meaning'' of a person staking something of value upon a contest of others, since the contracts were all premised—either directly or indirectly—on the outcome of a contest between electoral candidates. As in the Nadex Order, in the Kalshi Order, the Commission looked to definitions of the terms ''gaming,'' ''gambling,'' and ''bet or wager,'' including state and federal statutory definitions, and found that the subject contracts involved gaming, since taking a position in the contracts would be staking something of value upon the outcome of a contest of others: the contracts were premised on the outcome of Congressional election contests. As discussed, *infra,* the Commission further found in the Kalshi Order that the subject contracts involved ''activity that is unlawful under . . . State law'' pursuant to CEA section 5c(c)(5)(C)(i)(I) and § 40.11(a)(1).

[77] *See, e.g.,* 720 Ill. Comp. Stat. Ann. section 5/28–1 (West 2011) (A person commits gambling when he makes a wager upon the result of any game, contest, or any political nomination, appointment or election''); Neb. Rev. Stat. section 28–1101(4) (2011) (A person engages in gambling if he or she bets something of value . . . upon the outcome of a game, contest, or election.); N.M. Stat. Ann. section 44–5–10 (1978) (Bets and wagers authorized by the constitution and laws of the United States, or by the laws of this state, are gaming within the meaning of this chapter.); N.D. Cent. Code. Ann. section 12.1–28–01 (West 2011) (Gambling means risking any money upon the happening or outcome of an event, including an election . . . over which the person taking the risk has no control.). *See also* Ga. Code. Ann. section 16–12–21(a)(2) (West 2011) (A person commits the offense of gambling when he makes a bet upon the result of any political nomination, appointment, or election.); Miss. Code Ann. section 97–33–1 (West 2011) (If any person shall wager or bet upon the result of any election he shall be fined in a sum not more than Five Hundred Dollars.); S.C. Code Ann. section 16–19–90 (2012) (Any person who shall make any bet or wager of money upon any election in this State shall be guilty of a misdemeanor.); Tex. Penal Code Ann. section 47.02(a)(2) (West 2011) (A person commits an offense if he makes a bet on the result of any political nomination, appointment, or election.).

[78] Consistent with its determination in the Kalshi Order, where taking a position in a contract would be staking or risking something of value upon the outcome of a political contest, including an election or elections, the Commission would consider the contract also to involve activity that is unlawful under state law, pursuant to CEA section 5c(c)(5)(C)(i)(I) and § 40.11(a)(1). *See* Kalshi Order at 12–14.

[79] *See, e.g.,* notes 71, 75, and 78, *supra.*

[80] 31 U.S.C. 5362(1)(a).

[81] *See, e.g.* Va. Code Ann. section 58.1–4039 (A)(2) (West) (No person shall place or accept a proposition bet on college sports.). Ohio and Maryland have recently followed suit and banned player-specific proposition bets on college sports. *See https://casinocontrol.ohio.gov/static/NCAA%20Request%20&%20Commission's%20Response/Response%20to%20the%20NCAA%20Regarding%20Proposition%20Wagers%20on%20Student%20Athletes%202022%2002%2023.pdf* (Feb. 23, 2024 letter from the Ohio Casino Control Commission approving a request from the National Collegiate Athletic Association (''NCAA'') to prohibit player-specific proposition bets on intercollegiate athletics competitions); *https://sbcamericas.com/2024/03/04/maryland-bans-college-athlete-props/* (describing a directive by the Maryland Lottery and Gaming Control Agency to all sportsbook operators in Maryland to remove college player proposition wagers from their platforms as of Mar. 1, 2024). *See also Massachusetts Gaming Commission Says No Super Bowl Prop Bets This Year,* NewBostonPost (Feb. 9, 2024), *available at https://newbostonpost.com/2024/02/09/massachusetts-gaming-commission-says-no-super-bowl-prop-bets-this-year/.*

[82] For example, in Nevada, a sports book may not accept wagers on a non-sporting event unless

instances, event contracts that involve ''gaming,'' as proposed to be defined, may also involve a second Enumerated Activity—''activity that is unlawful under . . . State law.'' For example, as discussed in section I.C.3, *supra,* the Commission found in the Kalshi Order that the subject contracts involved both gaming and activity that is unlawful under state law.[83] While the Commission does not provide a complete catalogue herein of the types of betting or wagering that is prohibited under state law, it warrants recognition that in certain instances, event contracts that involve ''gaming,'' as proposed to be defined, may also involve activity that is unlawful under state law.[84]

As discussed above, the Commission recognizes that there may continue to be instances where contract-specific reviews will need to be commenced pursuant to § 40.11(c) in order to evaluate whether a particular contract involves ''gaming,'' as proposed to be defined. However, it is anticipated that the proposed definition and non-exclusive list of examples will assist in demarcating for registered entities and market participants the types of event contracts that involve ''gaming'' for purposes of § 40.11(a)(l), and thereby reduce the frequency with which such reviews must be commenced.

Request for Comment

The Commission requests comment on all aspects of its proposed definition of the term ''gaming.'' In particular, the Commission requests comment on the following questions:

- Are there examples of activities that would constitute ''gaming'' that may fall outside of the proposed definition?
- Are there other types of votes or elections that the Commission should specifically identify, for clarity, in the illustrative examples in proposed § 40.11(b)(2)? What types of other votes or elections should be identified, and why?
- Should the availability at gaming venues of bets or wagers on a particular contingency, occurrence, or event be a relevant factor in the Commission's consideration of whether an event contract involving that contingency, occurrence, or event involves ''gaming'' for purposes of § 40.11?
- If, on judicial review, it is determined that staking something of value on the outcome of a political contest does not involve ''gaming,'' the Commission may consider whether that activity is ''similar to'' gaming. Is staking something of value on the outcome of a political contest similar to gaming?
- The Commission may also consider whether it should enumerate contracts involving political contests or some subset thereof as contracts involving a ''similar activity'' to any one or more of ''war,'' ''terrorism,'' ''assassination,'' or ''activity that is unlawful under any Federal or State law'' under CEA section 5c(c)(5)(C)(i)(VI) and determine that contracts involving this newly enumerated activity of political contests are contrary to the public interest. Are contracts involving political contests contracts involving a similar activity to any one or more of ''war,'' ''terrorism,'' ''assassination,'' or ''activity that is unlawful under any Federal or State law''? If so, should the Commission determine such contracts are contrary to the public interest?

2. The Other Enumerated Activities

The Commission does not believe that it is necessary to define ''terrorism,'' ''assassination,'' or ''war'' at this time.[85] With respect to ''activity that is unlawful under any Federal or State law,'' the Commission notes that the § 40.11(c) review that it conducted in connection with its determination in the Kalshi Order evaluated whether the subject Congressional control contracts involved this Enumerated Activity. In the Kalshi Order, the Commission found that, in many states, betting or wagering on elections is prohibited by statute or common law, and the Commission cited to the statutory provisions and caselaw prohibiting such activity that it had identified through a survey of relevant state law.[86] The Commission found that, because taking a position in the subject contracts would be staking something of value upon the outcome of contests between electoral candidates—in effect, betting or wagering on the outcome of elections—and because in many states such conduct is illegal, the subject contracts involved activity that was unlawful under state law.[87]

The Commission anticipates that that the agency would in the future follow a similar approach—including a survey of relevant law—in circumstances where there is a question regarding whether an event contract submitted to the Commission involves activity that is unlawful under any state, or federal, law for purposes of § 40.11(a)(1). The Commission acknowledges that many state codes include laws prohibiting certain activity that, while not repealed, are generally considered archaic and are not enforced. The Commission believes that it is unlikely that a registered entity would seek to list for trading or accept for clearing an event contract involving such a law. To the extent that a registered entity does make a submission to the Commission regarding a contract that may involve such a law, the Commission believes that it may be appropriate to commence a review of the contract pursuant to § 40.11(c) to evaluate whether, in light of the relevant facts and circumstances, it is appropriate to recognize the contract as involving ''activity that is unlawful under any . . . State law'' for purposes of § 40.11(a)(1).

The Commission notes further that a registered entity may receive a definitive resolution of any questions concerning the applicability of § 40.11(a)(1) by submitting a contract for Commission approval under § 40.3. CFTC staff also may, at its discretion and upon a request from a registered entity, review a draft contract

specifically approved by the Gaming Commission; to date, the Nevada Gaming Commission has not approved wagers on awards shows or other non-athletic or certain ''Esports'' related events or contests. *See* Nev. Gaming Comm'n Reg. section 22.120, Permitted wagers (Rev. 2023)

[83] Kalshi Order at 11–12.

[84] *See* note 88, *infra.* While the Commission has exclusive jurisdiction over futures and swaps contracts traded on a CFTC-registered exchange, preempting the application of state law with respect to such transactions—and meaning that transacting in such contracts on a CFTC-registered exchange cannot, of itself, constitute unlawful activity for state law purposes—this does not preclude a contract from involving ''activity that is unlawful under . . . State law'' for purposes of CEA section 5c(c)(5)(C).

[85] The Commission clarifies, however, that it believes that cyberattacks and other acts of cyberterrorism constitute terrorism, and in some cases war, and are also likely to constitute activity that is unlawful under state or federal law.

[86] Kalshi Order at 11–12.

[87] CEA section 2(a)(1) grants the Commission ''exclusive jurisdiction'' over futures and swap contracts traded on a CFTC-registered exchange, 7 U.S.C. 2(a)(1). This ''preempts the application of state law,'' *Leist* v. *Simplot,* 638 F.2d 283, 322 (2d Cir. 1980), so transacting these contracts on a CFTC-registered exchange cannot, in and of itself, be an ''activity that is unlawful under any . . . State law.'' However, such contracts may still ''involve . . . activity'' that is unlawful under a state law, in the sense, for example, that transactions in the contracts may ''relate closely'' to, ''entail,'' or ''have as an essential feature or consequence'' an activity that violates state law. For example, in the Kalshi Order, the Commission found that state laws (which are not preempted by the CEA) prohibit wagering on elections. The Commission found that taking a position in the subject Congressional control contracts would be staking something of value on the outcome of contests between electoral candidates, such that wagering on elections was ''an essential feature or consequence'' of the contracts. Accordingly, the Commission found that while transactions in the contracts on a CFTC-registered exchange would not violate, for example, state bucket-shop laws, they nevertheless involved an activity that is unlawful in a number of states—wagering on elections. The Commission found that to permit such transactions on a CFTC-registered exchange would undermine important state interests expressed in statutes separate and apart from those applicable to trading on a CFTC-registered exchange. *Id.* at 13, note 28.

submission or proposal and provide guidance concerning the contract's compliance with the CEA and CFTC regulations, including § 40.11(a)(1).[88]

Request for Comment

The Commission requests comment as to whether commenters agree with the Commission's view that a registered entity is unlikely to seek to list for trading or accept for clearing a contract that involves a state law prohibiting certain activity that, while not repealed, is generally considered archaic and is not enforced.

C. Public Interest Considerations

1. Overview of Proposed Amendments

As discussed above, CEA section 5c(c)(5)(C) provides that a registered entity may not list, or make available for clearing or trading, contracts in certain excluded commodities that involve an Enumerated Activity or prescribed similar activity, and that have been determined by the Commission to be contrary to the public interest.[89] The Commission interprets CEA section 5c(c)(5)(C) to provide that a contract may not be listed or made available for clearing or trading if the Commission finds both that: (i) the contract involves an Enumerated Activity or prescribed similar activity, and (ii) the contract is contrary to the public interest.

While CEA section 5c(c)(5)(C) requires the Commission to determine that a contract that involves an Enumerated Activity or prescribed similar activity is contrary to the public interest, in order for the contract to be prohibited from being listed or made available for clearing or trading, the statute does not require this public interest determination to be made on a contract-specific basis. The Commission interprets CEA section 5c(c)(5)(C) to authorize categorical public interest determinations if the Commission determines that contracts involving an Enumerated Activity or prescribed similar activity are, as a category, contrary to the public interest.[90] The Commission proposes to amend § 40.11(a)(1) to include a determination that event contracts involving each of the Enumerated Activities—including ''gaming,'' as proposed to be defined—are, as a category, contrary to the public interest and therefore may not be listed for trading or accepted for clearing on or through a registered entity. The Commission notes that, to date, it has conducted a contract-specific public interest analysis in connection with each of the contract reviews that it has commenced pursuant to § 40.11(c).[91] If, as proposed, § 40.11(a)(1) is amended to include a categorical public interest determination with respect to contracts involving each of the Enumerated Activities, the Commission would not, going forward, undertake a contract-specific public interest analysis as part of a review commenced pursuant to § 40.11(c). Rather, the focus of any such review would be to evaluate whether the contract involves an Enumerated Activity, in which case, it may not be listed for trading or accepted for clearing on or through a registered entity. The Commission believes this would be appropriate to ensure the consistent treatment of categories of contracts that have been determined by the Commission to be contrary to the public interest. The Commission notes its expectation, as discussed above, that defining the term ''gaming'' for purposes of § 40.11(a)(1) will further assist registered entities in their product design and compliance efforts, and will reduce the instances in which contract-specific reviews need to be commenced pursuant to § 40.11(c).

2. Factors Considered by the Commission in Evaluating Whether a Contract, or Category of Contracts, Is Contrary to the Public Interest

The term ''public interest'' is not defined in CEA section 5c(c)(5)(C). As discussed more fully below, historically, the Commission has evaluated whether a contract is contrary to the public interest with reference to the contract's commercial hedging or price-basing utility. The Commission has also, however, regularly stated that other public interest factors may be considered.[92] In that historical context, the Commission observes that the event contract categories listed in CEA 5c(c)(5)(C)—for example, terrorism, war, assassination, and activity that is unlawful under any federal or state law—are indicative of additional public interest concerns for Congress, beyond a contract's hedging and price-basing utility, in establishing the heightened authority set forth in that provision.

The Commission reviewed the legislative history available to establish its own determination of what factors are relevant in a public interest evaluation under CEA section 5c(c)(5)(C). The legislative history of the provision is limited, but it does suggest an intent on the part of the drafters for the hedging and price-basing utility of a contract to be relevant factors for consideration in a public interest evaluation.[93] In the 2010 Colloquy, Senator Feinstein and Senator Lincoln discussed the Commission's authority, prior to the enactment of the Commodity Futures Modernization Act of 2000 (''CFMA''), to prevent trading that is contrary to the public interest.[94] Before its repeal by the CFMA, CEA section 5(g) made it a condition of initial and continuing contract market designation that transactions for future delivery not be contrary to the public interest.[95] The Commission interpreted this statutory public interest standard to include the concept of an ''economic purpose'' test. Pre-CFMA guidelines articulated the economic purpose test as an evaluation of whether a contract reasonably can be expected to be, or has been, used for hedging and/or pricing basing on more than an occasional basis.[96]

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[88] The Commission notes, however, that staff's guidance concerning drafts and proposals is preliminary and non-binding. CFTC staff formally reviews contracts only at such time as a compliant submission is provided to the Commission pursuant to § 40.2 or § 40.3.

[89] 7 U.S.C. 7a–2(c)(5)(C).

[90] Further, the Commission's general rulemaking authority under CEA section 8(a)(5) provides the Commission with the authority to enact prophylactic regulations that, as proposed herein and for the reasons discussed below, the Commission has determined are reasonably necessary to prevent the listing for trading or acceptance for clearing of event contracts that will always violate the public interest, and to diminish the harms (such as inefficiency for market participants) caused by regular use of post hoc evaluations of contracts that exchanges have already expended resources to develop. CEA section 8(a)(5), 7 U.S.C. 12(a)(5) (authorizing the Commission ''to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the CEA]'').

[91] In the Nadex Order and the Kalshi Order, the Commission first determined that the subject contracts involved an Enumerated Activity (or Enumerated Activities), and then separately determined that the contracts were contrary to the public interest and therefore prohibited from being listed or made available for clearing or trading. *See* Nadex Order at 3–4; Kalshi Order at 13–23.

[92] *See* note 103, *infra.*

[93] The Commission has recognized price basing to occur when producers, processors, merchants, or consumers of a commodity establish commercial transaction prices based on the futures price for that or a related commodity. *See, e.g.,* Kalshi Order at 18.

[94] *See* 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statements of Sen. Diane Feinstein and Sen. Blanche Lincoln).

[95] CEA section 5(g), 7 U.S.C. 7(g) (repealed).

[96] The Commission adopted ''Guideline No. 1'' to assist DCMs in preparing applications for product approval. *See* Guideline on Economic and Public Interest Requirements for Contract Market Designation, 40 FR 25849 (June 19, 1975). Guideline No. 1 stated that DCMs should make an affirmative showing that a proposed futures contract was ''reasonably expected to serve, on more than occasional basis,'' as a price discovery or hedging tool for commercial users of the underlying commodity. Subsequently, the Commission revised Guideline No. 1, publishing it as appendix A to part 5 of chapter 17 of the Code of Federal Regulations. *See* 47 FR 49832 (Nov. 3, 1982). As revised in 1982,

In the 2010 Colloquy, Senator Feinstein and Senator Lincoln articulated the approach to evaluating a contract's hedging and price-basing utility differently from how the economic purpose test was applied under former CEA section 5(g). Senator Feinstein asked Senator Lincoln whether, with respect to CEA section 5c(c)(5)(C), the intent was to ''define 'public interest' broadly so that the CFTC may consider the extent to which a proposed derivative contract would be used predominantly by speculators or participants not having a commercial or hedging interest.'' [97] Senator Feinstein further asked whether the Commission would ''have the power to determine that a contract is a gaming contract if the predominant use of the contract is speculative as opposed to a hedging or economic use.'' [98] Senator Lincoln replied, ''That is our intent.'' [99] Thus, while pre-CFMA Commission guidelines articulated the economic purpose test as an evaluation of ''whether [a] contract reasonably can be expected to be, or has been, used for hedging and/or price basing on more than an occasional basis,'' Senator Lincoln and Senator Feinstein referred instead to whether a contract is used predominantly by speculators or market participants not having a commercial or hedging interest.

While the articulation of the approach to evaluating hedging and pricing-basing utility differs from the pre-CFMA articulation, the 2010 Colloquy does suggest an intent on the part of the drafters of CEA section 5c(c)(5)(C) for the hedging and price-basing utility of a contract to be relevant considerations in a public interest review under that provision. As noted, this is not inconsistent with the approach taken in assessing whether a futures contract was contrary to the public interest under former CEA section 5(g), which contemplated application of the economic purpose test.

In this regard, the Commission notes further that the general ''Findings and Purpose'' provision of the CEA, at CEA section 3(a), states that the transactions subject to [the CEA] . . . are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair, and secure financial facilities.[100] Accordingly, the CEA recognizes hedging as a public interest, which certain transactions subject to the CEA—transactions providing a means for managing and assuming price risk—are intended to serve.

As such, the Commission recognizes the utility of a contract, or category contracts, for purposes of hedging and price-basing to be relevant factors for consideration in evaluating whether the contract, or category of contracts, is contrary to the public interest pursuant to CEA section 5c(c)(5)(C).[101] While the articulation of the approach to evaluating hedging and price-basing utility differs in the 2010 Colloquy and under the pre-CFMA economic purpose test, the Commission anticipates that a contract, or category of contracts, that does not satisfy one such articulation also would likely not satisfy the other.

In this regard, the Commission reiterates that it has the discretion to consider other factors, in addition to hedging and price-basing utility, in its evaluation of whether a contract, or category of contracts, is contrary to the public interest for purposes of CEA section 5c(c)(5)(C).[102] This is consistent with the discretion of the Commission when evaluating whether a futures contract was contrary to the public interest under CEA section 5(g), prior to its repeal by the CFMA.[103] Accordingly, for the reasons discussed herein, and giving due consideration to the intentions reflected in the 2010 Colloquy, the Commission has determined that there are circumstances where other public interest considerations support prohibiting a contract, or category of contracts, from being listed for trading or accepted for clearing on or through a registered entity, even where such contract, or category of contracts, may have certain hedging or price-basing utility.[104]

With respect to other factors to be considered in a public interest review, the legislative history of CEA section 5c(c)(5)(C) supports consideration of whether the contract, or category of

Guideline No. 1 was updated to address proposed innovations in the trading of futures contracts, including futures contracts on financial instruments and on various indexes and cash-settled futures contracts. Guideline No. 1 was again revised in 1992. 57 FR 3518 (Jan. 30, 1992). The 1992 revisions eliminated redundant materials by stating that an application for designation as a contract market for a particular futures contract should include a cash-market description only when the proposed contract differed from a currently designated contract and that a DCM need justify only individual contract terms that were different from terms which previously had been approved by the Commission. 57 FR at 3521. In addition, the 1992 revisions eliminated the guideline that a DCM provide a further, separate justification that the proposed contract would be quoted and disseminated for price basing, or used as a means of hedging against possible loss through price fluctuation on more than an occasional basis, noting that ''the economic purpose of a contract is often implicit, or encapsulated, in the exchange's demonstration that the terms and conditions of the proposed contract meet the criteria of the Guideline [No. 1].'' 57 FR at 3521–22, note 9. Former CEA section 5(g) was deleted by the CFMA, and Guideline No. 1 was accordingly also withdrawn by the Commission.

[97] 156 Cong. Rec. S5906 (daily ed. July 15, 2010) (statements of Sen. Diane Feinstein and Sen. Blanche Lincoln).

[98] *Id.*

[99] *Id.*

[100] 7 U.S.C. 5(a).

[101] The Commission considered hedging and price-basing utility in its previous orders under CEA section 5c(c)(5)(C) and § 40.11. *See* Kalshi Order at 13–15; Nadex Order at 3. In the Kalshi Order the Commission found, among other things, that the event underlying the subject contracts—control of a chamber of Congress—did not, in and of itself, have ''sufficiently direct, predictable, or quantifiable economic consequences'' for the contracts to serve an effective hedging function. The Commission found that, since the economic effects of control of a chamber of Congress are ''diffuse and unpredictable,'' the price of the subject contracts was not directly correlated to the price of any commodity, and so the price of the contracts could not predictably be used to establish commercial transaction prices. The Commission found that, even if some level of political risk may be embedded in the price of many commercial transactions, that did not, in itself, support a finding that the subject contracts served a price-basing function. Kalshi Order at 16–17. Similarly, in the Nadex Order the Commission found that ''the unpredictability of the specific economic consequences of an election means that the [subject contracts] cannot reasonably be expected to be used for hedging purposes . . .'' Nadex Order at 3. The Commission found that there was no situation in which the subject contracts' prices could form the basis for the pricing of a commercial transaction, financial asset, or service, which demonstrated that the contracts did not have price-basing utility. *Id.*

[102] For example, in both the Nadex Order and the Kalshi Order, the Commission highlighted the public interest concerns that would be raised if registered entities were permitted to offer trading in event contracts involving the outcome of political elections. Nadex Order at 4; Kalshi Order at 19–20.

[103] In the Senate conference report for the Commodity Futures Trading Commission Act of 1974, the conferees adopted an amendment that required a board of trade to demonstrate that transactions on it would not be contrary to the public interest, and ''note[d] that the broader language of the Senate provision would include the concept of the 'economic purpose' test provided in the House bill subject to the final test of the 'public interest.' '' S. Rep. 1194, 93rd Cong. 2d Sess. 36 (1974). *See also* Economic and Public Interest Requirements for Contract Market Designation, 47 FR 49832, 49836 (Nov. 3, 1982) (''Congress made clear when it adopted the public interest test of Section 5(g) of the Act, that the public interest test is broader than, and includes, an economic purpose test'' (citing the above-referenced Senate conference report). This public interest standard was not modified by the 1992 revisions to Guideline 1. *See generally* 57 FR 3518 (Jan. 30, 1992).

[104] In the 2010 Colloquy, Senator Feinstein asked Senator Lincoln whether she agreed that CEA section 5c(c)(5)(c) would ''empower the Commission to prevent trading in contracts that may serve a limited commercial function but threaten the public good by allowing some to profit from events that threaten our national security.'' Senator Lincoln confirmed that she agreed, stating that while national security threats ''pose a real commercial risk to many businesses in America,'' contracts that permitted people to hedge that risk ''would also involve betting on the likelihood of events that threaten our national security. That would be contrary to the public interest.'' 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statements of Sen. Diane Feinstein and Sen. Blanche Lincoln).

contracts, may threaten the public good. In the 2010 Colloquy, Senator Feinstein recognized contracts that would ''allow[] some to profit from events that threaten our national security'' as a threat to the public good.[105] Senator Lincoln similarly recognized that event contracts that allowed for the hedging of the commercial risks of terrorist attacks, war, and hijacking would also ''involve betting on the likelihood of events that threaten our national security. That would be contrary to the public interest.'' [106] The Commission believes this is plainly so given the terrible potential consequences of these activities. The Commission accordingly agrees with, and adopts, the view expressed in the 2010 Colloquy that national security and, more broadly, the public good, are relevant factors for consideration in an evaluation of whether a contract, or category of contracts, is contrary to the public interest for purposes of CEA section 5c(c)(5)(C).

The Commission will consider all relevant factors in evaluating whether a contract, or category of contracts, is contrary to the public interest, and there is no one factor that will be determinative in the Commission's evaluation. In addition to hedging utility, price-basing utility, and threats to national security or other threats to the public good, some of the factors that may be relevant when the Commission is evaluating whether a contract, or category of contracts, is contrary to the public interest include: (i) the extent to which the contract, or category of contracts, would draw the Commission into areas outside of its primary regulatory remit; [107] (ii) whether characteristics of the contract, or category of contacts, may increase the risk of manipulative activity relating to the trading or pricing of the contract; [108] and (iii) whether the contract, or category of contracts, could result in market participants profiting from harm to any person or group of persons.[109]

The Commission notes that the factors that inform a public interest determination, and the weight given to each such factor, are likely to vary depending on the particular characteristics of the contract, or category of contracts, that are being evaluated.

Request for Comment

The Commission requests comment on all aspects of its discussion of the factors to be considered in evaluating whether a contract, or category of contracts, is contrary to the public interest for purposes of CEA section 5c(c)(5)(C). In particular, the Commission requests comment on the following questions:

- Should hedging and price-basing utility be considered as factors when evaluating whether a contract, or category of contracts, is contrary to the public interest? Why or why not?
- If hedging and price-basing utility should be considered as factors when evaluating whether a contract, or category of contracts, is contrary to the public interest, how should such utility be assessed?
- Are there factors, in addition to those described herein, that may be relevant when evaluating whether a contract, or category of contracts, is contrary to the public interest? Are there any factors the Commission should specifically not consider? Why or why not?

3. The Enumerated Activities

The Commission proposes to amend § 40.11(a)(1) to include a determination that any event contract that involves an Enumerated Activity—including ''gaming,'' as proposed to be defined—is contrary to the public interest and therefore may not be listed for trading or accepted for clearing on or through a registered entity.

(a) Terrorism, Assassination, and War

The Commission recognizes the Enumerated Activities of terrorism, assassination, and war as activities that pose a threat to national and international security and entail violence and human suffering. The Commission believes that it would be contrary to the public interest to allow event contracts involving such activities to trade on CFTC-regulated markets. The Commission believes that allowing such contracts to trade would raise a real risk that the contracts, and markets for the contracts, could be used to ''profit from devastating events.'' [110] Allowing trading in contracts involving terrorism, assassination, or war could incentivize certain market participants to take a speculative position on whether these devastating events will occur, or how wide-reaching their impact will be—a type of speculation that the Commission believes, at a base level, is offensive and has no place in CFTC-regulated markets. Allowing trading in such contracts might even increase the risk of a terrorist attack, assassination, or act of war by creating financial incentives for a potential perpetrator to take a position in such a contract and then profit by carrying out the heinous act that the contract involves. The national and international security concerns and threat to the public good raised by terrorism, assassination, and war are so significant that the Commission must consider very seriously even the slightest risk that CFTC-regulated markets could create a means or motive to profit from such activity.[111] Accordingly, in circumstances where an event contract involves terrorism, assassination, or war, the Commission believes that the public interest concerns that would be raised by allowing the contract to be traded as a financial instrument on CFTC-regulated markets, as described above, would

[105] *Id.*

[106] *Id.*

[107] *See, e.g.,* Kalshi Order at 22–23.

[108] *See, e.g., id.* at 21–22. The Commission notes that DCMs and SEFs have a statutory obligation to ensure that the contracts that they list for trading are not readily susceptible to manipulation. *See* Core Principle 3 for DCMs, CEA section 5(d), 7 U.S.C. 7(d)(3), and Core Principle 3 for SEFs, CEA section 5h(f)(3), 7 U.S.C. 7b-3(f)(3). The Commission distinguishes the type of review that would be undertaken to evaluate whether a contract submission to the Commission, pursuant to § 40.2 or § 40.3, demonstrates compliance with this statutory obligation, from the type of review that would be undertaken to evaluate whether increased risk of manipulative activity may raise public interest concerns regarding a contract, or category of contracts, for purposes of CEA section 5c(c)(5)(C). The Commission notes that a review for purposes of CEA section 5c(c)(5)(C) would be to determine whether a contract, or category of contracts, should be per se prohibited from being listed for trading or accepted for clearing on or through a registered entity because it is contrary to the public interest.

[109] In the 2010 Colloquy, Senator Lincoln stated that CEA section 5c(c)(5)(C) was intended, in part, to ensure that the Commission had the power ''to prevent the creation of futures and swaps markets that would allow citizens to profit from devastating events.'' *See* 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statements of Sen. Diane Feinstein and Sen. Blanche Lincoln).

[110] *Id.*

[111] Similar concerns led to the shutdown in 2003 of the Futures Markets Applied to Prediction (''FutureMAP'') program proposed by the Defense Advanced Research Projects Agency (''DARPA''), an office within the United States Department of Defense. The FutureMAP program would have permitted traders to take positions on questions such as whether a particular political leader would be assassinated or whether a bioterror attack would occur. Senators raised concerns that the market would permit the perpetrator of a terrorist attack to profit from that attack. Senator Tom Daschle raised concerns that the market could actually incentivize terrorist attacks (''How long would it be before you saw traders investing in a way that would bring about the desired result''), and Senators Byron Dorgan and Ron Wyden characterized the project as ''morally repugnant,'' ''offensive,'' and ''grotesque.'' *See* ''Threats and Responses and Criticisms; Pentagon Prepares a Futures Market on Terror Attacks,'' The New York Times, July 29, 2003, *available at https://www.nytimes.com/2003/07/29/us/threats-responses-plans-criticisms-pentagon-prepares-futures-market-terror.html;* ''Pentagon Kills 'Terror Futures Market,' '' NBC News, July 29, 2003, *available at https://www.nbcnews.com/id/wbna3072985;* 149 Cong. Rec. S10082–83 (daily ed. July 29, 2003), *available at https://www.congress.gov/congressional-record/volume-149/issue-114/senate-section/article/S10082-1.*

supersede any potential price-basing or hedging utility of the contract.

The Commission therefore proposes to amend § 40.11(a)(1) to include determinations that any event contract that involves terrorism, assassination, or war is contrary to the public interest and may not be listed for trading or accepted for clearing on or through a registered entity.

Request for Comment

The Commission requests comment on all aspects of its proposed public interest determinations with respect to contracts involving terrorism, assassination, and war. In particular, the Commission requests comment on whether there are contracts that may involve terrorism, assassination, or war that do not raise the above-described public interest concerns. Why, or why not?

(b) Activity That is Unlawful Under Federal or State Law

The Commission similarly proposes to amend § 40.11(a)(1) to include a determination that any event contract that involves activity that is unlawful under federal or state law is contrary to the public interest and may not be listed for trading or accepted for clearing on or through a registered entity. As an independent agency of the federal government, the Commission exercises the authorities granted to it by Congress under the CEA to help ensure that U.S. derivatives markets operate with integrity. The Commission believes that it is contrary to the public interest to permit trading, in the financial markets that the Commission is mandated by Congress to oversee, in any event contract that involves activity that Congress has determined to be illegal.

The Commission further believes that it is contrary to the public interest to permit trading in any event contract that involves activity that is illegal under state law. Legislative bodies are intended to serve the public good, and such bodies generally bar or prohibit activity that they recognize as causing, or posing, public harm. Judges and judicial bodies, applying statutes and developing common law, also establish the illegality of activity that is recognized as causing, or posing, public harm.[112] The Commission thus believes that permitting trading, on CFTC-regulated markets, in contracts that involve activity that is unlawful under state law—and potentially in some circumstances creating opportunities to profit from illegal activity—would undermine important state interests, expressed in state statutes and common law, in protecting the public good.[113] This is also a matter of comity with states.

The Commission notes that there are variations across state law in the specific activities that are recognized as unlawful. The Commission believes that a determination that an event contract that involves activity that is unlawful under state law is contrary to the public interest—which turns the focus of the analysis to the questions of whether the activity, itself, is recognized as unlawful, and, if so, whether the contract ''involves'' such unlawful activity—eliminates the possibility that the Commission would have to serve, in its public interest analysis of a particular contract involving particular activity, as arbiter of a state's own public interest determination, as expressed in statute and/or common law, in recognizing specific activity as causing, or posing, public harm.

Request for Comment

The Commission requests comment on all aspects of its proposed public interest determination with respect to contracts involving activity that is unlawful under federal or state law. In particular, the Commission requests comment on whether there are contracts that may involve such activity that do not raise the above-described public interest concerns. Why, or why not?

(c) Gaming

As discussed above, the Commission is proposing to define the term ''gaming,'' for purposes of § 40.11, as the staking or risking by any person of something of value upon: (i) the outcome of a contest of others; (ii) the outcome of a game involving skill or chance; (iii) the performance of one or more competitors in one or more contests or games; or (iv) any other occurrence or non-occurrence in connection with one or more contests or games. The proposed definition draws upon the approach taken, in relevant state and federal statutory definitions, to defining the terms ''gambling,'' ''betting,'' or ''wagering,'' which, as discussed above, are generally used interchangeably with the term ''gaming.'' The Commission proposes to amend § 40.11(a)(1) to include a determination that any contract that involves ''gaming,'' as proposed to be defined, is contrary to the public interest. Both economic utility and other public interest factors inform the Commission's preliminarily determination that event contracts involving gaming should not be permitted to trade on CFTC-regulated markets.

The Commission believes that by defining ''gaming'' in a manner that draws upon the approach taken, in relevant state and federal statutory definitions, to defining the terms ''gambling,'' ''betting,'' or ''wagering,'' the Commission is in turn identifying, for purposes of § 40.11, contracts that ''exist predominantly to enable gambling.'' [114] The Commission believes that the economic impact of an occurrence (or non-occurrence) in connection with a contest of others, or a game of skill or chance—including the outcome of such contest or game—generally is too diffuse and unpredictable to correlate to direct and quantifiable changes in the price of commodities or other financial assets or instruments, limiting the hedging and price-basing utility of an event contract involving such an occurrence. Generally speaking, the Commission believes that something of value is staked or risked upon an occurrence (or non-occurrence) in connection with a contest of others,

[112] The Commission noted such common law prohibitions, and related policy concerns, with respect to wagering on elections in the Kalshi Order. Kalshi Order at 11–12, note 27.

[113] While the Commission has exclusive jurisdiction over futures and swaps contracts traded on a CFTC-registered exchange, preempting the application of state law with respect to such transactions—and meaning that transacting in such contracts on a CFTC-registered exchange cannot, of itself, constitute unlawful activity for state law purposes—this does not preclude a contract from involving ''activity that is unlawful under . . . State law'' for purposes of CEA section 5c(c)(5)(C).

[114] In the 2010 Colloquy, when discussing the Dodd-Frank Act provision that was ultimately enacted as CEA section 5c(c)(5)(C), Senator Lincoln stated that ''[t]he Commission needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed ''event contracts.'' *See* 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statements of Sen. Diane Feinstein and Sen. Blanche Lincoln). The Commission is aware that the legal landscape with respect to certain forms of gambling has changed since CEA section 5(c)(c)(5)(C) was adopted in 2010, and § 40.11 was adopted in 2011. Specifically, in 2018, the Supreme Court in *Murphy* v. *N.C.A.A.,* 584 U.S. 453, 138 S.Ct. 1461, struck down The Professional and Amateur Sports Protection Act (''PAPSA''). PAPSA had prohibited states from authorizing state-sponsored gambling on sporting events or permitting other persons to operate and promote such sports gambling schemes. Following this decision, many states have legalized various forms of sports gambling. The Commission highlights, however, the determination of Congress to identify ''gaming'' as an Enumerated Activity, separate and apart from activity that is unlawful under federal or state law. This indicates Congressional intent—supported by the 2010 Colloquy—to empower the Commission to prohibit event contracts that would effectively serve as a wagering vehicle, subject to a Commission determination that such contracts are contrary to the public interest. To this point, the Commission notes that there were forms of legalized gambling in the United States when CEA section 5c(c)(5)(C) was adopted (*e.g.,* casino sportsbooks in states such as Nevada and New Jersey).

or a game involving skill or chance, for entertainment purposes—in order wager on the occurrence. As such, the Commission believes that contracts involving such occurrences are likely to be traded predominantly ''to enable gambling'' [115] and ''used predominantly by speculators or participants not having a commercial or hedging interest,'' and cannot reasonably expected to be ''used for hedging and/or price basing on more than an occasional basis.'' [116]

While there may be individuals or entities for whom a particular occurrence in connection with a contest or game have more direct and more predictable economic consequences, the Commission believes that any such segment of individuals or entities is likely to be narrow as compared to the broader universe of market participants, including retail market participants, who may be able to trade in an event contract listed on a CFTC-registered exchange—and who, the Commission believes, are most likely to trade such contract for entertainment purposes only.

Moreover, the Commission believes that an individual or entity for whom a particular occurrence in connection with a contest or game may have more direct and more predictable economic consequences may also be more likely to have access to information and/or influence that could be used to engage in activity that could artificially move the market in an event contract involving such occurrence, potentially raising heightened manipulation concerns. For example, a professional athlete or coach may be economically impacted by their team's wins or losses, but may also have access to information—for example, about a team member's health or a potential injury—that could be used to trade ahead of the market in an event contract involving the team's performance. Further, the athlete or coach would potentially have a platform—for example, access to media, combined with public perception as an authoritative source of information regarding the team—that could be used to disseminate misinformation that could artificially impact the market in the contract for additional financial gain.[117]

The Commission additionally notes that, in many instances, a particular individual or group of individuals may be able to influence an occurrence in connection with a contest or game.[118] If an event contract involving such an occurrence is permitted to trade on CFTC-registered markets, then even if the individual, or group of individuals, that can influence the outcome of the occurrence are prohibited, by the contract's terms, from trading in the contract, such individual or group of individuals may be vulnerable to pressure or persuasion by others who have taken a position in the contract and seek a particular outcome.[119]

The Commission further notes that most contracts falling within the proposed definition of ''gaming'' would have no underlying cash market with bona fide economic transactions to provide directly correlated price forming information. Rather, price forming information is either nonexistent, or driven by informational sources that are unregulated, have opaque underlying processes and procedures, and may not follow scientifically reliable methodologies.[120] This differs from the informational sources used for pricing the vast majority of commodities underlying Commission-regulated derivatives contracts (*e.g.,* government issued crop forecasts, weather forecasts, federal government economic data, market-derived supply and demand metrics for commodities, market-based interest rate curves). The lack of price forming information for contracts involving ''gaming,'' or the availability of only opaque and unregulated sources of price forming information, may increase the risk of manipulative activity relating to the trading and pricing of such contracts, while decreasing the ability of the offering exchange, or the Commission, to detect such activity.

Other public interest considerations also weigh against permitting the trading, on CFTC-regulated markets, of event contracts involving gaming, as proposed to be defined. The Commission believes that permitting such contracts to trade as financial instruments on financial markets could raise broad investor protection concerns by conflating gambling and financial instruments in a manner that could particularly create confusion and risk for retail market participants. Among other things, it could improperly signal to certain retail investors that these contracts are instruments to be used for investment purposes—and it could signal to others that derivative markets are appropriate venues for retail market participants to trade for entertainment purposes, which could minimize, for those investors, unique characteristics and risks of trading, more generally, in derivative markets.

Moreover, the Commission notes that in the United States, gambling is overseen by state regulators with particular expertise, and governed by state gaming laws aimed at addressing particular risks and concerns associated with gambling.[121] The Commission is

[115] *Id.*

[116] *See* section II.C.2, *supra.*

[117] In this regard, the Commission notes that, in order to address concerns about the potential to undermine the integrity of a sporting event or wagering thereon, a number of states have established prohibitions on sports wagers for certain categories of individuals when they are involved in a particular sporting event, including athletes, coaches, referees, and staff of participants in the event. *See, e.g.,* N.Y. Rac. Pari-Mut. Wag. & Breed. Law § 1367 (McKinney). In the context of an event contract traded on CFTC-regulated markets, involving an occurrence (or non-occurrence) in connection with a contest of others or a game of skill or chance, the Commission notes that, even if individuals, or groups of individuals, who may influence the outcome of the occurrence are prohibited by the contract's terms from trading in the contract, this would not prevent such individual, or group of individuals, from engaging in other activity—for example, the spread of misinformation—that could artificially move the market in the event contract.

[118] This may particularly be the case for occurrences that do not directly affect the final outcome of a contest or game. The Commission believes that event contracts involving such occurrences would be akin to ''novelty,'' ''proposition,'' or ''prop'' bets. Many states that have legalized sports gambling prohibit various types of novelty or proposition bets due, in part, to manipulation concerns. *See, e.g., Massachusetts Gaming Commission Says No Super Bowl Prop Bets This Year,* NewBostonPost (Feb. 9, 2024), *available at https://newbostonpost.com/2024/02/09/massachusetts-gaming-commission-says-no-super-bowl-prop-bets-this-year/. See also Suspicious betting leads to questions about Super Bowl Gatorade color odds,* New York Post (Feb. 13, 2024), *available at https://nypost.com/2024/02/13/sports/suspicious-betting-raises-questions-about-super-bowl-gatorade-color-odds/.*

[119] Relevant to this concern, certain state gaming regulators have prohibited, or are seeking to prohibit, collegiate sports proposition bets due to concerns related to ''bad actors [who] have engaged in unacceptable behavior by making threats against student-athletes[.]'' *Could Ohio ban college sports prop bets? Mike DeWine, NCAA president Charlie Baker support,* The Columbus Dispatch (Feb. 2, 2024), *available at https://www.dispatch.com/story/sports/college/big-10/2024/02/02/mike-dewine-ohio-college-sports-betting-ban-ncaa/72453967007/; see also* Va. Code Ann. section 58.1–4039 (A)(2) (West) (No person shall place or accept a proposition bet on college sports.).

[120] Notably, the most useful source of price-forming information with respect to contracts involving ''gaming,'' as proposed to be defined, would likely be prices of similar wagers in gambling and sport-betting facilities. The Commission believes that this fact further supports the Commission's view that trading in such ''gaming'' contracts would effectively amount to betting or wagering.

[121] *See, e.g.,* N.Y. Rac. Pari-Mut. Wag. & Breed. Law section 1367 (McKinney) (requiring casinos and mobile sports wagering licensees to promptly report to the New York State Gaming Commission information relating to, among other things, unusual wagering activity or patterns that may indicate concern with the integrity of a sporting event, any potential breach of the relevant sports governing body's internal rules and codes of conduct pertaining to sports wagering (as they have been provided by the sports governing body to the

not a gaming regulator. The CEA and Commission regulations are focused on regulating financial instruments and markets, and do not include provisions aimed at protecting against gambling-specific risks and concerns, including customer protection concerns inherent to gambling.[122] Permitting event contracts involving gaming, as proposed to be defined, to trade on CFTC-regulated markets would in effect permit instruments commonly understood as bets or wagers on contests or games to avoid these legal regimes and protections. Gambling is a rapidly evolving field, and the Commission does not believe that it has the statutory mandate nor specialized experience appropriate to oversee it, or that Congress intended for the Commission to exercise its jurisdiction or expend its resources in this manner.[123]

The Commission notes that the non-exclusive list of examples of ''gaming'' set forth in proposed § 40.11(b)(2) includes staking or risking something of value upon the outcome of a political contest, including an election or elections, or upon an occurrence or non-occurrence in connection with such a contest. Consistent with its determinations in the Nadex Order and the Kalshi Order, the Commission believes that permitting trading, on CFTC-regulated markets, in this particular sub-set of gaming contracts would raise unique additional public interest concerns relating to election integrity and the perception of election integrity, and the appropriate role of the Commission in this area.[124] For example, permitting trading in these types of contracts could create monetary incentives to vote for particular candidates even when such votes may be contrary to a voter's (or organized groups of voters') political views. It would also raise concerns that conduct designed to artificially affect the electoral process could be used to manipulate the markets in such contracts, or conversely, that the markets in such contracts could be manipulated to influence elections or electoral perceptions. For example, false reporting or other misinformation—such as inaccurate polling or voter surveys or false news reporting—could be used to distort the information underlying price formation in such contracts.[125]

The Commission notes, further, that it is not tasked with the protection of election integrity or enforcement of campaign finance laws. However, if trading was permitted on CFTC-registered exchanges in event contracts that involve the staking or risking of something of value on a political contest, then the Commission could find itself investigating the outcome of an election itself.[126] Again, the Commission does not have the specialized experience appropriate for this role, and believes that it is unlikely that Congress intended for the Commission to exercise its jurisdiction or expend its resources this way.

The unique additional public interest concerns that would be raised by permitting the trading, on a CFTC-registered exchange, of an event contract that involves the staking or risking of something of value on the outcome of a political contest, or upon an occurrence or non-occurrence in connection with such a contest, inform the Commission's proposal to amend § 40.11(a)(1) to include a determination that any such contract is contrary to the public interest.[127]

casino or mobile sports wagering operator), and suspicious or illegal wagering activities, including using agents to place wagers, using confidential non-public information, or using false identification); Colo. Rev. Stat. Ann. section 44–30–1506 (West) (requiring a sports betting operator promptly to report to the Colorado Division of Gaming any abnormal betting activity or discernible patterns that may indicate a concern about the integrity of a sports event or events; any other conduct with the potential to corrupt a betting outcome of a sports event for purposes of financial gain, including match fixing or the use of material, nonpublic information to place bets or facilitate another person's sports betting activity; and suspicious or illegal wagering activities).

[122] For example, a number of states have developed self-exclusion programs for individuals who experience problem gambling, which enable such individuals to self-report to be excluded from in-person and/or online gambling sites for a set amount of years (or, in some cases, indefinitely). *See, e.g.,* Del. Code Ann. tit. 29, § 4834 (West); La. Stat. Ann. section 27:27.1; Ariz. Rev. Stat. Ann. section 5–1320; Iowa Gaming Association, *Responsible Gaming,* available at *https://www.iowagaming.org/responsible-gaming/.* A number of states mandate the on-site posting of problem gambling assistance notices, and some states also mandate employee training to identify individuals who may be struggling with problem gambling. *See, e.g.,* 4 Pa. Stat. and Cons. Stat. Ann. section 3706 (West); 230 Ill. Comp. Stat. Ann. 10/13.1; Ohio Rev. Code Ann. section 3772.18 (West). In addition, a number of states require gambling advertisements to include customer protection disclosures, such as resources for problem gambling assistance. *See, e.g.,* N.Y. Rac. Pari-Mut. Wag. & Breed. Law sections 1362, 1363 (McKinney); Tenn. Code Ann. section 4–49–205 (West); Ark. Code Ann. section 20–27–2601 (West); Conn. Gen. Stat. Ann. section 12–863 (West).

[123] *See* note 82, *supra,* for examples of certain evolving risks related to certain bets or wagers on contests or games.

[124] The Commission believes that permitting trading in contracts involving political contests in a foreign jurisdiction, or concerning a supranational organization, also would raise these public interest concerns, just as permitting trading in contracts involving political contest in the United States would.

[125] Certain commenters on the contracts subject to the Kalshi Order asserted that event contracts involving occurrences in connection with political election contests could serve as a check on misinformation and inaccurate polling, stating that market-based alternatives tend to be more accurate than polling or other methods of predicting election outcomes. *See* Kalshi Order at 22. The Commission notes that there is also research suggesting that election markets may incentivize the creation of ''fake'' or unreliable information in the interest of moving the market; a number of commenters on the contracts subject to the Kalshi Order also raised this concern. *Id. See also* Yeargain, Tyler, ''Fake Polls, Real Consequences: The Rise of Fake Polls and the Case for Criminal Liability,'' Missouri Law Review, Volume 85, Issue 1 (Winter 2020) citing Enten, Harry, ''Fake Polls are a Real Problem,'' FiveThirtyEight (Aug. 22, 2017), *available at https://fivethirtyeight.com/features/fake-polls-are-a-real-problem/* (noting how a seemingly false or unreliable poll caused significant movement on an event contract market and suggesting that such poll could have been, or at least could be, created to cause such market movement; further arguing that such false polls can have a real and detrimental effect on elections). The Commission notes, further, that there is no underlying cash market for political event contracts, with bona fide economic transactions to provide directly correlated price forming information. Rather, price forming information is driven in large measure by polling and other informational sources that are unregulated, frequently have opaque underlying processes and procedures, and may not follow scientifically reliable methodologies. The opaque and unregulated sources of price forming information for such contracts may increase the risk of manipulative activity relating to the trading and pricing of the contracts, while decreasing the ability of the listing registered entity and the Commission to detect such activity.

[126] While certain commodities outside the Commission's direct remit do underlie derivatives without giving rise to significant problems, due to the special role of elections in our society, the Commission believes that the oversight function in this area is best reserved for other expert bodies. Of course, governmental bodies are tasked with that function, but the Commission has both the authority and responsibility to address fraud, false reporting, and manipulation in markets for derivatives that trade on CFTC-registered exchanges. *See, e.g.,* CEA section 6(c), 7 U.S.C. 9(c); 17 CFR 180. As such, if trading were permitted in event contracts that involve the staking or risking of something of value on the outcome of a political contest, or upon an occurrence or non-occurrence in connection with such a contest, the Commission would have a statutory responsibility to exercise its surveillance, investigation, and enforcement authority to ensure the integrity of the markets in such contracts. Conversely, attempts at manipulation of such markets could have broader electoral implications, similarly drawing the Commission into investigations of election-related activities. Indeed, accusations of fraud have been leveled *at* government bodies tasked with administering elections. Such scenarios underscore for the Commission that it has no appropriate role in this area.

[127] Many state courts have also found that wagering on elections is contrary to sound public policy. *E.g.,* Alabama, *White* v. *Yarbrough,* 16 Ala. 109, 110 (1849) (''A wager on an election is void as against public policy''); Arkansas, *Williams* v. *Kagy,* 3 SW2d 332, 333–34, 176 Ark. 484, 3 (1928) (''Even before the passage of the statute quoted, this court ruled . . . that wagers upon elections then pending are calculated to endanger the peace and harmony of society and have a corrupting influence upon the morals and are contrary to sound policy''); Colorado, *Maher* v. *Van Horn,* 60 P. 949, 17–18 (Colo. 1900) (''[W]ager contracts on the result of elections are contrary to public policy and void and will not be enforced by the courts''); Georgia, *McLennan* v. *Whidon,* 48 SE 201, 202–03, 120 Ga. 666 (1904), quoting *Leverett* v. *Stegal,* 23 Ga. 259

Continued

Request for Comment

The Commission requests comment on all aspects of its proposed public interest determination with respect to contracts involving gaming. In particular, the Commission requests comment on whether there are contracts that may involve gaming that do not raise the above-described public interest concerns. Why, or why not?

D. The Commission's Authority To Identify Additional Similar Activities to the Enumerated Activities

CEA section 5c(c)(5)(C)(i)(VI) provides that the Commission may determine, by rule or regulation, that event contracts in certain excluded commodities are contrary to the public interest if the contracts involve ''other similar activity'' to the Enumerated Activities.[128] CEA section 5c(c)(5)(C)(ii), in turn, provides that such contracts shall not be listed or made available for clearing or trading on or through a registered entity. These statutory provisions are implemented through § 40.11(a)(2), which provides that a registered entity shall not list for trading or accept for clearing an event contract ''which involves, relates to, or references an activity that is similar to an activity enumerated in § 40.11(a)(1) of this part''—namely, an Enumerated Activity—and that the Commission determines, by rule or regulation, to be contrary to the public interest.[129] CEA sections 5c(c)(5)(C)(i)–(ii), as implemented through § 40.11(a)(2), thus empower the Commission to identify, by rule or regulation, additional, similar activities to the Enumerated Activities, and to prohibit registered entities from listing for trading or accepting for clearing event contracts involving those activities where the Commission finds that such contracts are contrary to the public interest. To date, the Commission has not exercised this authority.

While the Commission is not proposing to exercise this authority at this juncture, the Commission reiterates that it retains the authority under CEA section 5c(c)(5)(C)(VI) to determine, in the future, that other activities are similar to the Enumerated Activities, and that event contracts involving such similar activities are contrary to the public interest and may not be listed for trading or accepted for clearing on or through a registered entity. This authority will continue to be reflected in the regulatory text of § 40.11(a)(2). As part of any final rule resulting from this Notice of Proposed Rulemaking, the Commission intends to include an Appendix E to Part 40 containing guidance in the form of factors the Commission may consider, in addition to other factors the Commission deems appropriate in light of individual facts and circumstances, when making a determination under § 40.11(a)(2) that such event contracts are contrary to the public interest, consistent with the public interest analysis set forth above.

E. Technical Amendments

The Commission proposes to make certain technical amendments to § 40.11. These proposed amendments are intended to clarify and more logically organize the regulation, and are not intended to change the regulation's substantive meaning or effect. As a threshold matter, the Commission proposes to remove the words ''Review of'' from the title of § 40.11, because the regulation does not only address contract reviews. The Commission believes that the regulation would be more clearly and accurately titled ''Event contracts based upon certain excluded commodities.''

1. Technical Amendments to § 40.11(a)

The Commission proposes to make certain technical amendments to § 40.11(a). First, the Commission proposes to list the Enumerated Activities, as currently set forth in § 40.11(a)(1), in separate sub-paragraphs and to reorder the list of the Enumerated Activities to match the order in which they appear in CEA section 5c(c)(5)(C)(i). The Enumerated Activities would be listed in new sub-paragraphs (i) through (v) of § 40.11(a)(1).

The Commission further proposes to replace ''which'' with ''that'' in § 40.11(a)(2). This is not intended to change the meaning of the current language. Rather, the Commission proposes this change to make the language of § 40.11(a)(2) consistent with the language of § 40.11(a)(1).

The Commission additionally proposes to state in § 40.11(a)(2) that a contract may not be listed for trading or accepted for clearing if the contract involves activity that is similar to an activity enumerated in proposed sub-paragraphs (i) through (v) of § 40.11(a)(1)—in effect, if the contract involves activity that is similar to one of the statutory Enumerated Activities. This would be substantively consistent with existing § 40.11(a)(2) and would reflect the statutory text of CEA section 5c(c)(5)(C)(i)(VI), which states that the Commission may make a public interest determination with respect to contracts involving other activity that is similar to the Enumerated Activities set forth in CEA sections 5c(c)(5)(C)(i)(I)–(V). The Commission contemplates that, in the event that it identifies activities that are similar to the Enumerated Activities in a future rule or regulation pursuant to its authority under CEA section 5c(c)(5)(C)(i)(VI) and § 40.11(a)(2), such activities would be numbered sequentially after proposed sub-paragraphs (i) through (v) of § 40.11(a)(1).

2. Technical Amendments to § 40.11(c)

The Commission proposes to make certain technical amendments to § 40.11(c). These proposed amendments are not intended to alter the regulation's substantive meaning or its practical implementation, including the timing or procedural requirements of the § 40.11(c) review process. The proposed technical amendments are simply intended to clarify § 40.11(c) and improve its organization.

(1857) (finding that all gambling contracts are illegal but noting that ''If there be any class of gambling contracts which should be frowned upon more than another it is bets on elections. They strike at the foundations of popular institutions, corrupt the ballot box, or, what is tantamount to it, interfere with the freedom and purity of elections''); Indiana, *Worthington* v. *Black,* 13 Ind. 344, 344–345 (1859) (''It has been often decided that wagers upon the result of an election are against the principles of sound policy, and consequently illegal . . .''); Iowa, *David* v. *Ransom,* 1 Greene 383, 383–85 (1848) (''A wager or bet made between parties on the result of an election is void. If the wager is made before an election, illegal votes are often secured, and others induced, contrary to the better judgment of the voter; or if made after an election, the parties interested might be led to exert a corrupt influence upon the canvassing, and returns of the votes''); Kansas, *Reynolds* v. *McKinney,* 4 Kan. 94, 101 (1866) (''[A bet] involving an inquiry into the validity of the election of a public officer. . . . was therefore, illegal and void on principles of public policy''); Massachusetts, *Ball* v. *Gilbert,* 53 Mass. 397, 400–02 (1847) (a wager upon the event of an election to a public office—at the federal, state, or local level—is illegal and void on numerous public policy grounds); Missouri, *Hickerson* v. *Benson,* 8 Mo. 8 (1843) (wagers on the result of public elections and collateral matters are ''clearly'' against public policy and ''sound morality'' and consequently illegal and void at common law); Nebraska, *Specht* v. *Beindorf,* 56 Neb. 553, 76 NW 1059 (1898) (promissory note premised on the election of a public official is a wager on the result of an election and void on grounds of public policy); North Carolina, *Bettis* v. *Reynolds,* 34 N.C. 344, 345–48 (1851) (''the practice of betting on elections has a direct tendency to cause undue influence[,]'' and even where neither party was a voter, a wager on the result of a Presidential election void as against public policy); Oregon, *Willis* v. *Hoover,* 9 Or. 418, 419–20 (1881) (wagers on the result of public elections are illegal and void upon grounds of public policy); Rhode Island, *Stoddard* v. *Martin,* 1 R.I. 1, 1 (1828) (all wagers on elections and judicial decisions ''are of immoral tendency, against sound policy,'' and therefore void); Texas, *Thompson* v. *Harrison,* 1842 WL 3625, at *1 (1842) (wagers on the result of public elections are ''contrary to good morals'' and void on grounds of public policy); Wisconsin, *Murdock* v. *Kilbourn,* 6 Wis. 468, 470–71 (1857) (wager upon the event of a public election is contrary to public policy, illegal, and void).

[128] 7 U.S.C. 7a–2(c)(5)(C)(i)(VI).

[129] 17 CFR 40.11(a)(2).

First, the Commission proposes removing the phrase ''and approval of certain event contracts'' from the title of § 40.11(c), because the paragraph does not only address contract approval. The Commission believes the paragraph would be more clearly and accurately titled ''90-day review.''

Next, the Commission proposes to number the introductory paragraph to § 40.11(c) as § 40.11(c)(1), and to reorganize existing §§ 40.11(c)(1) and (2) into three new paragraphs, numbered §§ 40.11(c)(2) through § 40.11(c)(4). In renumbered § 40.11(c)(1), the Commission proposes adding the modifying phrase ''made by a registered entity'' to clarify that submissions pursuant to §§ 40.2 and 40.3 are made by registered entities. The Commission further proposes replacing the word ''which'' with ''that'' in order to make the language consistent throughout § 40.11, and proposes replacing the word ''be'' with ''is'' simply for grammatical structure.[130]

The proposed reorganization of existing §§ 40.11(c)(1) and (2) into three new paragraphs, numbered §§ 40.11(c)(2) through § 40.11(c)(4), and the proposed language changes to those provisions, are intended to improve the clarity of § 40.11(c) by, among other things, grouping related information together. As amended, § 40.11(c)(2) would address the commencement of a 90-day review period, including notification of such commencement. As amended, § 40.11(c)(2) would include language explicitly stating that a registered entity must be notified of the commencement of a 90-day review, and would group this language together with a clarified version of existing language providing that notice of the commencement of a 90-day review will be posted on the Commission's website. To further enhance clarity, proposed § 40.11(c)(2) would provide that the 90-day review period commences ''on the date the Commission notifies the registered entity of its determination to conduct a 90-day review,'' amending the current language, which states that the 90-day review period commences from the date the Commission notifies a registered entity of a potential violation of § 40.11(a). The Commission proposes to clarify the current language to avoid potential uncertainty as to the specific start date of the 90-day review period.

Proposed new § 40.11(c)(3) would address the existing requirement that the Commission request that a registered entity suspend the listing or trading of a contract during the pendency of the 90-day review period. To enhance clarity, minor technical changes would be made to the existing regulatory language, including removal of excess wording describing the types of contracts that may be subject to a 90-day review.

With the exception of a sub-heading the Commission proposes to remove for consistency, proposed new § 40.11(c)(4) would include existing regulatory language addressing Commission action at the end of the 90-day review period.

Request for Comment

The Commission requests comment on all aspects of its proposed technical amendments to § 40.11.

F. Implementation Timeline

The Commission proposes making the final rule amendments effective 30 days after publication in the **Federal Register**. The Commission believes that this 30-day period should provide registered entities with sufficient time to account for the rule amendments in their product design and compliance procedures. However, the Commission also proposes an implementation period that would run for an additional 30 days after the effective date of the final rule amendments—for a total of 60 days from the date of publication of the final rule amendments in the **Federal Register**—solely for event contracts that are listed for trading as of the date of publication of the final rule amendments, and that are impacted by the amendments.

The Commission believes that a 60-day implementation period for these contracts will minimize any market disruption that might be caused by the rule amendments. In this regard, the Commission notes that event contracts are generally based upon a discrete occurrence or event, and Commission staff's anecdotal experience indicates that many event contracts settle within relatively short time horizons. This, coupled with the fact that, as discussed further in section III.C, *infra,* contracts that involve ''gaming,'' as proposed to be defined, currently comprise a small portion of the overall event contracts market, suggests that few event contracts impacted by the proposed rule amendments, if finalized, would need to be wound down before their existing settlement dates.[131] To the extent that a particular event contract that is impacted by the rule amendments has a settlement date that extends beyond the implementation period, the Commission believes that 60 days would provide sufficient time for the registered entity to ensure the orderly cessation of trading in the contract.

For the avoidance of doubt, the proposed extended 60-day implementation period would apply only to contracts that are listed and available for trading as of the date of publication of the final rule amendments in the **Federal Register**. The extended implementation period would not apply to contracts that have been self-certified under § 40.2, or approved by the Commission under § 40.3, but are not listed and available for trading as of the date of publication of the final rule amendments in the **Federal Register**. The interest in minimizing market disruption that informs the proposed extended implementation period does not apply to such contracts.

All registered entities are expected to make good-faith efforts that will result in conformance with the final rule amendments by no later than the effective date of the final amendments (or the 60-day implementation period, as applicable). These good-faith efforts should take the final rule amendments into account in all compliance, contract design, and listing, trading, or clearing decisions, as well as in decisions leading to the orderly and timely winddown of any contracts with settlement dates beyond the 60-day implementation period.

Request for Comment

The Commission requests comment on all aspects of the proposed implementation timeline. In particular, the Commission requests comment on the following questions:

- Would an effective date that is 30 days after publication of the final rule amendments in the **Federal Register** provide registered entities with sufficient opportunity to comply with the amendments?
- Would the proposed 60-day implementation period provide sufficient time for the expiration of, or orderly cessation of trading in, listed event contracts that are impacted by the proposed rule amendments?

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory

[130] As discussed above, the Commission also is proposing to remove from § 40.11(c)(1), as proposed to be renumbered, the words ''relate to, or reference'', and to refer only to contracts that ''may involve'' an activity enumerated in § 40.11(a)(1) or § 40.11(a)(2), in order to more closely align with the statutory language of CEA section 5c(c)(5)(C).

[131] *See also* note 171, *infra.*

flexibility analysis respecting the impact.[132] Whenever an agency publishes a general notice of proposed rulemaking for any rule, pursuant to the notice-and-comment provisions of the Administrative Procedure Act,[133] a regulatory flexibility analysis or certification is typically required.[134]

The rule amendments proposed herein will affect DCMs, SEFs, and DCOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[135] The Commission previously determined that DCMs are not small entities for purposes of the RFA.[136] Similarly, the Commission previously determined that SEFs [137] and DCOs [138] are not small entities for purposes of the RFA.[139]

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. § 605(b) that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [140] imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any ''collection of information,'' as defined by the PRA. Under the PRA, 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 from the Office of Management and Budget (''OMB'').[141] The PRA is intended, in part, to minimize the paperwork burden created for individuals, businesses, and other persons as a result of the collection of information by federal agencies, and to ensure the greatest possible benefit and utility of information created, collected, maintained, used, shared, and disseminated by or for the federal government.[142] The PRA applies to all information, regardless of form or format, whenever the federal government is obtaining, causing to be obtained, or soliciting information, and includes required disclosure to third parties or the public, of facts or opinions, when the information collection calls for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.[143]

The rule amendments proposed herein, if adopted, would result in a collection of information within the meaning of the PRA, as discussed below. The Commission therefore is submitting this proposal to the OMB for its review in accordance with the PRA.[144] Responses to this collection of information would be mandatory. The Commission will protect any proprietary information according to the Freedom of Information Act and part 145 of the Commission's regulations.[145] In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public any ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' [146] Finally, the Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[147]

1. Submission of Updated Rules to the Commission

This proposed rulemaking affects a collection of information for which the Commission has previously received a control number from OMB. The title for this collection of information is OMB Control No. 3038–0093, Part 40, Provisions Common to Registered Entities (''OMB Collection 3038–0093'').

Section 40.6 of the Commission's regulations [148] requires registered entities to make rule submissions to the Commission when they adopt a new or revised rule or rule amendments, including changes to product terms and conditions. The Commission anticipates that, if the rule amendments proposed herein are adopted, registered entities whose product offerings include contracts involving ''gaming,'' as proposed to be defined, will take certain steps with respect to those contracts in order to comply with the rules. The Commission anticipates that, for certain exchanges, one step will be filing § 40.6 self-certification submissions to permanently delist the contracts and remove reference to them from their exchange rules.[149] These § 40.6 filings are additional burdens under the PRA and would increase the reporting burden associated with OMB Collection 3038–0093.[150]

The Commission estimates that approximately 30 § 40.6 filings would need to be submitted for contracts to be delisted if the proposed rule amendments are adopted, taking an average of two hours per submission. Currently, there are six DCMs that list event contracts for trading.[151] As an average, the new burden would be an estimated 5 additional § 40.6 filings per DCM. Accordingly, the Commission estimates the additional PRA burden as follows:

- *§ 40.6 submissions related to delisting contracts*

Estimated Number of Respondents: 6.

One-Time Responses by each Respondent: 5.

Estimated Hours per Response: 2.

Estimated Total Hours: 60.

As discussed in the analysis of cost benefit considerations in section III.C, *infra,* registered entities may incur other costs to review and implement the new definition of ''gaming,'' if the proposed rules are adopted. This may include costs to update any product design and compliance procedures that a registered entity maintains in the regular course of business. These activities do not constitute ''information collections,'' however, because the PRA excludes the maintenance of records required to be kept in the usual and customary order of business from the definition of a ''collection of information.'' [152]

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[132] 5 U.S.C. 601 *et seq.*

[133] 5 U.S.C. 553.

[134] *See* 5 U.S.C. 601(2), 603, 604, and 605.

[135] *See* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982).

[136] *Id.* at 18618–19.

[137] *See* Core Principles and Other Requirements for SEFs, 78 FR 33476, 33548 (June 4, 2013).

[138] *See* New Regulatory Framework for Clearing Organizations, 66 FR 45604, 45609 (Aug. 29, 2001).

[139] The determination about impact on small entities in this section is limited to the RFA analysis. Additional analysis on the impact of the regulation is set out in the analysis of cost-benefit considerations in section III.C.

[140] 5 U.S.C. 601, *et seq.*

[141] *See* 44 U.S.C. 3507(a)(3); 5 CFR 1320.5(a)(3).

[142] *See* 44 U.S.C. 3501.

[143] *See* 44 U.S.C. 3502(3).

[144] *See* 44 U.S.C. 3507(d); 5 CFR 1320.11.

[145] *See* 5 U.S.C. 552; *see also* 17 CFR part 145 (Commission Records and Information).

[146] 7 U.S.C. 12(a)(1).

[147] 5 U.S.C. 552a.

[148] 17 CFR 40.6.

[149] In this context, ''delisting'' refers to the process of submitting rule amendments to the Commission in order to withdraw self-certified or approved contracts (meaning they can no longer be listed for trading on the exchange), regardless of whether such contracts are currently available to market participants for trading.

[150] Additional costs associated with delisting are laid out in the analysis of cost-benefit considerations, but are not PRA burdens because they do not require a registered entity to submit reports or create records for the Commission beyond the registered entity's existing obligations.

[151] As discussed below in section III.C.2(a)(3), note 175, only one DCM currently offers the types of event contracts that would be prohibited and require § 40.6 filings as a result of the proposed rule amendments, if adopted. However, for the purposes of the PRA, the Commission is estimating the potential burden for all six DCMs that currently offer event contracts.

[152] 5 CFR 1320.3(b)(3). The following OMB collections address the general reporting and recordkeeping compliance obligations for DCMs, SEFs, and DCOs, for compliance with relevant CEA

Moreover, updates to these types of business records would not require registered entities to provide responses to a series of identical questions.[153] The Commission expects that the content and nature of any revisions to update product design or compliance procedures would vary considerably among registered entities and registered entities retain flexibility in deciding how to structure those procedures and what content to include.

There are no additional capital and start-up or operations and maintenance costs associated with this collection.

2. Request for Comment

The Commission invites the public and other federal agencies to comment on any aspect of the proposed information collection requirements discussed above. The Commission will consider public comments on this proposed collection of information in:

(1) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

(2) Evaluating the accuracy of the estimated burden of the proposed collection of information, including the degree to which the methodology and the assumptions that the Commission employed were valid;

(3) Enhancing the quality, utility, and clarity of the information proposed to be collected; and

(4) Minimizing the burden of the proposed information collection requirements on registered entities, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, *e.g.,* permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5174 or from *http://RegInfo.gov.* Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- *OIRAsubmissions@omb.eop.gov* (email).

Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rulemaking, and please refer to the **ADDRESSES** section of this rule proposal for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between 30 and 60 days after publication of this release in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB receives it within 30 calendar days of publication of this release. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rule amendments.

C. Consideration of Costs and Benefits

1. Introduction

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[154] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (i) protection of market participants and the public; (ii) efficiency, competitiveness, and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

While, as discussed previously and further below, the Commission believes the amendments proposed herein—measured relative to the baseline of status quo conditions—would create meaningful benefits for market participants and the public, it also recognizes that they likely would result in some incremental costs. The Commission has endeavored to enumerate material costs and benefits and, when reasonably feasible, assign a quantitative value to them. Where it is not reasonably feasible to quantify costs and benefits of the proposed amendments, those costs and benefits are discussed qualitatively.[155]

The Commission identifies and considers the benefits and costs of the proposed amendments relative to a baseline standard of those generated by the current statutory and regulatory framework applicable to event contracts, *i.e.,* the status quo. This framework includes the provisions involving event contracts in CEA section 5c(c)(5)(C) and current § 40.11 and Commission orders that have been issued pursuant to § 40.11(c)(2), which address relevant terms such as ''gaming.'' The specific elements of the baseline that would be impacted by the proposed amendments are discussed in more detail below.

2. Proposed Amendments

(a) Definition of Gaming—Proposed § 40.11(b)

(1) Baseline and Proposed Amendments

Pursuant to current § 40.11(a)(1), a registered entity shall not list for trading or accept for clearing on or through the registered entity an event contract in certain excluded commodities that ''involves, relates to, or references'' gaming. The term ''gaming'' is not defined in the CEA or Commission regulations. The Commission has issued two orders pursuant to § 40.11(c)(2)—the Nadex Order [156] and the Kalshi Order [157]—both of which have included discussions of the term. The orders have provided some insight regarding the Commission's understanding of what ''gaming'' means for purposes of CEA section 5c(c)(5)(C) and § 40.11. For example, the orders set forth the Commission's recognition that: (i) relevant state and federal statutes define the terms ''gambling,'' ''betting,'' and ''wagering''—which are generally used

core principles and Commission regulations: OMB Control No. 3038–0052, Core Principles and Other Requirements for DCMs (''OMB Collection 3038–0052''); OMB Control No. 3038–0074, Core Principles and Other Requirements for Swap Execution Facilities (''OMB Collection 3038–0074''); and OMB Control No. 3038–0076, Requirements for Derivative Clearing Organizations (''OMB Collection 3038–0076''). The Commission does not anticipate that the proposed rule amendments will affect the information collection burden associated with these collections.

[153] 44 U.S.C. 3502(3)(A) (providing that a ''collection of information'' occurs when ten or more persons are asked to report, provide, disclose, or record information in response to ''identical questions'').

[154] 7 U.S.C. 19(a).

[155] The Commission notes that this cost benefit consideration is based on its understanding that the derivatives market regulated by the Commission functions internationally with: (1) transactions that involve U.S. persons occurring across different international jurisdictions; (2) some persons organized outside of the United States that are registered with the Commission; and (3) some persons that typically operate both within and outside the United States and that follow substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of the proposed rule amendments on all relevant derivatives activity, whether based on their actual occurrence in the United States or on their connection with activities in, or effect on, U.S. commerce.

[156] *See https://www.cftc.gov/PressRoom/PressReleases/6224-12.*

[157] *See https://www.cftc.gov/PressRoom/PressReleases/8780-23.*

interchangeably with the term ''gaming''—to include staking something of value upon a game or contest of others; [158] (ii) the event contracts subject to each respective order involved ''gaming,'' because they involved staking something of value upon the outcome of a contest of others; [159] and (iii) an event contract can involve ''gaming,'' for purposes of CEA section 5c(c)(5)(C) and § 40.11, in circumstances where the contract's underlying, itself, is gaming, and in circumstances where the contract has a different connection to gaming, for example because the contract ''relates closely'' to, ''entails,'' or ''has as an essential feature or consequence'' gaming.[160]

The Commission's understanding of the term ''gaming,'' as set forth in the orders that it has issued pursuant to § 40.11(c)(2), is reflected in its proposed definition of the term—and, more generally, in the other amendments proposed herein. However, the Commission recognizes that in the absence, to date, of a formal statutory or regulatory definition, registered entities may have taken somewhat different approaches to interpreting the scope of the term, and in some respects may have interpreted the scope to be narrower than the definition of ''gaming'' that the Commission is now proposing. Conversely, certain registered entities may have interpreted the term more broadly than the Commission's proposed definition.

The Commission is proposing to define ''gaming,'' in new § 40.11(b)(1), to mean the staking or risking by any person of something of value upon: (i) the outcome of a contest of others; (ii) the outcome of a game involving skill or chance; (iii) the performance of one or more competitors in one or more contests or games; or (iv) any other occurrence or non-occurrence in connection with one or more contests or games. The Commission is proposing to provide in new § 40.11(b)(2) that ''gaming'' includes, but is not limited to, the staking or risking of something of value upon the outcome of a political contest, including an election or elections, an awards contest, or a game in which one or more athletes compete; or an occurrence or non-occurrence in connection with such a contest or game, regardless of whether it directly affects the outcome. In establishing the proposed ''gaming'' definition, the Commission, as noted above, considered its discussion of ''gaming'' in the Nadex Order and Kalshi Order, and drew upon the ordinary meaning of the term, as well as relevant state and federal statutory definitions.[161]

(2) Benefits

By providing additional specificity to determine whether a particular event contract falls within the scope of CEA section 5c(c)(5)(C) and is contrary to the public interest because it involves ''gaming,'' the Commission believes its proposed definition would reduce the likelihood that a registered entity would list for trading an event contract that is contrary to the public interest.

The Commission believes that, by establishing a common understanding and more uniform application of the term ''gaming,'' the proposed definition also should assist registered entities in their product design and compliance efforts and help avoid situations in which registered entities expend resources to develop and submit a contract that the Commission subsequently determines may not be listed for trading or made available for clearing, pursuant to CEA section 5c(c)(5)(C) and § 40.11(a)(1). As discussed above, the Commission has observed a significant increase in the overall number and diversity of event contracts being listed for trading.[162] While the Commission does not have access to data or any other information to enable it to predict the specific types or quantities of event contracts that may be listed for trading in the future, the observed event contract trend causes the Commission to anticipate that going forward, absent these proposed rule amendments, the number of submitted contracts involving ''gaming'' could increase. Accordingly, by better delineating the types of prohibited event contracts that involve ''gaming,'' the proposed definition should enhance registered entities' confidence with respect to product design and compliance, potentially yielding cost- and resource-saving benefits for them in the process. In addition, the proposed definition may help guard against market disruption that might otherwise be caused if an event contract is listed for trading and the Commission later determines, following an individualized review pursuant to (c), that the contract is prohibited because it involves gaming and is contrary to the public interest.

The proposed definition also would support the Commission and its staff in the effective oversight of derivative markets—including by supporting the efficient and effective administration of the contract submission and review process, by helping to reduce the likelihood that contracts are submitted to the Commission that raise public interest concerns. In this regard, among other things, the proposed definition would promote the Commission's responsible stewardship and efficient use of the tax dollars appropriated to it by reducing the need for individualized contract reviews pursuant to § 40.11(c). In the Commission's experience, a review pursuant to § 40.11(c) is resource-intensive and consumes hundreds of hours of staff time. Based on prior experience, the Commission estimates that each review conducted pursuant to § 40.11(c) takes, on average, approximately 625 hours of Commission staff time, at a cost of approximately $220,012.[163]

[158] Kalshi Order at 8–9.

[159] Nadex Order at 3; Kalshi Order at 10.

[160] Kalshi Order at 7. *See also* Nadex Order at 2 (''[T]he legislative history of CEA Section 5c(c)(5)(C) indicates that the relevant question for the Commission in determining whether a contract involves one of the activities enumerated in CEA Section 5c(c)(5)(C)(i) is whether the contract, considered as a whole, involves one of those activities.'')

[161] *See* note 54, *supra* (discussing that undefined statutory terms are given their ordinary meaning).

[162] *See* section I.A., *supra.*

[163] This figure is rounded to the nearest dollar and based on the annual mean wages for U.S. Bureau of Labor Statistics (''BLS'') categories 19–3011, ''Economists'' and 23–1011, ''Lawyers.'' BLS, Occupational Employment and Wages, May 2023 (hereinafter ''BLS Data''), *available at https://www.bls.gov/oes/current/oes_nat.htm.* This estimate assumes that, of the approximately 625 hours expended for each review conducted pursuant to § 40.11(c), approximately 25% (or 156 hours) is expended by economists, and approximately 75% (or 469 hours) is expended by lawyers. The ''Economist'' category consists of professionals who ''[c]onduct research, prepare reports, or formulate plans to address economic problems related to the production and distribution of goods and services or monetary and fiscal policy.'' BLS, Occupational Employment and Wages, May 2023: 19–3011, Economists, *available at https://www.bls.gov/oes/current/oes193011.htm.* According to BLS, the mean salary for this category in the context of Federal, State, and Local Government is $138,360. This number is divided by 1,800 work hours in a year to account for sick leave and vacations and multiplied by 4 to account for retirement, health, and other benefits or compensation, as well as for office space, computer equipment support, and human resources support. This number is further multiplied by 1.0272 to account for the 2.72% change in the CPI for Urban Wage-Earners and Clerical Workers between May 2023 and March 2024 (298.382 to 306.502). BLS, CPI for Urban Wage Earners and Clerical Workers (CPI–W), U.S. City Average, All Items—CWUR0000SA0, *available at https://www.bls.gov/data/#prices.* Together, these modifications yield an hourly rate of $316. ''The ''Lawyer'' category consists of professionals who ''[r]epresent clients in criminal and civil litigation and other legal proceedings, draw up legal documents, or manage or advise clients on legal transactions.'' BLS, Occupational Employment and Wages, May 2023: 23–1011, Lawyers, *available at https://www.bls.gov/oes/current/oes231011.htm.* According to BLS, the mean salary for this category in the context of Federal, State, and Local Government is $159,280. This number is divided by 1,800 work hours in a year to account for sick leave and vacations and multiplied by 4 to account for retirement, health,

(3) Costs

The Commission expects that some registered entities may incur a one-time compliance cost to understand and implement the proposed ''gaming'' definition.[164] This may include costs to account for the definition in the registered entity's product design and compliance procedures. Costs associated with understanding and implementing the proposed ''gaming'' definition may vary depending on the size of the registered entity, available resources, and existing products, practices and policies. Nonetheless, the Commission preliminarily estimates that a registered entity typically would spend approximately 10 hours, or $2,660 (based on an hourly rate of $266),[165] to update its product design and compliance procedures to implement the proposed ''gaming'' definition. The Commission estimates that this would result in an overall burden of 90 hours and an aggregated cost of $23,940 (nine registered entities[166] × $2,660).

As discussed more fully below, if the proposed rule amendments are adopted, the Commission anticipates that exchanges whose product offerings include contracts that involve ''gaming,'' as proposed to be defined, will, in order to ensure compliance with the rules, file § 40.6 self-certification submissions to permanently delist the contracts and remove reference to the contracts in their exchange rules.[167] Exchanges may also need to take steps to effectuate the orderly wind-down of contracts involving ''gaming'' that are listed and available for trading as of the date of publication of final rule amendments in the **Federal Register**, and that have settlement dates beyond the 60-day implementation period proposed by the Commission.

The Commission preliminarily estimates that approximately 30[168] § 40.6 delisting submissions would be filed for contracts involving ''gaming,'' as proposed to be defined, taking approximately two hours per submission. This would result in an estimated burden of 60 hours and an estimated aggregated cost of $15,960 (based on an hourly rate of $266).[169]

As discussed above, to the extent the proposed rule amendments are finalized as proposed, and contracts that involve ''gaming'' are listed and available for trading as of the date of publication of final rule amendments in the **Federal Register** and have settlement dates beyond the 60-day implementation period, there may be costs to the listing exchanges, and market participants, associated with the wind-down of those contracts. The Commission notes that event contracts are generally based upon a discrete occurrence or event, and Commission staff's anecdotal experience indicates that many event contracts settle within relatively short time horizons. This, coupled with the fact that, as discussed below, event contracts that involve ''gaming,'' as proposed to be defined, currently comprise a small portion of the overall event contracts market, suggests that few event contracts involving ''gaming'' would likely need to be wound down before their existing settlement dates.[170]

With respect to the limited number of contracts that the Commission anticipates would have settlement dates beyond the proposed 60-day implementation period, the Commission expects that the costs to exchanges associated with orderly wind-down would include operational, compliance and technological costs. As further noted below, the costs to exchanges associated with the wind-down of these contracts may also include the inability to realize the full anticipated return on investment in the contracts. The Commission notes that the precise costs attributable to contract wind-down would be proprietary information of the listing exchange, to which the Commission does not have access. However, given the limited number of contracts that the Commission anticipates would need to be wound down before their existing settlement dates, the Commission believes that these costs to the exchange should be relatively modest.

The Commission further anticipates that certain market participants may incur losses depending on the nature of their positions in the contracts at, and leading up to, wind-down. Conversely, certain market participants may profit based on the nature of their positions at, and leading up to, wind-down.[171] The Commission notes that the future market losses or gains to a market participant are not predictable with any data and therefore, the Commission

and other benefits or compensation, as well as for office space, computer equipment support, and human resources support. This number is further multiplied by 1.0272 to account for the 2.72% change in the CPI for Urban Wage-Earners and Clerical Workers between May 2023 and March 2024 (298.382 to 306.502). BLS, CPI for Urban Wage Earners and Clerical Workers (CPI–W), U.S. City Average, All Items—CWUR0000SA0, *available at https://www.bls.gov/data/#prices.* Together, these modifications yield an hourly rate of $364. The rounding and modifications applied with respect to the estimated average burden hour cost for this occupational category have been applied with respect to each occupational category discussed as part of this analysis.

[164] Currently, there are six CFTC-registered exchanges that offer event contracts for trading, and there are three CFTC-registered DCOs that accept event contracts for clearing. However, the Commission acknowledges that additional entities have sought, or may seek in the future, to register with the Commission in order to list or clear event contracts.

[165] This figure is rounded to the nearest dollar and based on the annual mean wage for BLS category 13–2061, ''Financial Examiners.'' BLS Data, *available at https://www.bls.gov/oes/current/oes_nat.htm.* This category consists of professionals who ''[e]nforce or ensure compliance with laws and regulations governing financial and securities institutions and financial and real estate transactions.'' BLS, Occupational Employment and Wages, May 2023: 13–2061 Financial Examiners, *available at https://www.bls.gov/oes/current/oes132061.htm.* According to BLS, the mean salary for this category in the context of Securities, Commodity Contracts, and Other Financial Investments and Related Activities is $116,520. This number is divided by 1,800 work hours in a year to account for sick leave and vacations and multiplied by 4 to account for retirement, health, and other benefits or compensation, as well as for office space, computer equipment support, and human resources support. This number is further multiplied by 1.0272 to account for the 2.72% change in the CPI for Urban Wage-Earners and Clerical Workers between May 2023 and March 2024 (298.382 to 306.502). BLS, CPI for Urban Wage Earners and Clerical Workers (CPI–W), U.S. City Average, All Items—CWUR0000SA0, *available at https://www.bls.gov/data/#prices.* Together, these modifications yield an hourly rate of $266. The rounding and modifications applied with respect to the estimated average burden hour cost for this occupational category have been applied with respect to each occupational category discussed as part of this analysis.

[166] *See* note 165, *supra.*

[167] In this context, ''delisting'' refers to the process of submitting rule amendments to the Commission in order to withdraw self-certified or approved contracts (meaning they can no longer be listed for trading on the exchange), regardless of whether such contracts are currently available to market participants for trading.

[168] This estimate is based on Commission staff analysis of product submissions and trading data regarding event contracts submitted to the Commission by CFTC-registered exchanges. The estimate contemplates that self-certified or approved contracts involving ''gaming,'' as proposed to be defined, would need to be delisted regardless of whether such contracts are available to market participants for trading at the time that final rule amendments are published in the **Federal Register**, or whether their settlement dates fall within the 60-day implementation period proposed by the Commission.

[169] *See* note 166, *supra.*

[170] The terms and conditions of event contracts listed for trading as of the issuance of these proposed rule amendments that the Commission believes would be impacted by such amendments, if finalized, generally establish that the subject contract will settle either on a date that is expected to be soon after the contract's underlying occurrence or event, or, as a backstop, on a date that is further in the future (typically the end of the calendar year). Based on CFTC staff's experience in connection with administering the agency's product review process, the Commission believes, notwithstanding backstop expiration dates, most event contracts settle close in time to the underlying occurrence or event.

[171] The Commission notes that the types of event contracts that would be impacted by this proposed rulemaking, if finalized, tend to be fully collateralized, which would have a bearing on the market risk to which market participants would be exposed in the event of the early wind-down of such a contract.

believes that it is not feasible to further quantify these costs associated with potential contract wind-downs.

The Commission recognizes that a further consequence, for certain registered entities, and applicants for registration, of establishing a common understanding and more uniform application of the term ''gaming'' may be to modify such registered entities', and applicants', understanding of the types of event contracts that they may seek to list for trading or accept for clearing in the future. This may entail certain modifications to a registered entity's, or applicant's, business model and projected revenue streams, and may impact a registered entity's, or applicant's, ability to realize the full anticipated return on investment with respect to certain aspects of its business model. For example, a registered entity or applicant for registration may have invested resources into various aspects of strategic planning (*e.g.,* market research, technological implementation, and marketing) that are premised, at least in part, on event contracts that may be implicated by the proposed ''gaming'' definition.[172] Relatedly, establishing a common understanding and more uniform application of the term ''gaming'' may modify, in certain respects, the types of event contracts that are available to market participants for trading and clearing.

In this regard, the Commission notes that contracts that involve ''gaming,'' as proposed to be defined, comprise a small portion of the overall event contracts market, suggesting that the above-described consequences of the proposed ''gaming'' definition would be relatively modest. Specifically, the Commission estimates that contracts involving ''gaming,'' as proposed to be defined, comprised less than 1% of the total trading volume in event contracts in 2023.[173]

Based on historical trading data, the Commission recognizes that the above-described anticipated costs of the proposed ''gaming'' definition may have more of an impact for some registered entities—and consequently for their customers—than others.[174] The Commission expects, however, that a significant proportion of these registered entities' offerings would not be impacted by the proposed gaming definition, suggesting that the overall impact to these registered entities of the proposed definition would be relatively modest.[175]

Further, the Commission believes that providing specificity to determine whether a particular event contract involves ''gaming'' will support the ability of these and other registered entities to develop and list new products with enhanced confidence regarding such products' compliance with the CEA and CFTC regulations. The Commission believes that this should assist registered entities, as well as applicants for registration, in making informed business decisions with respect to product design, which should have long-term business benefits. As discussed above, it may also yield business efficiencies for registered entities by helping to avoid situations where they expend resources to develop and submit a contract that the Commission subsequently determines, following a § 40.11(c) review, may not be listed for trading or accepted for clearing. To that end, the Commission believes that defining the term ''gaming'' will have broader public benefits by helping to ensure that contracts that are contrary to the public interest—namely, certain contracts that ''exist predominantly to enable gambling''—are not traded, including by retail market participants, as financial instruments on CFTC-regulated markets.

(b) Amendments To Further Align With Statutory Language

The proposed rule amendments include certain changes to improve regulatory and statutory textual alignment that are not expected to render material costs or benefits.[176] First, when describing the contracts to which § 40.11 applies, the Commission is proposing to remove the terms ''relate to'' and ''reference'' wherever they appear, and to refer only to contracts that ''involve'' (or, as applicable, that ''may'' involve) an Enumerated Activity or prescribed similar activity,[177] in order to further align with the statutory text of CEA section 5c(c)(5)(C)(i). The Commission also is proposing to remove from § 40.11 the reference to CEA section 1a(19)(iv), and to more precisely track the statutory language of CEA section 5c(c)(5)(C)(i) when describing the contracts to which § 40.11 applies—while accounting for the errant reference to ''section 1a(2)(i),'' which is not a provision in the statute—by stating that the regulation applies with respect to contracts ''in excluded commodities based on the occurrence, extent of an

[172] The Commission notes that the value of any such lost return would be proprietary information of the listing registered entity to which the Commission does not have access, and therefore, the Commission believes that it is not feasible to further quantify this cost associated with the proposed ''gaming'' definition.

[173] To make this estimate, Commission staff reviewed aggregated event contracts trading data that was reported to the Commission by CFTC-registered exchanges for the period of January 1, 2023 through December 31, 2023. Based on this review, the Commission further estimates that event contracts that involve ''gaming,'' as proposed to be defined, comprised approximately 6% of the total number of event contracts listed for trading in 2023. These event contracts were primarily comprised of contracts based on the outcome of various entertainment awards contests. In 2012, in the Nadex Order, the Commission recognized certain event contracts to involve ''gaming'' where taking a position in the contracts would be staking ''something of value upon a contest of others.'' Nadex Order at 3.

As previously discussed, the Commission notes that it has observed a significant increase in the number and diversity of event contracts listed for trading by CFTC-registered exchanges, as well as increased interest among applicants and prospective applicants for exchange registration in operating exchanges that would primarily or exclusively offer event contracts for trading. This upward trend—if it continues, as the Commission anticipates is possible (if not probable)—potentially could extend, absent the proposed rule amendments, to include additional event contracts involving ''gaming,'' as proposed to be defined. An extension of this type would mean that a registered entity or applicant for registration currently may have plans to seek to list for trading or accept for clearing, and may have invested in, event contracts that involve ''gaming,'' as proposed to be defined. Beyond this general observation that registered entities or applicants for registration potentially could have plans to list in the future, and could have invested in event contracts involving ''gaming,'' as proposed to be defined, the Commission lacks access to the entity-specific proprietary data necessary to quantify what, if any, additional costs should be attributed to such yet-to-be-listed, planned-for contracts.

To the extent that registered entities or applicants for registration currently could have plans to list in the future event contracts involving ''gaming,'' as proposed to be defined, in the Commission's view this also supports the benefits, as discussed *infra,* that defining the term would provide. Among other things, the definition would enhance confidence regarding product compliance that can inform product design efforts, and would help to ensure that contracts that are contrary to the public interest are not traded on CFTC-regulated markets.

[174] In 2023, only one CFTC-registered exchange listed event contracts that involved ''gaming,'' as proposed to be defined. In 2023, only one CFTC-registered DCO cleared event contracts that involved ''gaming,'' as proposed to be defined.

[175] For example, the Commission estimates that, in 2023, event contracts involving ''gaming,'' as proposed to be defined, comprised approximately 1% of the trading volume of the CFTC-registered exchange that offered such contracts for trading. The Commission further estimates that event contracts that involve ''gaming,'' as proposed to be defined, comprised approximately 9% of the total number of event contracts listed by this exchange in 2023. To make these estimates, Commission staff reviewed aggregated event contracts trading data that was reported to the Commission by CFTC-registered exchanges for the period of January 1, 2023 through December 31, 2023.

[176] By further aligning the regulatory text of § 40.11 with the statutory text of CEA section 5c(c)(5)(C), the proposed amendments may be of some limited benefit to the extent any registered entity would unnecessarily expend resources to resolve confusion attributable to the existing textual variation.

[177] While there are no prescribed similar activities at this juncture, the Commission retains its authority under CEA section 5c(c)(5)(C)(i)(VI) and § 40.11(a)(2) to prescribe similar activities in future rules or regulations.

occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(19)(i) of the Act)[.]''

3. Section 15(a) Factors

The Commission has evaluated the costs and benefits of the proposed amendments to § 40.11 in light of the following five broad areas of market and public concern identified in section 15(a) of the CEA: protection of market participants and the public; efficiency, competitiveness, and financial integrity of the markets; price discovery; sound risk management practices; and other public interest considerations.

(a) Protection of Market Participants and the Public

The Commission believes that the proposed amendments to § 40.11 will help to protect the public by preventing the listing for trading or acceptance for clearing by registered entities of certain event contracts that are contrary to the public interest. The Commission further believes that permitting trading of contracts involving ''gaming,'' as proposed to be defined, would conflate gambling and financial instruments in a manner that could particularly create confusion and risk for retail market participants, and that the proposed amendments would, accordingly, enhance protection of market participants.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission acknowledges that a consequence, for certain registered entities and applicants for registration, of the proposed amendments may be to modify such registered entities' and applicants' understanding of the types of event contracts that they may seek to list for trading or accept for clearing in the future. This may entail certain modifications to a registered entity's business model and projected revenue streams, and may impact a registered entity's, or applicant's, ability to realize the full anticipated return on certain aspects of its business model. Based on the types of event contracts that different registered entities currently list for trading or accept for clearing, the Commission anticipates that this consequence of the proposed amendments may impact some registered entities—and consequently their customers—more than others. However, for those registered entities that currently list for trading or accept for clearing contracts that involve ''gaming,'' as proposed to be defined, the Commission estimates that a significant proportion of their offerings would not be impacted by the proposed amendments, suggesting that the overall impact of the rule amendments should be relatively modest.[178]

Moreover, the Commission believes that, by further specifying types of event contracts that are contrary to the public interest and therefore may not be listed for trading or accepted for clearing, the proposed amendments also will support these and other registered entities' ability to develop and list new products with enhanced confidence regarding such products' compliance with the CEA and CFTC regulations. The Commission believes that this should assist registered entities, as well as applicants for registration, in making informed business decisions with respect to product design, which may enhance competitiveness and efficiency.

(c) Price Discovery

While the proposed amendments are not likely to have an impact on price discovery in CFTC-regulated markets, the Commission acknowledges that certain event contracts could have limited informational value in other contexts outside the scope of CFTC-regulated markets that may be lost if the proposed amendments are adopted.

(d) Sound Risk Management Practices

The Commission has not identified any effect of the proposed amendments on sound risk management practices.

(e) Other Public Interest Considerations

As discussed in detail above, the primary purpose of § 40.11 is to implement the Commission's statutory authority to determine that certain event contracts are contrary to the public interest and therefore may not be listed or made available for clearing or trading on or through a registered entity. The proposed amendments seek to support this objective by further specifying the types of event contracts that are contrary to the public interest and therefore may not be listed for trading or accepted for clearing.

Request for Comment

The Commission generally requests comments on all aspects of its consideration of costs and benefits, including the identification and assessment of any costs and benefits not discussed herein; data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the costs and benefits of the proposed amendments; and substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's discussion. The Commission welcomes comment on such costs and benefits, particularly from registered entities that can provide quantitative cost and benefit data based on their respective experiences. The Commission also welcomes comments on alternatives to the proposed amendments that may be preferable on cost-benefit grounds, and why.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to ''take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving'' the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market established pursuant to section 17 of the CEA.[179]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether this proposed rulemaking implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the Proposal to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the Proposal is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the Proposal is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the CEA that would otherwise be served by adopting this proposed rulemaking.

List of Subjects in 17 CFR Part 40

Commodity futures, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission hereby proposes to amend 17 CFR chapter I as follows:

[178] *See* note 176, *supra.*

[179] 7 U.S.C. 19(b).

PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

■ 1. The authority citation for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8 and 12, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Revise § 40.11 to read as follows:

§ 40.11 Event contracts based upon certain excluded commodities.

(a) *Prohibition.* Agreements, contracts, transactions, or swaps described in paragraphs (a)(1) and (2) of this section are contrary to the public interest and shall not be listed for trading or accepted for clearing on or through a registered entity:

(1) Agreements, contracts, transactions, or swaps in excluded commodities based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(19)(i) of the Act) that involve:

(i) Activity that is unlawful under any Federal or State law;

(ii) Terrorism;

(iii) Assassination;

(iv) War; or

(v) Gaming.

(2) Agreements, contracts, transactions, or swaps in excluded commodities based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(19)(i) of the Act) that involve other activity that is similar to an activity enumerated in paragraphs (a)(1)(i) through (v) of this section, and that the Commission determines, by rule or regulation, to be contrary to the public interest.

(b) *Gaming.* (1) For purposes of paragraph (a)(1)(v) of this section, ''gaming'' means the staking or risking by any person of something of value upon:

(i) The outcome of a contest of others;

(ii) The outcome of a game involving skill or chance;

(iii) The performance of one or more competitors in one or more contests or games; or

(iv) Any other occurrence or non-occurrence in connection with one or more contests or games.

(2) For purposes of paragraph (a)(1)(v) of this section, ''gaming'' includes, but is not limited to, the staking or risking by any person of something of value upon the outcome of a political contest, including an election or elections, an awards contest, or a game in which one or more athletes compete, or an occurrence or non-occurrence in connection with such a contest or game, regardless of whether it directly affects the outcome.

(c) *90-day review.* (1) The Commission may determine, based upon a review of the terms or conditions of a submission made by a registered entity under § 40.2 or § 40.3, that an agreement, contract, transaction, or swap as described in paragraph (a) of this section may involve-an activity enumerated in paragraphs (a)(1) or (2) of this section, and is subject to a 90-day review.

(2) The Commission shall notify the registered entity of its determination to conduct a 90-day review and post notice of the determination on its website. The 90-day review period shall commence on the date the Commission notifies the registered entity of its determination to conduct a 90-day review.

(3) The Commission shall request that the registered entity suspend the listing or trading of the agreement, contract, transaction, or swap subject to the 90-day review during the pendency of the review period.

(4) The Commission shall issue an order approving or disapproving an agreement, contract, transaction, or swap that is subject to a 90-day review under this paragraph (c) not later than 90 days subsequent to the date that the Commission commences review, or if applicable, at the conclusion of such extended period agreed to or requested by the registered entity.

Issued in Washington, DC, on May 29, 2024, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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

Appendices to Event Contracts—Voting Summary and Chairman's and Commissioners' Statements

Appendix 1—Voting Summary

On this matter, Chairman Behnam and Commissioners Johnson, and Goldsmith Romero, voted in the affirmative. Commissioners Mersinger and Pham voted in the negative.

Appendix 2—Statement of Chairman Rostin Behnam

I support the proposed amendments to the Commission's rules concerning event contracts. Before further discussion, I would like to acknowledge the tremendous work by many CFTC colleagues. I particularly would like to thank Vince McGonagle, Nora Flood, and Grey Tanzi for all of their thorough and thoughtful work on the proposal.

Starting in 2021, there has been a significant uptick in the number of event contracts listed for trading by CFTC-registered exchanges. To put that increase into perspective, more event contracts were listed for trading in 2021 than had been listed in the prior 15 years combined. And that has continued to be true each year since.

Given this exponential increase, the Commission today proposes to further specify the types of event contracts that fall within the scope of CEA section 5c(c)(5)(C) and are contrary to the public interest. The amendments will support efforts by registered entities to comply with the CEA by more clearly identifying the types of event contracts that may not be listed for trading or accepted for clearing. These changes will support responsible and efficient market innovation, by helping registered entities and new applicants to make informed decisions with respect to product design.

Specifically, the Commission is proposing to amend Commission Regulation 40.11 to, among other things, further specify types of event contracts that fall within the scope of CEA section 5c(c)(5)(C) and are contrary to the public interest, such that they may not be listed for trading or accepted for clearing on or through a registered entity. The proposal defines ''gaming'' and provides illustrative examples of gaming, including the outcome of a political contest, the outcome of an awards contest, the outcome of a game in which one or more athletes compete, or an occurrence or non-occurrence in connection with such a contest or game.

The proposal includes a determination that event contracts involving each of the Enumerated Activities in CEA section 5c(c)(5)(C) (gaming, war, terrorism, assassination, and activity that is unlawful under state law) are, as a category, contrary to the public interest and therefore may not be listed for trading or accepted for clearing through a registered entity. The illustrative examples of gaming that I just mentioned are therefore contrary to the public interest and cannot be listed for trading.

To be clear, that means that even contracts on the outcome of a political contest such as an election could not be listed for trading or accepted for clearing under the proposed rule. Such contracts not only fail to serve the economic purpose of the futures markets—they are illegal in several states and could potentially and impermissibly preempt State responsibilities for overseeing federal elections. This is not a new phenomenon for the CFTC. Over the course of the last 20 years, the CFTC has remained steadfast—through many administrations—that election or political contracts should not be allowed on the US futures and options markets.

Contracts involving political events ultimately commoditize and degrade the integrity of the uniquely American experience of participating in the democratic electoral process. Allowing these contracts would push the CFTC, a financial market regulator, into a position far beyond its Congressional mandate and expertise. To be blunt, such contracts would put the CFTC in the role of an election cop.

The CFTC's jurisdiction as mandated by Congress and solidified in our statute, the Commodity Exchange Act, recognizes our expertise in markets for goods, services,

rights, and interests—which can include events associated with financial, commercial, or economic consequences. We are tasked with upholding the public interest by ensuring that America's derivatives markets provide a means for managing and assuming price risks and providing for price discovery through liquid, fair, open, transparent, and financially secure trading facilities. Market integrity is featured so prominently within that mandate that the CFTC has civil enforcement authority when it comes to the potential for fraud, manipulation, and other abuses such as the dissemination of false information in the underlying or commodity cash markets. Political control contracts on CFTC-regulated exchanges would push the CFTC far beyond this historical expertise and jurisdiction, and potentially place the CFTC in the position of monitoring such markets for fraud and manipulation in elections themselves.

I thank the staff for their hard work in producing this important proposal.

Appendix 3—Statement of Commissioner Summer K. Mersinger

I support the Commission [180] undertaking a rulemaking on event contracts, which is long overdue. During my tenure on the Commission, I have consistently called for a rulemaking process to establish a framework for the Commission to exercise the discretionary authority with respect to event contracts that Congress granted to the agency in our governing statute, the Commodity Exchange Act (''CEA'').[181]

Unfortunately, though, I cannot support this particular proposed rulemaking (the ''Proposal''). At first blush, it appears to be ''much ado about nothing,'' [182] as it seems to do little more than rubber-stamp what the Commission has already said and done. Upon closer inspection, though, it is a ''wolf in sheep's clothing'' [183] because where the Proposal departs from our past practice, it lays the foundation to prohibit entire categories of potential exchange-traded event contracts whose terms and conditions the Commission has never even seen.

In planting the seeds of future bans of countless event contracts, sight unseen, the Proposal—

- Exceeds the legal authority that Congress granted the Commission in the CEA;
- Relies heavily on a brief snippet of legislative history consisting of a colloquy between two Senators—cherry-picking parts of the colloquy it likes, while ignoring other parts of the same colloquy;
- Resurrects an ''economic purpose test'' for evaluating the public interest that was based on a provision of the CEA that was repealed by Congress nearly a quarter-century ago;
- Fails to do the hard work of analyzing the unique nature of event contracts, which are different in kind from traditional derivatives contracts more familiar to the agency;
- Relies on unsupported conjecture, treats similar circumstances differently, and raises more questions than it answers; and
- Flies in the face of the CFTC's mandate to promote responsible innovation as Congress directed in the CEA.

My dissent should not be taken as an indication that I am a fan of all event contracts. But it is hard not to conclude from the multitude of defects in this Proposal that its significant overreach is motivated more by a seemingly visceral antipathy to event contracts than by reasoned analysis.

It does not matter whether we think event contracts are a good idea or a bad idea; the Commission must exercise its authority with respect to event contracts within the scope of the CFTC's legal authority, and must appropriately implement the authority that Congress has provided us. This Proposal fails both tests.

I. Event Contracts in Brief

CEA Section 5c(c)(5)(C), which was added to the CEA in 2010 by the Dodd-Frank Act,[184] permits the Commission to prohibit an event contract from being listed for trading on an exchange [185] if: (1) the contract involves one of five enumerated activities *(i.e.,* activity that is unlawful under Federal or State law; terrorism; assassination; war; or gaming); and (2) the Commission determines that the contract is contrary to the public interest. CEA Section 5c(c)(5)(C) also provides that the Commission may determine, by rule or regulation, that an event contract involves ''other similar activity'' to the five enumerated activities, which would subject event contracts involving that similar activity to the ''contrary to the public interest'' standard.[186]

Congress in CEA Section 5c(c)(5)(C) did not decree that event contracts involving enumerated activities are contrary to the public interest *per se.* Rather, if an event contract involves an enumerated activity, the Commission ''may'' determine that it is contrary to the public interest and prohibited from trading—which necessarily indicates that the Commission also has the discretion to determine that it is not.

A year after enactment of the Dodd-Frank Act, the Commission adopted CFTC Rule 40.11 [187] to implement the CEA's new event contract provisions.[188] It is Rule 40.11 that the Commission is now proposing to amend.

II. The Proposed Definition of ''Gaming'' is Significantly Overbroad

Neither the CEA nor the Commission's rules define the term ''gaming.'' In the Rule 40.11 Adopting Release implementing CEA Section 5c(c)(5)(C), the Commission acknowledged that ''the term 'gaming' requires further clarification,'' and said that the Commission may issue a future rulemaking concerning event contracts that involve ''gaming.'' [189]

I agree that, 13 years later, it is long past time for the Commission to do so. But, the Proposal's definition of ''gaming'' is much too broad.

1. The Proposal Sweeps in the Universe of Every ''Occurrence or Non-Occurrence in Connection With'' a Game

The proposed definition of ''gaming'' includes both the outcome of a game and the performance of one or more competitors in a game. So far, so good.

But it then tacks on an additional category of ''any other occurrence or non-occurrence in connection with'' a game. The all-encompassing nature of the phrase ''any other occurrence or non-occurrence'' is self-evident. And that universality is further reinforced by its attachment to the ''in connection with'' wording.

The motivation for this expansive wording in the Proposal is likely that, where the phrase ''in connection with'' appears in various enforcement provisions of the CEA, the Commission interprets it ''broadly, not technically or restrictively.'' [190] And the Proposal gives no indication that it should be interpreted any differently here. In fact, the Proposal (section II.B.1.b) goes so far as to say that staking or risking something of value on a contingent event ''in connection with'' a game ''would be as much of a wager or a bet on the game . . . as staking or risking something of value on the outcome of the game . . . would be.''

Under this incredibly far-reaching formulation, there are countless ''occurrence[s] or non-occurrence[s] in connection with'' a game that the Proposal

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[180] This Statement will refer to the agency as the ''Commission'' or ''CFTC.'' All web pages cited herein were last visited on May 9, 2024.

[181] *See* Dissenting Statement of Commissioner Summer K. Mersinger Regarding Order on Certified Derivatives Contracts with Respect to Political Control of the U.S. Senate and House of Representatives (September 22, 2023), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement092223* (''Kalshi Dissenting Statement''); and Dissenting Statement of Commissioner Summer K. Mersinger Regarding Commencement of 90-Day Review Regarding Certified Derivatives Contracts with Respect to Political Control of the U.S. Senate and House of Representatives (June 23, 2023), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/mersingerstatement062323.*

[182] Shakespeare, William, 1564–1616, *Much Ado about Nothing,* London, New York (Penguin, 2005).

[183] Aesop's Fables, *The Wolf in Sheep's Clothing* (1867).

[184] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (''Dodd-Frank Act'').

[185] CEA Section 5c(c)(5)(C) applies to event contracts listed for trading by two types of exchanges (designated contract markets (''DCMs'') and swap execution facilities (''SEFs'')), as well as the clearing of event contracts by derivatives clearing organizations (''DCOs''), all of which must register with, and are regulated by, the CFTC. For convenience, this Statement will refer simply to ''exchange trading'' of event contracts.

[186] CEA Section 5c(c)(5)(C)(i); 7 U.S.C. 7a–2(c)(5)(C)(i).

[187] CFTC Rule 40.11, 17 CFR 40.11.

[188] *See* Provisions Common to Registered Entities, 76 FR 44776 (July 27, 2011) (''Rule 40.11 Adopting Release'').

[189] *Id.* at 44785.

[190] *See* Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 FR 41398, 41405 (July 14, 2011) (citing the U.S. Supreme Court's decision in *SEC* v. *Zandford,* 535 U.S. 813 (2002), interpreting the ''in connection with'' language in SEC Rule 10b–5, 17 CFR 240.10b–5, as ''particularly instructive''; in *Zandford,* the Supreme Court broadly equated the ''in connection with'' language with the word ''coincide'' and the phrase ''not independent events,'' *id.* at 820–822).

would deem to be ''gaming.'' Obvious examples include event contracts involving the attendance at a baseball or football game, or whether a particular nation will be selected to host a soccer World Cup. These would clearly be ''in connection with'' the underlying baseball, football, or soccer games—but there is no reason why staking something of value on those contingent events should be treated the same as staking something of value on the outcome of those games.

Indeed, there is no better illustration of the overbreadth of the ''in connection with'' aspect of the proposed ''gaming'' definition than the Proposal's own example (section II.B.1.c) of ''whether a particular individual will attend a game.'' It is difficult to fathom why an event contract involving whether Taylor Swift will attend a Kansas City Chiefs football game should constitute ''gaming''—and impossible to understand why the Proposal treats similar things differently, since whether she attends a Beyoncé concert would not constitute ''gaming.''

I acknowledge that it might be appropriate to extend the definition of ''gaming'' to include events that can affect the outcome of a game or the performance of a competitor in a game. Event contracts involving, say, whether an injury to Shohei Ohtani would prevent him from playing in the World Series, or involving the score of a football game at halftime, might be examples of this. But to broadly define as ''gaming'' every ''occurrence or non-occurrences in connection with'' a game—regardless of whether it has any bearing on the outcome of the game or the performance of a competitor in the game—is wholly unwarranted.

2. Elections and Awards Are Not ''Gaming''

The Proposal rubber-stamps two prior Commission Orders that found that event contracts involving political control or elections are ''gaming,'' [191] essentially repeating the same discussion from those Orders—and then throwing awards into its ''gaming'' definition as well. Yet, this definition is inconsistent with the legislative history of CEA Section 5c(c)(5)(C)—legislative history on which, for other issues discussed below, the Proposal relies heavily.

That legislative history consists of a colloquy between Senators Blanche Lincoln and Dianne Feinstein. Senator Lincoln was then the Chair of the Senate Committee on Agriculture, Nutrition, and Forestry, which is the CFTC's authorizing committee.

In the colloquy, the Senators talked about ''gaming'' only in the limited context of sporting events. In responding to Senator Feinstein's question about the CFTC's authority under Section 5c(c)(5)(C) to determine that a contract is a ''gaming'' contract, Senator Lincoln said that ''[i]t would be quite easy to construct an 'event contract' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament.'' [192] Thus, Senator Lincoln clearly associated ''gaming'' with sporting events, *i.e.,* games.[193]

But rather than remain true to the legislative history that equated ''gaming'' with only sporting events, the Proposal broadly sweeps all ''contests'' into its definition of ''gaming.'' And it then concludes that elections and awards are ''contests'' and, therefore, ''gaming''—even though neither Senator Lincoln nor Senator Feinstein ever mentioned elections or awards (or ''contests,'' for that matter).

The Proposal attempts to squeeze elections and awards into the ''gaming'' category through the following tortured chain of reasoning:

- Gaming means gambling;
- Some State statutes link gambling to betting or wagering on contests; therefore,
- Contests (including elections and awards) constitute gaming.

Yet, one has to ask: If Congress had intended for elections and awards to be enumerated activities, is it more likely that Section 5c(c)(5)(C) would have:

- Included elections and awards in its list of enumerated activities; or
- Enumerated ''gaming'' and hoped the Commission would—
  - Define ''gaming'' to include ''contests;'' and
  - Consider ''contests'' to include elections and awards?

Congress easily could have included elections and awards as enumerated activities, but it did not. Confronted with this Congressional silence, I do not believe the Commission can simply decree that elections and awards are enumerated activities. And this is especially the case when Congress in CEA Section 5c(c)(5)(C) provided the Commission with a ready-made process for determining, through a rulemaking proceeding, whether contests, elections, and/or awards are similar to the enumerated activities, including ''gaming.''

I am baffled at why the Commission is tying itself into knots by trying to reason its way from ''gaming'' to ''gambling'' to ''contests'' to elections and awards, rather than simply do what Congress said it could do: consider whether elections and awards are similar to ''gaming'' (or another enumerated activity). This is not a matter of form over substance. Approach matters when it comes to exercising our authority under the CEA, and I cannot support the Proposal's approach to stretch the statutory term ''gaming'' to include elections and awards.

III. The Commission Lacks Legal Authority To Determine in Advance That Entire Categories of Event Contracts Are Contrary to the Public Interest

The overbreadth of the Proposal's ''gaming'' definition would suffice for me to dissent. But the Proposal's most brazen overreach is its determination, in advance, that every event contract that involves an enumerated activity is automatically contrary to the public interest—regardless of the terms and conditions of that contract.

The Proposal would prohibit these contracts—sight unseen—through the shortcut of declaring entire categories of event contracts to be contrary to the public interest. But the Commission lacks legal authority under the CEA to make public interest determinations by category.

The Proposal's justification for its approach (in section II.C.1) is that ''the statute does not require this public interest determination to be made on a contract-specific basis.'' This is backwards. The CFTC is a creature of statute, and has only the authorities granted to it by the CEA. There is no provision in CEA Section 5c(c)(5)(C) for public interest determinations regarding event contracts involving enumerated activities to be made by category. Accordingly, the Commission cannot claim that authority through the *ipse dixit* of ''Congress didn't say we couldn't.''

This is not a mere question of what procedure to follow. The Proposal would allow the Commission to make the substantive policy determination that entire categories of event contracts, regardless of their terms and conditions, are contrary to the public interest. And the consequences of such a determination are severe—a complete prohibition on exchanges' ability to list event contracts, and on market participants' ability to trade them. If Congress had intended for the Commission to wield this immense authority, surely it would have said so.

In fact, in another CEA provision similar to CEA Section 5c(c)(5)(C) that also was added by the Dodd-Frank Act, Congress did say so. CEA Section 2(h)(2)(A)(i) specifically states that the Commission shall review ''each swap, or any group, *category,* type, or class of swaps to make a determination as to whether the swap or group, *category,* type, or class of swaps should be required to be cleared.'' [194]

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[191] *See* Order Prohibiting North American Derivatives Exchange's Political Event Derivatives Contracts (April 2, 2012), available at *https://www.cftc.gov/PressRoom/PressReleases/6224-12;* and Order In the Matter of the Certification by KalshiEX LLC of Derivatives Contracts with Respect to Political Control of the United States Senate and United States House of Representatives (September 22, 2023), available at *https://www.cftc.gov/PressRoom/PressReleases/8780-23.*

[192] *See* 156 Cong. Rec. S5906–07 (daily ed. July 15, 2010) (statements of Senator Dianne Feinstein and Senator Blanche Lincoln), available at *https://www.congress.gov/111/crec/2010/07/15/CREC-2010-07-15-senate.pdf* (''Feinstein-Lincoln colloquy'').

[193] The Senator's view is consistent with the natural interpretation of the word ''gaming'' as meaning the staking of money on the outcome of a game. For example, Cambridge Dictionary defines ''gaming'' in terms of games: ''The risking of money in games of chance, especially at a casino; gaming machines/tables.'' *See* ''gaming'' definition, CAMBRIDGE DICTIONARY, available at *https://dictionary.cambridge.org/us/dictionary/english/gaming.*

[194] CEA Section 2(h)(2)(A)(i), 7 U.S.C. 2(h)(2)(A)(i) (emphasis added). For convenience, the text will refer only to CEA Section 2(h)(2)(A)(i), although the Dodd-Frank Act also used this same wording explicitly authorizing the Commission to make determinations by category in CEA Sections 2(h)(2)(B)(i), (ii), (iii)(II), and (E); 2(h)(3)(A), (B), (C)(i), (C)(ii), and (D); and 2(h)(4)(B), (B)(iii), (C)(i), and (C)(ii), 7 U.S.C. 2(h)(2)(B)(i), (ii), (iii)(II), and (E); 2(h)(3)(A), (B), (C)(i), (C)(ii), and (D); and 2(h)(4)(B), (B)(iii), (C)(i), and (C)(ii).

Of particular interest is CEA Section 2(h)(4)(B)(iii), 7 U.S.C. 2(h)(4)(B)(iii), which provides that to the extent the Commission finds that a particular swap or category (or group, type or class) of swaps would be subject to mandatory clearing but no DCO has listed the swap or category

Thus, when it enacted the Dodd-Frank Act, Congress knew how to tell the Commission that it could make a determination on either an individual or categorical basis when it wanted to do so.[195] In contrast, Congress did not say in CEA Section 5c(c)(5)(C) that the Commission could make public interest determinations for event contracts by category.

The Proposal's premise is that a grant of authority to make a determination about one thing necessarily includes authority to make a determination about a category of such things—*unless* Congress says otherwise. But if that were the case, then there was no need for Congress to tell the Commission in CEA Section 2(h)(2)(A)(i) that it could make mandatory swap clearing determinations either by individual swap or by category.[196] The Proposal's determination would render statutory text in CEA Section 2(h)(2)(A)(i) mere surplusage in violation of established canons of statutory construction.[197] It also would violate the canon of statutory construction that provisions enacted as part of the same statute (here, the Dodd-Frank Act) should be construed in a similar manner.[198]

In the absence of any statutory text in CEA Section 5c(c)(5)(C) like that in CEA Section 2(h)(2)(A)(i), I cannot accept that Congress silently authorized the CFTC to make life easier for itself through the shortcut of making impactful determinations that entire categories of event contracts are contrary to the public interest and thus are prohibited from trading on exchanges.

IV. Even if There Is Legal Authority, the Proposal Fails To Justify Making Advance Public Interest Determinations by Category—for a Host of Reasons

Even if the Commission has legal authority to make public interest determinations for event contracts by category, the Proposal is wholly unpersuasive in its attempt to justify doing so. There are a multitude of failings.

1. There is No Basis To Resurrect the Repealed ''Economic Purpose Test,'' Which Shouldn't be Applied to Event Contracts in Any Event

The Proposal would ban entire categories of event contracts as being contrary to the public interest based largely on the proposition that they fail the ''economic purpose test.'' There are four significant problems with this approach.

Congressional Intent: First, the Proposal relies on a single, ambiguous, passage in the legislative history to conclude that Congress intended, for purposes of a public interest review of an event contract, to resurrect the ''economic purpose test'' that the Commission once used to determine whether a futures contract was contrary to the public interest—until Congress repealed that public interest requirement in 2000.[199]

The Proposal's resurrection of the ''economic purposes test'' is based entirely on this one passage in the colloquy between Senator Dianne Feinstein and Senator Blanche Lincoln:

Mrs. Feinstein: . . . Will the CFTC have the power to determine that a contract is a gaming contract if the predominant use of the contract is speculative as opposed to hedging or economic use?

Mrs. Lincoln: That is our intent. The Commission needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed event contracts. It would be quite easy to construct an 'event contract' around sporting events such as the Super Bowl, the Kentucky Derby, and Masters Golf Tournament. These types of contracts would not serve any real commercial purpose. Rather, they would be used solely for gambling.[200]

To be clear, the Dodd-Frank Act did not codify the Commission's prior ''economic purpose test.'' And I cannot accept the Proposal's assertion that this isolated colloquy between two Senators establishes an intent by the whole of Congress that the Commission conduct its public interest reviews of event contracts based on an ''economic purpose test'' that the Commission had withdrawn as a result of the repeal (by the whole of Congress) of the statutory provision it implemented a decade earlier.

After all, neither Senator Feinstein nor Senator Lincoln used the term ''economic purpose test'' or referred to the Commission's Guideline No. 1 that set out that test. As someone who spent over a decade working in Congress, and who was present on the Senate floor for countless colloquies and even had a hand in preparing talking points for similar floor discussions, I am confident that if the Senators believed we should resurrect the ''economic purpose test,'' they would have said just that.

Difference in Kind: Second, the ''economic purpose test'' was designed for traditional futures contracts that have been listed and traded on exchanges for decades.[201] These contracts differ in kind from event contracts, which typically are structured as binary (yes/no) options.

The two prongs of the ''economic purpose test,'' which the Proposal adopts as a primary basis for prohibiting entire categories of event contracts as being contrary to the public interest, evaluate: (1) the contract's utility for price basing; and (2) whether the contract can be used for hedging purposes. Yet, the Commission itself has previously recognized the difference between event contracts and the traditional futures contracts for which the ''economic purpose test'' was developed. In a Concept Release issued in 2008, the Commission stated that ''[i]n general, event contracts are neither dependent on, nor do they necessarily relate to, market prices or broad-based measures of economic or commercial activity,'' and elaborated as follows:

Since 2005, the Commission's staff has received a substantial number of requests for guidance on the propriety of offering and trading financial agreements that may primarily function as information aggregation

(or group, type, or class) of swaps for clearing, the Commission ''shall . . . take such actions as the Commission determines to be necessary and *in the public interest,* which may include requiring the retaining of adequate margin or capital by parties to the swap, group, *category,* type, or class of swaps.'' (Emphasis added) Here, unlike with respect to event contracts, Congress explicitly told the Commission that it could make a public interest determination either individually or by category.

[195] Similarly, in another CEA provision added by the Dodd-Frank Act, Congress told the Commission that it could exempt swaps or other transactions from position limits either individually or by class. *See* CEA Section 4a(7), 7 U.S.C. 6a(7) (''The Commission . . . may exempt . . . any swap or class of swaps . . . or any transaction or class of transactions from any requirement it may establish . . . with respect to position limits'').

[196] Nor can authority to make categorical determinations be found in the CEA's grant of general rulemaking authority in CEA Section 8a(5), 7 U.S.C. 12a(5), which provides that the Commission may adopt such rules as, ''in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of'' the CEA. Again, if that were the case, then there was no need for Congress to tell the Commission in CEA Section 2(h)(2)(A)(i) that it could make mandatory swap clearing determinations either by individual swap or by category, nor was there any need for Congress to tell the Commission in CEA Section 4a(7) that it could exempt swaps or other transactions from position limits requirements either by individual transaction or by class.

[197] *See, e.g., Dep't of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz,* 601 U.S. 42, 53 (2024) (stating proper respect for Congress cautions courts against lightly assuming statutory terms are superfluous or void of significance); *City of Chicago, Illinois* v. *Fulton,* 592 U.S. 154, 159 (2021) (specifying the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme).

[198] *See Turkiye Halk Bankasi A.S.* v. *United States,* 598 U.S. 264, 275 (2023) (The Court has a duty to construe statutes and not isolated provisions, and such construction must occur within the context of the entire statutory scheme.).

[199] Before 2000, CEA Section 5(g) required that futures contracts not be contrary to the public interest. The Commission interpreted this statutory public interest standard to include the ''economic purpose test.'' *See* Request for Comments Respecting Public Interest Test, Guideline on Economic and Public Interest Requirements for Contract Market Designations, 40 FR 25849 (June 19, 1975) (''Guideline No. 1''). In 2000, Congress repealed Section 5(g) of the CEA and its public interest requirement in the Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763 (2000) (''CFMA''). As a result, the Commission withdrew Guideline No. 1.

[200] *See* Feinstein-Lincoln colloquy, n.13, *supra.*

[201] The CFTC's Guideline No. 1, including its ''economic purpose test,'' applied to futures contracts. *See* Guideline No. 1, 40 FR at 25850 (''The Commission is inviting comment . . . to assist the Commission in determining whether the *futures contracts* of [certain exchanges] meet the public interest requirements for contract market designation . . .''), and at 25851 (an exchange ''should at this time affirm that *futures transactions* in the commodity for which designation is sought are not, or are not reasonably expected to be, contrary to the public interest'') (emphases added). And the Feinstein-Lincoln colloquy makes clear that CEA Section 5c(c)(5)(C) was drafted with futures contracts in mind. Senator Lincoln cited terrorist attacks, war and hijacking as examples of events that ''pose a real commercial risk to many businesses in America,'' but stated that ''*a futures contract* that allowed people to hedge that risk [of terrorist attacks, war, and hijacking] . . . would be contrary to the public interest.'' Feinstein-Lincoln Colloquy, n.13, *supra* (emphasis added).

vehicles. These event contracts generally take the form of financial agreements linked to eventualities or measures that neither derive from, nor correlate with, market prices or broad economic or commercial measures.[202]

In other words, the Proposal would ban entire categories of event contracts largely on the basis of price basing and hedging requirements that event contracts (described in the Concept Release as ''information aggregation vehicles'') likely—because of their very structure—have little chance of satisfying.

This problem is compounded by the fact that under the Proposal, some event contracts that fail to satisfy the ''economic purpose test'' would be banned, while other contracts failing the test would not. For example, the Proposal's statement (in section II.C.3.c) that ''most contracts falling within the proposed definition of 'gaming' would have no underlying cash market with bona fide economic transactions to provide directly correlated price forming information'' is equally true of weather-related event contracts—but those contracts would not be banned.

Since the weather is not an enumerated activity, event contracts involving the weather can trade because they are not subject to a public interest review under CEA Section 5c(c)(5)(C). Thus, the Proposal's reliance on the ''economic purpose test'' means that exchanges can list for trading event contracts (such as those involving weather) that the Commission believes are contrary to the public interest—which I find untenable.

These are the inevitable results of imposing an ''economic purpose test'' on event contracts that was not designed for event contracts. Certainly, a rulemaking proceeding could be appropriate to fully explore the economic attributes of event contracts, and to consider how to incorporate such attributes into a public interest review that is tailored to the nature of event contracts. But, that is not this Proposal.

Government paternalism: Third, the Proposal asserts (in section II.C.3.c) that ''the economic impact of an occurrence (or non-occurrence) in connection with a contest of others, or a game of skill or chance . . . generally is too diffuse and unpredictable to correlate to direct and quantifiable changes in the price of commodities or other financial assets or instruments, limiting the hedging and price-basing utility of an event contract involving such an occurrence.''

But to say that there are limits to the hedging utility of an event contract is simply a statement that the contract may not be a particularly good hedging vehicle. Market participants should be permitted to make their own choices about what financial products meet their hedging needs. It is not the CFTC's role to deny them that choice altogether because we feel a given product's hedging value is ''limited.''

The ''Economic Purpose Test'' Was Not Applied to Categories of Contracts: Fourth, even assuming that the ''economic purpose test'' is an appropriate part of a public interest analysis for event contracts, it does not support making public interest determinations for event contracts by category—because the Commission applied its ''economic purpose test'' to the terms and conditions of individual contracts. The Commission's Guideline No. 1 provided that ''*[i]ndividual contract terms and conditions* must be justified'' in order for an exchange to demonstrate that it met the ''economic purpose test.'' [203]

The Commission took no shortcuts in applying its subsequently withdrawn ''economic purpose test'' to futures contracts. It did not group contracts into categories (such as all futures contracts on wheat, corn, gold, or silver) in evaluating the public interest through its ''economic purpose test.'' Rather, the Commission looked at each contract's ''individual contract terms and conditions'' to make that determination. If the Proposal is going to (incorrectly) adopt that ''economic purpose test'' in determining whether an event contract is contrary to the public interest, then it should apply that test the same way.

2. The Proposal's Application of Other Factors Falls Far Short of Justifying Its Prohibition of Entire Categories of Event Contracts

Aside from the ''economic purpose test,'' the Proposal points to a hodgepodge of other factors to try to justify prohibiting entire categories of event contracts, whose terms and conditions the Commission has never seen, from being traded on exchanges. But its discussion of these factors is conjectural and without evidentiary support, calls into question other contracts that are trading on regulated exchanges, and raises more questions than it answers. Taken as a whole, the Proposal falls far short of justifying the shortcut of prohibiting entire categories of event contracts (even assuming the Commission has the legal authority to do so).

Examples of these defects in the Proposal abound, but I will focus here on just a few:

Hopelessly Impractical: The category of activities illegal under State law demonstrates the type of problems inherent in determining that all event contracts in a category are contrary to the public interest. Some activities are illegal in some States, but not others. Yet, the Proposal does not provide any guidance on several obvious questions: Is an event contract automatically contrary to the public interest if it involves an activity that is illegal in only a single State—and if so, why? Or, if not, then how many States have to declare an activity illegal before the automatic prohibition on event contracts involving that activity is triggered? More than half? States comprising a certain percentage of the country's population? [204]

The problem is exacerbated by the Proposal's suggestion that the prohibition of event contracts can hinge on decisions by judges. Is this reference limited to Supreme Courts of the States? Or would a ruling by a lower court of a State that a particular activity is illegal trigger an automatic determination that an event contract involving that activity is contrary to the public interest? What if that decision is appealed?

While I have focused here on the category of event contracts involving activities illegal under State law, these types of practical questions are a foreseeable and inevitable result of any determination that an entire category of event contracts is contrary to the public interest. I recognize that a contract-specific approach to making public interest determinations regarding event contracts may be difficult and resource-intensive for the CFTC. But aside from my view that a contract-specific approach is required by the CEA, it also is a better approach from a policy perspective precisely because it would permit the CFTC to consider these practical questions in the context of the specific circumstances applicable to a particular event contract. We do not get to override a requirement under the law because it will be hard or require more work for us.

Absolutism Based on Conjecture: Another defect in the Proposal is illustrated by the following (in section II.C.3.c): ''*Generally speaking,* the Commission believes that something of value is staked or risked upon an occurrence (or non-occurrence) in connection with a contest of others, or a game or [sic] skill or chance, for entertainment purposes—in order wager [sic] on the occurrence. As such, the Commission believes that contracts involving such occurrences are *likely* to be traded predominantly 'to enable gambling' and 'used predominantly by speculators or participants not having a commercial or hedging interest' . . .'' (Emphasis added; footnote omitted)

These assertions are entirely conjectural, as the Proposal does not cite any support for these statements. One can readily envision an event contract involving whether a particular US city will be awarded the summer or winter Olympic games in a given year, which

[202] Concept Release on the Appropriate Regulatory Treatment of Event Contracts, 73 FR 25669, 25669–25670 (May 7, 2008). More specifically, the Concept Release noted that: 1) event contracts based on environmental measures (such as the volatility of precipitation or temperature levels) or environmental events (such as a specific type of storm within an identifiable geographic region) will ''not predictably correlate to commodity market prices or other measures of broad economic or commercial activity;'' and 2) event contracts based on general measures (such as the number of hours that U.S. residents spend in traffic annually or the vote-share of a particular candidate) ''do not quantify the rate, value, or level of any commercial or environmental activity,'' and that contracts on general events (such as whether a Constitutional amendment will be adopted) ''do not reflect the occurrence of any commercial or environmental event.'' *Id.* at 25671.

[203] Guideline No. 1, 40 FR at 25850 (emphasis added). *See also id.* at 25851 (''The justification of *each contract term or condition* must be supported by appropriate economic data'') (emphasis added).

[204] The Proposal justifies its category-based approach regarding activity that is illegal under State law (in section II.C.3.b) on the grounds that it ''eliminates the possibility that the Commission would have to serve . . . as arbiter of a state's own public interest determination . . . in recognizing specific activity as causing, or posing, public harm.'' But unless the activity is illegal in all 50 States, then in determining that an event contract involving an activity illegal in some States is automatically contrary to the public interest, the Commission is inherently ''serv[ing] as arbiter'' of the determination by all the other States that the activity does not cause, or pose, public harm.

would be used by hotel and restaurant owners, as well as other businesses, that would make money if their city gets the Olympics but not if the Olympics are awarded elsewhere. Such an event contract would not necessarily be used predominantly for entertainment or speculative purposes.

Indeed, the quoted text itself uses wording like ''[g]enerally speaking'' and ''likely,'' which is an acknowledgement that its conclusions are not universally true. A belief for which no evidence is cited, and that is acknowledged not to be true across-the-board, cannot justify an absolutist determination that all event contracts involving an activity are automatically contrary to the public interest, nor can it justify a prohibition on trading all event contracts in that category.

Calling into Question Traditional Futures Contracts: I agree that an event contract involving the outcome of a sporting event, and that allows players or coaches to in trade that contract, would be contrary to the public interest. But consistent with its overreach, the Proposal also concludes that even where the terms and conditions of such a contract prohibit such persons from trading, the contract is nonetheless contrary to the public interest. The Proposal's stated rationale (in section II.C.3.c) is that ''the athlete or coach would potentially have a platform—for example, access to media, combined with public perception as an authoritative source of information regarding the team—that could be used to disseminate misinformation that could artificially impact the market in the contract for additional financial gain.''

The same can be said of many traditional exchange-traded futures contracts. For example, oil companies (or companies in the agricultural or metals sectors, or other energy companies) also have ''access to media, combined with public perception as an authoritative source of information regarding'' the oil (or other) industry, ''that could be used to disseminate misinformation that could artificially impact the market in the contract for additional financial gain.'' And yet, exchanges are permitted to list oil futures for trading (in fact, oil companies are permitted to trade them).

The Proposal offers no explanation for why a possible incentive to spread misinformation should render all event contracts involving sporting events (or occurrences or non-occurrences in connection with sporting events) contrary to the public interest when traditional futures contracts with the same incentive are not. A contract-specific public interest analysis, by contrast, could take into account the terms and conditions of a particular event contract—such as whether athletes and coaches can trade, or whether there are guardrails against the spread of misinformation—to determine whether the threat of misinformation in that contract is such that it is contrary to the public interest.

Fallacies Concerning the CFTC's Regulatory and Enforcement Roles: The Proposal raises in alarmist tones the red herring that sweeping public interest determinations are necessary so that the CFTC does not get drawn into a regulatory or enforcement role for which it is not well-equipped. For example, the Proposal says (in section II.C.2) that one factor that may be relevant in evaluating whether event contracts are contrary to the public interest is the extent to which they ''would draw the Commission into areas outside of its primary regulatory remit.'' [205] Other examples are: (1) the statements (in section II.C.3.c) relating to event contracts involving elections that the Commission ''is not tasked with the protection of election integrity or enforcement of campaign finance laws;'' and (2) the statement (in the first sentence of footnote no. 127) that ''the oversight function in this area [regarding elections] is best reserved for other expert bodies.''

To be clear: The CFTC does not administer, oversee, or regulate elections, sporting events, gambling, or any other activity or event discussed in the Proposal—and that will not change with respect to any event contract that is found not to be contrary to the public interest. Rather, the CFTC would exercise its exact same authorities under the CEA that it does with respect to all other derivatives contracts.

Nor would the CFTC become some type of ''election cop.'' After all, the CFTC has anti-fraud and anti-manipulation enforcement authority with respect to futures contracts on broad-based security indices, but that does not mean the CFTC regulates the securities markets or that it is tasked with the protection of the integrity of the securities markets or enforcement of securities laws—the Securities and Exchange Commission (''SEC'') does all that. The CFTC similarly has enforcement authority with respect to natural gas and electricity since there are futures contracts on those commodities, but that does not mean the CFTC regulates the transmission of natural gas or electricity or that it is tasked with the protection of the integrity of physical natural gas or power markets, or enforcement of the Natural Gas Act or the Federal Power Act—the Federal Energy Regulatory Commission (''FERC'') does all that.

The same is true with respect to an event contract that is not contrary to the public interest and thus is permitted to trade on a regulated exchange. As the Supreme Court has stated: ''This Court's cases have consistently held that the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation.'' [206] If a particular event contract involving elections were found not to be contrary to the public interest and thus permitted to trade, the CFTC would have absolutely no authority to administer, oversee, or regulate the elections that are the subject of that contract, or to enforce any campaign finance laws. Its authority would extend only so far as is the case with respect to all commodities underlying derivatives contracts within our jurisdiction, as provided by Congress in the CEA.

Why This is Important: I can understand why some might ask: You have been pleading for an event contracts rulemaking for some time now, and here it is—so what is the problem? The problem is this: CFTC Rule 40.11(a)(1) already prohibits the listing and trading of any event contract involving an enumerated activity. As I explained in my Kalshi Dissenting Statement:

Rule 40.11 contradicts the statute. CEA Section 5c(c)(5)(C) grants the Commission discretion to determine *whether* [an exchange's] event contract that involves an enumerated activity is contrary to the public interest. CFTC Rule 40.11(a), by contrast, provides that [an exchange] ''*shall not* list for trading'' a contract that involves . . . an enumerated activity (emphasis added). Read literally, Rule 40.11(a) removes entirely the flexibility that Congress granted the Commission to evaluate [exchange] event contracts from a public interest perspective.[207]

Rather than fix this problem, though, the Proposal doubles down on it. By making categorical public interest determinations in advance, the Proposal would impermissibly transform the two-step analysis that Congress provided for event contracts into a single step. It would transmogrify the *discretion* that Congress gave the Commission to determine that an event contract involving an enumerated activity is contrary to the public interest into a *mandate* that it do so.

The Proposal actually is quite candid in acknowledging that it would re-write CEA Section 5c(c)(5)(C). It states (in section II.C.1): ''If, as proposed, [Rule 40.11] is amended to include a categorical public interest determination with respect to contracts involving each of the Enumerated Activities, the Commission would not, going forward, undertake a contract-specific public interest analysis as part of a review . . . Rather, the focus of any such review would be to evaluate whether the contract involves an Enumerated Activity, in which case, it may not be listed for trading . . .''

If Congress had intended that every event contract involving an enumerated activity is automatically contrary to the public interest and prohibited from trading, it could have provided for such a single-step process in CEA Section 5c(c)(5)(C). But it did not do that, and instead provided that even if an event contract involves an enumerated activity, the Commission cannot prohibit the contract without exercising its discretion in a second step of determining that the contract is contrary to the public interest. The

[205] Since the CFTC has a narrow ''regulatory remit'' restricted to regulating derivatives markets, this factor presumably could support finding that virtually every event contract is contrary to the public interest.

[206] *NAACP* v. *Federal Power Commission,* 425 U.S. 662, 669 (1976). The Court went on to explain: ''Congress in its earlier labor legislation unmistakably defined the national interest in free collective bargaining. Yet it could hardly be supposed that, in directing the Federal Power Commission to be guided by the 'public interest,' Congress thereby instructed it to take original jurisdiction over the processing of charges of unfair labor practices on the part of its regulatees.'' *Id.* at 671. Similarly, it could hardly be supposed that, in directing the CFTC to be guided by the ''public interest'' in evaluating event contracts, Congress thereby instructed it to take original jurisdiction over the regulation or enforcement of laws relating to elections, sporting events, gambling, or any other activity or event.

[207] *See* Kalshi Dissenting Statement, n.2, *supra.*

Commission can't short-circuit the process that Congress established by determining that an event contract is contrary to the public interest—in advance and without knowing the contract's terms and conditions—simply because that makes things easier for the agency.

Granted, the Proposal makes categorical public interest determinations only for the activities enumerated in CEA Section 5c(c)(5)(C). I admit that I am not going to lose sleep over a determination that all event contracts involving terrorism, assassination, and war are contrary to the public interest.

But this is where the ''wolf in sheep's clothing'' arrives. While this Proposal only addresses event contracts involving enumerated activities, it sets the precedent for how the Commission can handle event contracts involving other activities that it determines are similar to enumerated activities, too.

If the Proposal is adopted as final, then at any time in the future, the Commission could determine that other activities are similar to enumerated activities—and could then determine that every event contract involving that activity is automatically contrary to the public interest (and therefore prohibited from trading) regardless of its particular terms and conditions. And given all the deficiencies in this Proposal's categorical public interest determinations discussed above, that appears to be a low bar to clear.

V. Portions of the Proposal Are Inaccurate or Extremely Weak, or Make No Sense

The fact that certain portions of the Proposal are inaccurate, extremely weak, or simply make no sense suggests that it either was hastily prepared, or is motivated primarily by the sheer hatred that the Commission seems to bear towards event contracts. Here are a few examples:

- The Proposal says (in section II.C.2) that ''the public good'' is a relevant factor for consideration in an evaluation of whether an event contract is contrary to the public interest. It makes no sense that the Commission should consider ''the public good'' in evaluating whether a contract is contrary to ''the public interest.'' This is tautological—''the public good'' and ''the public interest'' mean the same thing.
- The Proposal's statement (in section II.C.2) that in the colloquy, Senators Feinstein and Lincoln ''discussed the Commission's authority, prior to the enactment of the Commodity Futures Modernization Act of 2000 ('CFMA'), 'to prevent trading that is contrary to the public interest'' is incorrect. Senators Feinstein and Lincoln did not ''discuss'' the Commission's pre-CFMA authority. Senator Feinstein referenced it in asking a question, but Senator Lincoln (the Committee Chair) did not talk about it—in fact, she did not even mention the CFMA.
- Footnote no. 49 cites the CFTC Reauthorization Act of 2019 as support for the Proposal's view that an erroneous reference to a non-existent CEA Section 1a(2)(i) in CEA Section 5c(c)(5)(C) was intended by Congress to refer to CEA Section 1a(19)(i) instead, since the bill included a provision to replace the reference to Section 1a(2)(i) with a reference to Section 1a(19)(i). But an amendment in a bill introduced in a subsequent Congress (nine years later) sheds no light on what was intended by the Congress that enacted the statutory provision in question—especially when the referenced bill was not enacted and nothing has happened on it during the ensuing five years.

VI. Certain Implementation Timeline Provisions in the Proposal Are Ill-Advised

As discussed above, I do not support the proposal to determine that all event contracts involving enumerated activities are contrary to the public interest. But if the Commission decides to do so, I oppose applying that determination to contracts that are already listed for trading as of the date of publication of final rule amendments in the **Federal Register**.

It is my hope that there would be few such contracts. But for any contracts that would be impacted, the Proposal is pollyanaish in its rosy view (in section II.F) that ''a 60-day implementation period for these contracts will minimize any market disruption that might be caused by the rule amendments.'' For one thing, given the Proposal's repeated emphasis (in sections II.B.1.c and section II.C.3.c) that its examples of activities that constitute ''gaming'' under the proposed definition are non-exclusive, I am dubious that exchanges and traders necessarily will know exactly which existing event contracts the Commission believes are now suddenly prohibited.

Beyond that, this aspect of the Proposal is fundamentally unfair. At any time during the 13 years since its adoption of Rule 40.11, the Commission could have concluded that a given event contract involving an enumerated activity is contrary to the public interest. Exchanges and market participants that have listed and traded an event contract in good faith reliance on the fact that the Commission had not determined the contract to be contrary to the public interest should not pay the price (literally) for the Commission's inaction by having to halt trading in a fixed amount of time because the Commission has finally gotten around to it.

This would be the antithesis of ''good government.'' Accordingly, I do not believe that any rule amendments finalized as part of this rulemaking should apply to an event contract that is listed and available for trading as of the date of their publication in the **Federal Register**.

VII. Conclusion

Rather than undertake a rulemaking process to do the hard work of building a framework for evaluating event contracts pursuant to CEA Section 5c(c)(5)(C), the Commission squandered the 14 years since that provision was enacted as part of the Dodd-Frank Act. While the Commission is now proposing an event contract rulemaking, that hard work still has yet to be done. Instead, the Commission is skipping right over building a proper framework—and simply proposing to prohibit contracts outright.

This result seems preordained, given the hostility that the Commission has displayed toward event contracts since the enactment of the Dodd-Frank Act. This Proposal rubber-stamps the Commission's two prior Orders finding proposed event contracts to be contrary to the public interest. In addition, it continues the ''tradition'' of stretching a solitary, cryptic colloquy to form the basis for evaluating whether event contracts are contrary to the public interest through the ''economic purpose test'' that: (1) is not mentioned in the statute; (2) had previously been withdrawn due to Congress' repeal of the CEA provision it implemented; (3) was not designed for this type of contract; and (4) many event contracts, due to their structure, likely will be unable to meet.

And now the Proposal goes even further, adopting an overly broad definition of ''gaming'' and declaring entire categories of event contracts to be contrary to the public interest, sight unseen. The Commission's legal authority to make such determinations by category is questionable, at best; that it is inappropriate from a policy perspective cannot reasonably be questioned.

The Proposal flatly contravenes Congress' direction in the CEA that the CFTC ''promote responsible innovation.'' [208] The unmistakable take-away for exchanges is not to expend resources developing an innovative event contract because the Commission will go to great lengths to find that it is contrary to the public interest and prohibit it from trading.[209]

I want to be very clear: My dissent should not be taken as an endorsement of the wisdom of event contracts generally, or of any event contract in particular. Rather, it reflects my application of Congress' direction to the Commission in CEA Section 5c(c)(5)(C). Whatever we may think of event contracts, we cannot re-write the CEA to claim an authority that Congress did not give us because we have been derelict in applying the authority that Congress did give us. Nor should we be prohibiting an event contract without a proper showing that it involves an enumerated activity and is contrary to the public interest based on the application of well-defined factors to the particular terms and conditions of that particular contract.

Because this wolf in sheep's clothing fails on many levels for the foregoing reasons, I respectfully dissent.

Appendix 4—Statement of Commissioner Caroline D. Pham

I respectfully dissent from the Event Contracts Proposal because it takes the CFTC's regulation of event contract markets backwards with its fundamental misunderstanding of how we regulate derivatives and the States regulate gaming. Instead of thoughtfully considering how to effectively regulate these markets while

[208] CEA Section 3(b), 7 U.S.C. 5(b). The Proposal claims (in section I.A, section II, and section II.A.1.b) that it would help to support responsible market innovation. I do not agree that prohibiting broad categories of innovative event contracts supports responsible market innovation.

[209] In this regard, the Proposal even undermines the CFTC's commitment to its own stated Core Value of being ''Forward-Thinking'' (*i.e.,* challenging ourselves to stay ahead of the curve). CFTC Core Values, Forward-Thinking, available at *https://www.cftc.gov/About/AboutTheCommission.*

fostering innovation, the Event Contracts Proposal ties itself in knots over the bounds of gaming, which Congress has neither asked nor directed the Commission to regulate. I am simply disappointed in this wasted opportunity to regulate retail binary options, sidestepping our responsibility, and concerned about its legal impact.

The United States is built on a foundation of federalism. Federalism reflects the Founders' understanding that a one-size-fits-all approach would not work for this country, and allows for States to govern in ways that best suit their residents.[1] The simple language of the Tenth Amendment to the Constitution (''The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people'') emphasizes that the Federal government is a government of limited and enumerated powers.[2] The Tenth Amendment, importantly, protects the American people from Federal encroachment.

State regulation of gaming, ranging from betting to lotteries, is long-established in the U.S., and is clearly a power reserved to the States.[3] No one understands their local cultures, economies, and values better than the States,[4] which leads to State laws that have been crafted to reflect the needs of their residents. This approach has allowed some States to embrace gaming and leverage it as a source of revenue and tourism, while others take a more conservative approach.[5]

When it comes to event contracts related to gaming, I have been clear that the CFTC should exercise caution, primarily because I believe the Commission fundamentally misunderstands the law in this area and Congressional intent.[6] That fear has proven well-founded with the Event Contracts Proposal.

The CFTC has a role in regulating event contracts as a market regulator, but it is essential that the CFTC does not encroach upon the prerogatives of States. An appropriate Event Contracts Proposal would have struck a balance between Federal oversight and State autonomy by focusing on the CFTC's core mandate of promoting market stability and protecting market participants from fraud and abusive practices.[7] In doing so, the CFTC could have maintained the integrity of event contracts without undermining the authority of State governments.

Instead, as I will explain below, the Event Contracts Proposal bigfoots into State regulation of gaming by drawing unintelligible lines in the sand that will either at best result in confusion for State gaming authorities, or at worst push event contracts into illegal, unregulated offshore markets.

The Event Contracts Proposal Ignores the Supreme Court's Preemption Doctrine

The Constitution's Supremacy Clause provides that ''the Laws of the United States . . . shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.'' [8] This language is the basis for the doctrine of Federal preemption, according to which Federal law supersedes conflicting State laws.[9]

The Supreme Court has identified two general ways in which Federal law can preempt State law: expressly, when a Federal statute or regulation contains explicit preemptive language; and impliedly when its structure and purpose implicitly reflect Congress's preemptive intent.[10] But the Federal government cannot preempt traditional State powers that are the exclusive domain of States to regulate, recognizing the right to self-determination by the people.

The Event Contracts Proposal uniquely ignores the fact that the limits Congress placed on the Commission's regulation of event contracts *save* the Commission from becoming a gaming regulator. In other words, the Commission could have relied on implied preemption to regulate event contracts as derivatives in our markets separate and apart from State gaming regulation. Instead, the Commission *creates* preemption concerns by proposing a gaming definition that incomprehensibly relies so heavily on State law that I don't know how any exchange could understand where the Commission's rules begin and end for these contracts.

Together, under CEA Section 5c(c)(5)(C), Rule 40.11, and the preamble to the final rulemaking for Rule 40.11, whether an event contract is prohibited by Rule 40.11 depends on the underlying activity that the contract is based upon. When the Commission reviewed an exchange's political control contracts, I raised that the underlying activity was political control, which was neither terrorism, assassination, war, gaming, nor unlawful under any Federal or State law.[11] Therefore, Rule 40.11(a)(1) did not apply. Yet in disapproving the contracts, the Commission argued that ''*taking a position* in the Congressional Control Contracts'' (emphasis added) amounted to gaming.[12]

When taking a position in a derivatives contract is gaming, the Commission starts to look like a gaming regulator. Congress may not compel a State to enact or enforce a regulatory regime,[13] and indeed, Congress has not here. Yet in doubling down on its logic in the Event Contracts Proposal, when the act of entering into a derivatives contract that meets the Proposal's overbroad definition of gaming, drawn from dozens of State laws, is now gaming under the Commission's jurisdiction, we begin encroaching on State gaming oversight. State-regulated sportsbooks, in trying to comprehend where the Commission's gaming derivatives begin and traditional bets end, will be captured in this confusion and question the need to register with the Commission as exchanges. I certainly don't want the Commission to be registering Las Vegas sportsbooks and other betting venues.

The Commodity Exchange Act Is Clear That the Commission Regulates Event Contracts

Congress has been clear in its direction for the CFTC.

First, in relevant part, the purpose of the Commodity Exchange Act is to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions; to

[1] *See* Bernard Dobski, Ph.D., America Is a Republic, Not a Democracy, The Heritage Foundation (June 19, 2020) (examining whether current egalitarian efforts threaten, among other things, the diverse interests the Founders sought to protect from factionalism), *https://www.heritage.org/american-founders/report/america-republic-not-democracy.* Interestingly, the Event Contracts Proposal repeatedly claims to be motivated by the increase in volume and ''diversity of event contracts listed for trading by Commission-registered exchanges.'' However, the Proposal admits only one CFTC registered exchange currently offers the types of event contracts covered by the Proposal, out of the six CFTC registered exchanges that are authorized to offer event contracts. I question the motivations of any rulemaking that seeks to quash unique products offered by one exchange because their products are ''diverse.''

[2] *See* Gary Lawson and Robert Schapiro, Common Interpretation: The Tenth Amendment, National Constitution Center, *https://constitutioncenter.org/the-constitution/amendments/amendment-x/interpretations/129#:~:text=by%20Gary%20Lawson,-Phillip%20S.&text=The%20Tenth%20Amendment%20formally%20changed,Tenth%20Amendment%20is%20unconstitutional%20afterwards.*

[3] *See* Tim Lynch, Gambling Regulation Belongs to the States, Cato Institute (July 23, 1998), *https://www.cato.org/commentary/gambling-regulation-belongs-states.*

[4] *See* America Is a Republic, Not a Democracy.

[5] *See* LexisNexis Legal Insights, States Embracing New Form of Gambling: iGaming (Mar. 3, 2024), *https://www.lexisnexis.com/community/insights/legal/capitol-journal/b/state-net/posts/states-embracing-new-form-of-gambling-igaming.*

[6] Dissenting Statement of Commissioner Caroline D. Pham Regarding the Review and Stay of KalshiEX LLC's Political Event Contracts (Aug. 26, 2022), *https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement082622.*

[7] Commodity Exchange Act (CEA) Section 3(a), 7 U.S.C. 5.

[8] U.S. Const. art. VI, cl. 2.

[9] Congressional Research Service, Federal Preemption: A Legal Primer, 1 (Jul. 23, 2019) (citing *Gade* v. *Nat'l Solid Wastes Mgmt. Assn.,* 505 U.S. 88, 108 (1992)), *https://crsreports.congress.gov/product/pdf/R/R45825/1.*

[10] *See id.* at 2 (citing *Gade,* 505 U.S. 88, 98). The Court has identified two subcategories of implied preemption: ''field preemption'' and ''conflict preemption.'' Field preemption occurs when a pervasive scheme of federal regulation implicitly precludes supplementary state regulation, or when states attempt to regulate a field where there is clearly a dominant federal interest. *Id.* In contrast, conflict preemption occurs when compliance with both federal and state regulations is a physical impossibility (impossibility preemption), or when state law poses an ''obstacle'' to the accomplishment of the ''full purposes and objectives'' of Congress (obstacle preemption). *Id.* at 2 (citing *Fla. Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142–43 (1963) and *Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941)).

[11] Dissenting Statement of Commissioner Caroline D. Pham Regarding the Review and Stay of KalshiEX LLC's Political Event Contracts.

[12] *See* CFTC Order, In the Matter of the Certification by KalshiEX LLC of Derivatives Contracts with Respect to Political Control of the United States Senate and United States House of Representatives (Sept. 22, 2023), *https://www.cftc.gov/PressRoom/PressReleases/8780-23.*

[13] *See New York* v. *United States,* 505 U.S. 144 (1992).

protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.[14]

Second, the Commission is authorized to review event contracts if the underlying activity that the contract is based upon is terrorism, assassination, war, gaming, or unlawful under any Federal or State law.[15]

Read together, Congress intended that the Commission regulate event contracts within the bounds of the section 5(c) prohibitions. Instead of telling market participants how we will regulate the innovative contracts and exchanges that have appeared in recent years, the Commission has decided to ''identif[y] the types of event contracts that may *not* be listed for trading or accepted for clearing'' (emphasis added), seemingly primarily to avoid the work. If the number of contract reviews has increased, then the Commission should increase its resources and capacity—not to prohibit public activity.

As referenced above, the Commission then embarks on a survey of state gaming definitions to insert the concept into the Commission's rules. The Commission even notes the approach ''reflects the similar approach taken in numerous state gambling statutes,'' and mentions 35 States. The word ''state'' appears in the 95 page release 133 times. The Event Contracts Proposal reads as a defense against becoming a gaming regulator while inserting State gaming into our rules, which is not only confusing but unnecessary because Congress has clearly defined our role with respect to the States.

To make matters worse, the Commission then leaps from the overbroad, vague definition of gaming to provide examples of the types of event contracts that the Commission believes fall outside of the scope of CEA section 5c(c)(5)(C) and, by extension, Regulation 40.11. Given the fact that the Event Contracts Proposal repeatedly states that the broad range and volume of new contracts motivated this rulemaking, I find it stunning that the outer bounds provided are limited to contracts based on: (1) economic indicators, (2) financial indicators, and (3) foreign exchange rates or currencies.

Instead of creating a framework, the Commission is creating a vast gray area for exchanges. Where gaming begins and the scope of Regulation 40.11 ends is anyone's guess now, and I fear State gaming authorities will be left to figure it out on their own.

Specific Areas for Public Comment

In addition to my concerns raised above, I highlight the following specific areas for public comment to aid in review of the Proposal:

Missing Comment Letters

The Event Contracts Proposal completely omits any discussion of the comment letters the Commission recently received on the definition of gaming, as well as Rule 40.11 and event contracts more broadly. All told, the Commission has received around 200 comments in response to requests for public comment on an exchange's political control contracts.[16] These comments came from exchanges, academics, former CFTC officials, and other industry participants, and were directly on point on the issues raised in today's Proposal.

The Commission cannot selectively decide to tell one side of the story. It strains credulity that the Commission has selective amnesia and makes no mention of these letters in the Event Contracts Proposal.

Misplaced Election Integrity Concerns

The Commission gets hung up on the fact that ''it is not tasked with the protection of election integrity or enforcement of campaign finance laws'' in justifying prohibiting event contracts based on political contests. However, the Federal Election Commission polices campaigns. Congress has never asked, nor suggested, the CFTC should police elections, much like the Commission has not become the weather police for weather derivatives. I will highlight a couple categories of event contracts that have been permitted since 1992:

The Commission is not the crop yield police and hasn't displaced the role of the USDA. The Commission is not the police for changes to corporate officers or asset purchases and has not displaced the role of the SEC. The Commission is not the police for regional insured property losses, which is the domain of state insurance regulators. The Commission is not the bankruptcy police, which is the domain of the courts. The Commission is not the temperature police, and so on and so forth. I do believe that the 2008 concept release from which I drew these examples was very thoughtful, and I wanted to familiarize myself with the full administrative record.[17]

Conclusion

I would like to thank Grey Tanzi, Andrew Stein, Lauren Bennett, Nora Flood, and Vince McGonagle in the Division of Market Oversight for their work on the Proposal.

The contracts causing so much consternation for the Commission have not been, and are not, gaming. If the Commission could accept that and move on, we could have a healthy discussion over how to effectively regulate these markets as we do any other and protect against abusive trading in retail binary options contracts. Instead, we have muddled it and made a mess.

I look forward to the comments.

[FR Doc. 2024–12125 Filed 6–7–24; 8:45 am]

BILLING CODE 6351–01–P

[14] CEA Section 3(a), 7 U.S.C. 5.

[15] CEA section 5c(c)(5)(C), 7 U.S.C. 7a–2(c)(5)(C)(i)(I)–(VI).

[16] The CFTC maintains the public comment files at: *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7311,* and *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=7394.*

[17] *See* Request for Public Comment, Concept Release on the Appropriate Regulatory Treatment of Event Contracts, 73 FR 25,669 (May 7, 2008), *https://www.federalregister.gov/documents/2008/05/07/E8-9981/concept-release-on-the-appropriate-regulatory-treatment-of-event-contracts.*

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Part III

Department of Agriculture

Agricultural Marketing Service

9 CFR Part 201

Poultry Grower Payment Systems and Capital Improvement Systems; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Part 201

[Doc. No. AMS–FTPP–22–0046]

RIN 0581–AE18

Poultry Grower Payment Systems and Capital Improvement Systems

AGENCY: Agricultural Marketing Service, U.S. Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS or the Agency) is soliciting comments on proposed revisions to its regulations under the Packers and Stockyards Act, 1921 (P&S Act or Act). The proposal would prohibit certain payment practices under poultry grower ranking systems (commonly known as tournaments) in contract poultry production for broiler chickens, require live poultry dealers (LPDs) to adopt policies and procedures for operating a fair ranking system for broiler growers, and require LPDs to provide certain information to broiler growers when the LPD requests or requires the grower to make additional capital investments (ACIs). AMS proposes these changes in response to numerous complaints from growers about the use of tournament systems. AMS intends for the proposed regulations to increase transparency and address deception and unfairness in broiler grower payments, tournament operations, and capital improvement systems.

DATES: Comments must be received by August 9, 2024. Comments on the information collection aspects of this proposed rule must be received by August 9, 2024.

ADDRESSES: Comments must be submitted through the Federal e-rulemaking portal at *https://www.regulations.gov* and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at the address provided above. A plain-language summary of this proposed rule is available at *https://www.regulations.gov* in the docket for this rulemaking.

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:

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I. Executive Summary

On June 8, 2022, AMS published an advanced notice of proposed rulemaking (ANPR) in the **Federal Register** titled, ''Poultry Growing Tournament Systems: Fairness and Related Concerns'' (87 FR 34814), to inform policy development and rulemaking under the P&S Act regarding improved fairness in poultry grower ranking systems in contract poultry production.[1] In the ANPR, AMS solicited comment from the public on how to address potential unfairness arising from the use of poultry grower ranking systems under contracts to grow broiler chickens. As with past opportunities for input, commenters identified a lack of transparency regarding payments under tournament pay systems, fairness in tournament operations, and additional capital improvement requirements as ongoing concerns. These comments and AMS's Packers and Stockyards Division's (PSD) expertise provide the basis for this proposed rulemaking.

Section 407(a) of the P&S Act (7 U.S.C. 228(a)) authorizes the Secretary of Agriculture to make rules and regulations as necessary to carry out the provisions of the Act (7 U.S.C. 181 *et seq.*). The Secretary has delegated the responsibility for administering the Act to AMS. Under this authority, AMS is issuing this proposed rule to carry out the provisions of section 407 of the Act, as well as sections 202(a) (which prohibits ''any unfair, unjustly discriminatory, or deceptive practice or device''), 401 (which requires an LPD to ''keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business''), and 410 (which bans the failure to pay ''the full amount due [to the] poultry grower on account of such poultry''). The Federal Trade Commission (FTC)'s extensive experience enforcing prohibitions against unfair practices, unfair methods of competition, and deceptive practices arising under the FTC Act has also informed aspects of this proposed rule.[2]

AMS is proposing to amend 9 CFR part 201, subpart N, by adding new § 201.106 regarding LPD responsibilities for the design of broiler grower compensation arrangements; new § 201.110 regarding the fair operation of broiler grower ranking systems; new § 201.112 regarding disclosure requirements for LPDs when requesting additional capital investments from broiler growers; and new § 201.290 regarding severability. In particular, the Agency is proposing to:

- Prohibit LPDs from discounting or reducing a grower's rate of compensation as disclosed in the broiler growing arrangement based on the grower's grouping, ranking, or comparison to others.
- Establish a duty of fair comparison that requires LPDs to design and operate their broiler grower ranking system to provide a fair comparison among growers, with particular attention to certain factors including the distribution of inputs and flock production practices, the time period of the comparison, the conditions and circumstances for the comparison, and the reasonableness of efforts to resolve disputes.
- Require LPDs to establish and maintain written documentation of their processes for the design and operation of a broiler grower ranking system that is consistent with the duty of fair comparison, review their compliance with these processes not less than once every two years, and retain all relevant written records for five years.
- Require LPDs to provide a grower with a Capital Improvement Disclosure Document when an LPD requests that the grower make an additional capital investment.
- Introduce a severability clause that would permit for certain parts of the

[1] The comment period ended September 6, 2022. In response to industry organizations' request for additional time to submit comments, AMS reopened the comment period on September 9, 2022 (87 FR 55319). That comment period closed September 26, 2022.

[2] Letter from FTC Chair Lina Khan to AMS, ''Poultry Grower Tournament Systems: Fairness and Related Concerns,'' Docket No. AMS–FTPP–22–046, at *https://www.regulations.gov/comment/AMS-FTPP-22-0046-0143;* Michael Kades, ''Protecting livestock producers and chicken growers,'' Washington Center for Equitable Growth (May 2022).

regulations to remain in effect even if others are deemed unenforceable.

If the proposed rule is adopted, USDA would enforce the regulations through referral to the Department of Justice (DOJ) for appropriate action or, where failure to pay is implicated, through administrative action. Injured individuals would also have a right to proceed in Federal court. AMS would also conduct compliance reviews of adherence to the proposed regulatory requirements and would investigate suspected violations. Additionally, growers can always file a complaint or tip at *farmerfairness.gov* or by calling 1–833–DIAL–PSD (1–833–342–5773) if they suspect a violation of the Act or any other Federal law or regulation governing fair and competitive marketing, including contract growing, of livestock and poultry.

II. Industry Background and Need for the Rulemaking

A. Overview

The current broiler chicken industry is susceptible to both unfairness and deception. To build or upgrade chicken barns, growers both initially and periodically incur substantial debt in loans that typically last 15 years. To meet those obligations and earn a reasonable return, the grower is then dependent on the LPD that provides the chickens (both the number and frequency), the feed, and other inputs. Grower contracts with the LPD are commonly much shorter than the length of the loans. Growers often have little, if any, ability to negotiate their contracts with LPDs or opportunity to switch to alternative LPDs. LPDs' bargaining and market power, premised on lack of competitive alternative LPDs locally, creates significant risk to growers.

Most large LPDs today include a tournament component as part of the compensation arrangement with growers under contract. If a grower's feed conversion performance is above the average, the grower receives a bonus; if the grower is below average, the LPD reduces the grower's compensation. In theory, the tournament system insulates growers from variation in the cost of feed and other inputs, encourages growers to perform to the best of their ability, and rewards better-performing growers. In practice, however, the tournament system has many problems. For example, if an LPD treats individual growers in a tournament differently (*e.g.,* by providing different quality inputs) the grower's skill would not determine their compensation, which makes for an unfair tournament.

The difference between the length of grower's loan and the length of the grower's contract with an LPD creates another problem. Because LPDs have substantial bargaining power after the initial grower investment, an LPD can require a grower to make ACIs that will increase the grower's debt; if the grower refuses, the LPD can terminate the grower, either actually or constructively (for example, by reducing the number of flocks or chicks delivered). Depending on the facts and circumstances, such actions would be unfair and deceptive practices in violation of section 202(a) of the Act.

B. Industry Background

Until the late 1950s or 1960s, farmers owned their chickens, and the primary value was in the eggs those chickens laid. After a brief period of chicken auctions in the 1950s, farming chicken meat for distribution led to ''grower'' contract arrangements with feed distributors and later with processors. As these arrangements gained popularity, processors experimented with various compensation methods to capture costs and incentivize grower performance. One commonly used compensation method was a fixed performance standard payment system. Under a fixed performance standard payment system, individual grower performance is compared to a fixed standard of feed cost or efficiency set by the LPD rather than to an average of other growers in a contemporaneous settlement group. Other methods included square footage contracts, which remain common with pullet farmers (*i.e.,* farmers who raise chicks from hatching until they are ready to produce eggs, or about 20–22 weeks). Pullet farmers typically are paid weekly or biweekly based on the square footage of chicken housing, or breeder farmers, who are typically paid a flat rate per dozen eggs.[3] Since the 1990s, the broiler industry overwhelmingly uses the tournament system, described below in section II.C., to compensate growers.

Today, the broiler chicken industry is highly vertically integrated. That is, a single entity owns or controls nearly all the steps of production and distribution, with the only partial exception being the growout stage. The USDA National Agricultural Statistics Service's (NASS) Census of Agriculture (Agricultural Census) reported that 96.2 percent of broilers were raised and delivered under production contracts between LPDs and independent farmers, or broiler growers.[4] Under a production contract, the LPD provides the inputs, like chicks, feed, and veterinary treatment services, that the contract broiler grower uses in growing the flock and the LPD maintains ownership of the chickens throughout the production process. The grower provides the poultry growing facility, flock management, labor, and utilities required during flock growout.[5] At the end of growout, the LPD collects and weighs the mature poultry and pays the broiler grower for their services.

To grow broiler chickens on a commercial scale, a grower must make an initial substantial investment in housing. Most farms have multiple houses, and the total investment required can easily exceed $1 million.[6] The housing, which growers build and equip specifically for the purpose of growing poultry, has an expected life of 20 years or more. The costs of adapting the housing for any other purpose can be prohibitive.[7] Over time, LPDs have requested or required that growers make ACIs to upgrade housing and equipment for improved efficiency during the contracting relationship. An ACI is defined under 9 CFR 201.2, in relevant part, as an investment or combination of investments of $12,500 or more per structure paid by a poultry grower or swine production contract grower over the life of the poultry growing arrangement or swine production contract beyond the initial investment for facilities used to grow, raise, and care for poultry or swine. Growers generally finance these long-term assets against much shorter-term production contracts, which generally range from between less than a year (or ''flock to flock'') to less than five years.[8] This can

[3] See, *e.g.,* New Farmer's Guide to the Commercial Broiler Industry: Farm Types & Estimated Business Returns—Alabama Cooperative Extension System (aces.edu).

[4] USDA, NASS. *2022 Census of Agriculture: United States Summary and State Data.* Volume1, Part 51. Issued February 2024 p. 51 and p.411. *https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.*

[5] Growout period is defined as the period of time between placement of poultry at a grower's facility and the harvest or delivery of such animals for slaughter, during which the feeding and care of such poultry are under the control of the grower.

[6] See, for example, Cunningham and Fairchild (November 2011) Op. Cit.; Simpson, Eugene, Joseph Hess and Paul Brown, Economic Impact of a New Broiler House in Alabama, Alabama A&M & Auburn Universities Extension, March 1, 2019 (estimating a $479,160 construction cost for a 39,600 square foot broiler house).

[7] For a discussion of the difficulty in adapting of broiler grow houses for other purposes, *see* Vukina and Leegomonchai 2006, Op. Cit.

[8] MacDonald, James M. ''Financial Risks and Incomes in Contract Broiler Production.'' Amber Waves August 4, 2014. *https://www.ers.usda.gov/amber-waves/2014/august/financial-risks-and-incomes-in-contract-broiler-production/* (last accessed 12/13/2023).

expose growers to financial risk and uncertainty around debt repayment and the recoupment of their investments. Growers thus are dependent on LPDs—who control most aspects of a grower's production—to recoup their substantial initial and subsequent investments.[9]

Currently, many LPDs operate with the benefit of substantial market power in local markets to purchase grower services. Broiler grower operations must be located in close proximity (usually less than 50 miles) to an LPD's feedmills, hatcheries, and processing plants due to the costs of transporting feed to the grower's farm and the costs (including death loss) associated with transporting finished chickens from the grower's farm to the processing plant. This can result in poultry production that is often highly localized and concentrated at a regional level. Most growers have few LPDs in their area with whom they can contract. The table below shows the number of LPDs (referred to as integrators in the table) that broiler growers have in their local areas by percent of total farms (number of growers), total birds produced (number of birds), and total production (pounds of birds produced).

TABLE 1—LPDS (INTEGRATORS) IN BROILER GROWER'S AREA [10] [11]

Integrators in grower's area *	Farms	Birds	Production	Can change to another integrator
Number	Percent of total			Percent of farms
1	21.7	23.4	24.5	7
2	30.2	31.9	31.7	52
3	20.4	20.4	19.7	62
4	16.1	14.9	14.8	71
>4	7.8	6.7	6.6	77
No Response	3.8	2.7	2.7	Not available.

* MacDonald. (June 2014) Op. Cit. (Percentages were determined from the USDA Agricultural Resource Management Survey (ARMS), 2011. ''Respondents were asked the number of LPDs in their area, which was subjectively defined by each grower. They were also asked if they could change to another LPD if they stopped raising broilers for their current LPD.'' The 7 percent of those facing a single LPD assert that they could change, presumably through longer distance transportation to an LPD outside the area. Ibid. p. 29 and 30.).

The data in the table shows that roughly 22 percent of growers operate in a pure monopsonistic local market, and that 52 percent of broiler growers (farms), accounting for 55 percent of broilers produced and 56 percent of total production, report having only one or two LPDs in their local areas. This limited competition among LPDs accentuates the contract risks to growers. Even where multiple LPDs are present, there can be significant costs to switching, including adjustments for differences in technical specifications that LPDs may require. To switch LPDs, a grower may need to invest in new equipment and learn to apply different operational techniques for different breeds, target weights, and growout cycles. By requiring ACIs specific to that LPD, an LPD may inhibit the ability of growers to switch to a competing LPD due to the costs associated with those differing housing specifications.

In another study of broiler concentration, MacDonald and Key (2012) found that the level of market concentration in an area tends to correlate with measurable payment impacts on growers.[12] MacDonald and Key reported that grower payments (per pound, controlling for bird size) were lower in markets with fewer dealers. While the study could not identify the causal impact of LPD numbers on payments, the results conform to general economic theory about the impact that reduced competition would have on prices. For example, going from four LPDs to two LPDs lowered grower payments by four percent, and going from four LPDs to one LPD lowered grower payments by eight percent, controlling for compensation rates and features of the grower operation and contract.

Table 1 however, also shows that more than 23 percent of broiler growers (farms) have four or more integrators in the grower's area, and more than 71 percent report that they can change integrator (although at what cost is not reflected). Although growers in these areas may have relatively more bargaining power than those in more concentrated markets, they remain at significant bargaining disadvantages relative to integrators and commonly subject to industry-wide practices. The potential for the abuse of market power may vary based on concentration and practices employed by specific LPDs in local markets or nationally.

In this proposed rule, AMS uses the term ''inputs'' to mean resources supplied by LPDs, such as chicks or feed. There is often variation in the quality of these inputs, which can impact the performance of a grower's flock. If an LPD distributes inputs of substantially different quality to growers within a settlement pool, these inputs contribute to differences in relative grower performance, with the growers receiving the lowest quality inputs receiving lower pay as a result. Several commenters in the 2022 ANPR, for example, noted that the quality of inputs can vary, unfairly shifting risk to the growers.

Likewise, LPDs determine production practices on growers' farms, which also affect growers' pay. In this proposed rule, AMS uses the term ''production practices'' to refer to features of the on-farm production process that are determined by the LPD, such as density of bird placement (number of chicks delivered or placed with a grower per square foot of broiler housing), age at harvest, and weight at harvest. These practices greatly impact grower compensation. If these factors are not applied evenly across grower participants in tournaments, that unevenness also unfairly skews relative performance measures. If an LPD uses a

[9] For a discussion the difficulty in adapting of broiler grow houses for other purposes see Tom Vukina and Porametr Leegomonchai. ''Oligopsony Power, Asset Specificity, and Hold-Up: Evidence from the Broiler Industry.'' American Journal of Agricultural Economics 88 (2006).

[10] MacDonald, James M. 2014. Technology, Organization, and Financial Performance in U.S. Broiler Production, EIB–126, USDA Economic Research Service.

[11] The term ''integrator'' used in MacDonald (June 2014) refers to a vertically integrated poultry company that contracts with farmers who serve as growers. LPDs referenced elsewhere in this document are also ''integrators.''

[12] James M. MacDonald and Nigel Key. ''Market Power in Poultry Production Contracting? Evidence from a Farm Survey.'' *Journal of Agricultural and Applied Economics* 44 (November 2012): 477–490.

settlement pool to compare growers to whom the LPD has assigned substantially different production practices, perhaps, for example, to test the consequences of different feed or veterinary practices, the growers receiving the less advantageous production practices will receive relatively lower pay. These production decisions may result in variation in the amount of feed required per pound of meat that is unrelated to grower effort or acumen. Including both types of growers for comparison in a single settlement pool is analogous to matching wrestlers across different weight classes.

As described above, the organization and structure of broiler production is characterized by a high degree of vertical integration, market power in many regional markets, substantial investment in production capital that is specific to a single LPD, nearly universal use of production contracts, and use of complex grower compensation systems based on relative performance. Asymmetric information, incomplete contracts, and hold-up are also issues of concern in poultry contracting that motivate the specific interventions proposed in this proposed rule.

Information asymmetry in poultry contracting arrangements can contribute to market inefficiencies and unfair and deceptive practices. Asymmetric information occurs when one party to a contract has more critical information than the other party. LPDs have information related to (as well as control over) many areas of strategic decision making that impact growers. For example, LPDs use systems of grower compensation and methods for calculating grower payment designed to limit total grower compensation, while maximizing production efficiency. LPDs also have exclusive information about many factors under their control that influence the performance elements of poultry production and thereby affect grower payments. Even where some of information is disclosed to growers, LPDs continue to have much more information about the quality and distribution of grower inputs, specific production practices the LPD assigns to individual growers, the likely effect on grower performance of different input qualities and production practices, and the manner in which the LPD chooses to compare growers in a ranking system.[13] In addition, LPDs determine the types of ACIs they request or require of growers, which growers may not anticipate and can place significant drains on available cash and substantially degrade expected investment returns. Neither growers, nor AMS, have ready access to the information that informs these specific requests unless LPDs provide it to them. Information asymmetry can lead to market failure in the broiler production industry because growers must make important production decisions without access to important information. This also facilitates abusive practices where the information would help growers, and AMS, identify and halt those practices sooner.

Contracts used in broiler production are also often incomplete. Under the typical poultry production contract, LPDs compensate the grower for raising live poultry from the time of chick delivery through retrieval by the LPD for slaughter. Such a contract may be viewed as complete, with no material gaps, if the contract terms include the substantive legal, practical, and economic promises, obligations, and contingencies needed to operate in a poultry growing arrangement. These terms should be verifiable and legally enforceable. Incomplete contracts arise when terms key to basic functioning of the contract do not meet these conditions and magnify risks with respect to the performance of the other contractual party, leading to other potential inefficiencies. In this instance, incomplete contracts may give LPDs discretionary latitude to deviate from expectations.

LPDs often offer highly complex pay systems in broiler contracts based on the interplay of several separate components, including base pay rate, incentive pay for ACIs or certain production practices, and performance adjustments under the tournament. The complexity of such pay systems makes it difficult for growers to fully understand the potential range of payments they are likely to receive or the ways in which LPD performance or nonperformance may affect that pay, preventing them from properly evaluating the fairness of the contract before signing. For example, several ANPR commenters noted the difficulty growers face without having full understanding of—or confidence in—how inputs are distributed or how the quality may affect performance. Their inability to evaluate how this distribution occurs inhibits their ability to effectively contract and to effectively enforce those contracts to the extent that is possible given the overall power imbalance and concentration in many local markets.

Contracts that require investments in contract-specific assets can give rise to the hold-up problem. The economic concept of a hold-up problem refers to a situation in which one or both parties to a transaction must make investments in such contract specific assets, and the two parties may be unable to cooperate efficiently due to incomplete or asymmetric information and the inability to write, enforce, or commit to contracts. Once a party becomes locked into a transaction as a result of making a transaction-specific investment, they lose bargaining leverage and become vulnerable to exploitation by the other party. This may involve one party to a contract opportunistically deviating from expectations of the other party or failing to live up to previously agreed upon terms. Hold-up occurs in broiler production due to market failures associated with incomplete grower information, contract-specific investments, and market power, as well as insufficient enforcement around aspects necessary to maintain market integrity and prevent market abuses including unfair breaches of contract. Broiler growers lack sufficient information about the nature of inputs they will receive from the LPD over time, the performance of other growers in the tournament pool, and the nature of complex tournament operations under grower contracts.

The production of broilers requires investment in specialized equipment and facilities, which can be specific to the enterprise of broiler production and have little alternative value outside of a contractual relationship with a limited pool of nearby LPDs (or, in some cases, a single LPD).[14] As a result, the realistic options for growers to reallocate their labor and invested capital are reduced, and growers are committed to growing chickens to pay off the financing of the initial capital investment, plus ACIs. When growers are committed to broiler production to pay off lenders and have few, if any, alternative LPDs with whom they can contract, they are under more pressure to accept less favorable contract terms. LPDs can behave opportunistically by failing to perform under contracts in ways that growers reasonably expect and by requiring ACIs with little or no economic value to the producer. Economic research has shown that hold-up can lead to reduced

[13] LPDs exercise discretion in fulfilling the contract terms when operating a tournament by, for example, choosing which growers to be included in a settlement group or whether appropriate comparable growers are available for comparison purposes.

[14] For a discussion of hold-up in the broiler industry, see Vukina and Leegomonchai (2006), Op. Cit.

compensation when a grower has only one LPD available with which to contract in the local area.[15]

C. The Tournament System

LPDs typically pay broiler growers for the services they provide using a unique system in which growers' pay is based in part on a comparison of their feed conversion relative to other growers. A 2014 survey found that over 93 percent of these broiler production contracts make use of a relative performance payment system, often called a tournament system.[16] Under a tournament system, the contract between the broiler grower and the LPD provides for payment to the grower based on a grouping, ranking, or comparison of broiler growers delivering broilers to the same company during a specified period (usually one week). This grouping is informally referred to as a settlement group.

Under a typical tournament system, the broiler grower receives a fixed payment per pound of broilers produced, called a base pay rate, plus a calculation adjustment based on how efficiently the grower used the resources provided by the LPD to produce each pound of broilers (informally referred to as a performance adjustment).[17] LPDs typically calculate the performance adjustment primarily by comparing the feed conversion ratio (*i.e.,* the quantity of feed consumed by the flock divided by the weight of the flock delivered) to the average ratio of all growers in the tournament settlement group. (As a technical matter, grower contracts sometimes use fixed weights expressed in dollar terms for this calculation.) Broiler growers whose costs are less than the average cost for that tournament settlement group receive a bonus above the base pay rate, while those whose costs are above the average incur a discount from the base pay rate. Broiler contracts also typically specify a minimum rate of pay that the grower can receive after all performance discounts have been applied. The broiler grower may receive additional incentives as components of total payment from the LPD to employ particular housing, equipment, management practices, fuel usage, or other contributions the LPD requests. Some of these incentive payments may be based on the delivered weight of each flock and others may be a fixed per flock amount.

In a simplified example of how tournament systems operate, the LPD places flocks with 10 growers under contract to deliver the same-sized broiler chickens to the dealer's processing plant at the end of a specified growout period. Upon harvest, the LPD determines each grower's performance by measuring the quantity of feed and other inputs in the LPD's tournament formula (such as chicks supplied by the LPD or medicines) per pound of broilers produced by the grower. The LPD then compares individual grower ratios against average ratios for all growers in the settlement group and ranks individual growers according to their relative performance within the group of 10 growers. Each grower's pay is determined by adding a bonus to, or subtracting a discount from, the contract's stipulated base pay rate, calculated as the difference between the grower's ratio and the average ratio within the tournament grouping for that specific growout period. This is also known as a performance adjustment. For instance, if the grower's contract stated a base pay rate of $0.0550 per pound, an above-average grower (*i.e.,* a more efficient grower with a lower cost per pound produced) in this hypothetical example could receive $0.0615 after the performance adjustment, while a below-average grower could receive $0.0530.

LPDs benefit from the tournament system in several ways. The tournament system provides LPDs control and certainty over total compensation to the growers as a group. For each tournament, the LPD knows the total compensation that will be paid per pound of broilers produced by the group; that total amount is allocated among the growers through performance adjustments (amounts above, or deductions from, the base pay rate). LPDs also benefit from the tournament system to the extent it may incentivize additional grower effort and expenditure of resources beyond that required for the grower to remain in the LPD's rotation of growers.

The tournament system is intended to, and LPDs in fact purport that it does, reward growers financially for their experience, skill, effort, and investments in up-to-date and efficient housing and equipment.[18] Additionally, assuming that all growers in a tournament grouping are treated similarly and the variables within the tournament grouping are within the control of the growers, the tournament may insulate growers to some degree against external shocks that affect all growers in the grouping.[19] Examples of external shocks might include unfavorable weather, the introduction of new genetics, or changes in the LPD feed formulation. This protection can be incomplete, however, because these external shocks—some of which are within the control of the LPD—can adversely affect the overall weight of the broilers in a tournament affected by such shocks, thereby reducing the base weight compensation for all participating growers.

The tournament system can operate unfairly and deceptively. Without a guaranteed base pay rate, the complexity of the tournament makes it difficult for growers to clearly understand what the minimum amount is they could actually receive in payment. Base pay can be, but is not commonly, a guaranteed minimum pay.[20] (This is discussed in greater detail below in section III.A.) Furthermore, if the comparison-compensation factor (*i.e.,* the bonus or deduction) is a large percentage of total compensation, that variance in total grower compensation could turn a reliable business proposition into a high-risk venture without a demonstrable countervailing benefit. Therefore, sufficiently large variance in total grower compensation can, by itself, be deceptive and unfair. Moreover, because many broiler growers operate in regions with just one to two LPDs, the local market dynamics may force

[15] Ibid.

[16] James M. MacDonald, ''Technology, Organization, and Financial Performance in U.S. Broiler Production.'' U.S. Department of Agriculture Economic Research Service, Economic Information Bulletin No. 126 (June 2014).

[17] There is some inconsistency in the use of payment terms across broiler contracts at different companies or complexes. Most grower contracts define the term base pay rate as it is described in this paragraph. However, some contracts instead use the term base pay when referring to a fixed amount plus the performance adjustment.

[18] See, *e.g.,* ''How the Tournament System Works'', National Chicken Council (informing farmers that: ''1 All farmers are provided the same quality of chicks, the same feed, and access to veterinary care. 2 Farmers who invest in more advanced facilities, as well as use the best management practices will likely produce higher quality chickens more efficiently. 3 Farmers receive a base pay (per their contract) and potentially a bonus, based on the health and quantity of the flock (tournament system).''); available at *https://www.chickencheck.in/faq/tournament-system/* (last accessed May 22, 2024).

[19] Knoeber and Thurman show that tournaments shift most of the risks of broiler production from broiler growers to LPDs relative to a fixed payment system. See Knoeber, C.R. and W.N. Thurman. '' 'Don't Count Your Chickens . . .': Risk and Risk Shifting in the Broiler Industry,'' *American Journal of Agricultural Economics* 77 (August 1995) p. 486–496.

[20] See ''A Bird's Eye View of How Chicken Farmers Are Paid'', National Chicken Council (informing farmers that: ''All farmers are guaranteed a base pay from the chicken company per their contract.''; ''No matter what, farmers get paid.''; and ''Bonuses are given to farmers who raise healthy flocks and invest in their farm. This is referred to as the tournament system.''); available at *https://www.chickencheck.in/faq/tournament-system/* (last accessed May 22, 2024).

growers to enter into riskier contracts, in particular, contracts that do not guarantee them an adequate minimum base pay rate, flock placements and stocking densities, or length of contract in relation to the loan obligations commonly necessary to engage in broiler growing.

Compensation based on relative performance when LPDs control the distribution of inputs and assignment of production practices creates the potential for unfairness and deception. Nor are tournament pay systems an effective incentive system when factors outside of the grower's control largely determine performance. Unfortunately, growers have no choice but to rely on the good faith of LPDs for the fair administration of tournaments. They must trust that LPDs will use their extensive information and control to prevent or remedy situations where a particular grower within the tournament receives dissimilar inputs or the assignment of production practices that result in a substantial disadvantage to that grower within the settlement pool. They also must trust that LPDs will not use their control to advantage favored growers or to punish or otherwise impermissibly disadvantage growers.

The tournament system also introduces considerable complexity and uncertainty for growers in the calculation of the compensation for their services and in evaluating the returns on growers' investments, which can sometimes make it more difficult for growers to discover unscrupulous conduct by LPDs, to compare offers from competing LPDs, and to plan and manage their businesses.

D. Need for the Rulemaking

USDA has received concerns about the impact of unfair or non-transparent LPD practices from growers in listening sessions and during comment periods for more than a decade. In 2010, USDA held a series of workshops in conjunction with DOJ to hear from farmers about concentration and trade practice issues in agriculture. Normal, Alabama, hosted one such session with an emphasis on the poultry industry.[21] Many growers complained that their success or failure depended on factors controlled by LPDs and that LPDs required them to undertake additional capital investments. Further, growers expressed concern about the lack of choice among LPDs in many relevant regional markets, which further enhanced LPD's bargaining position and control over growers.

Grower public comments at the 2010 workshop led USDA to propose rules in 2010 and 2016.[22] Growers have continued to communicate to USDA specific areas of concern regarding the poultry industry. Since 2021, AMS renewed its efforts to address these concerns through different approaches, one of these being the June 8, 2022, ANPR which informed this proposed rule.

In the ANPR, AMS sought comments and information to inform policy development and future rulemaking regarding the use of poultry grower ranking systems. The comment period for the original notice was June 8, 2022, to September 6, 2022. AMS provided additional time for the public to submit comments and extended the comment period to September 26, 2022. AMS received a total 168 comments, 153 during the first comment period and 15 during the second. Organizational commenters included farm bureaus, live poultry dealers, poultry industry trade associations, meat industry trade associations, and other associations or non-profit organization. Commenters expressed both support and concern about the use of tournaments in poultry production.

Many commenters supported the current poultry grower contracting system and opposed rulemaking. Commenters supporting the current poultry grower contracting system stated they believe it is well designed; efficient; and beneficial to growers, dealers, and consumers. Commenters were concerned that changes to or the elimination of the tournament system could have an adverse financial impact on LPDs. Commenters stated that they believe that the current system encourages efficient poultry production by providing greater payments to the most efficient poultry growers. Supporters contended the tournament system has fueled improvements and innovations, incentivized growers to raise birds ethically, and allowed for efficient risk management. They also stated that the Agency has failed to establish credible evidence of the existence of exploitation; that the proposed measures would address exploitation, if it existed; or, that the Agency has the statutory authority to engage in this exercise.

Other commenters opposed the current tournament payment system, stating that tournament systems do not meet their intended purpose and that the payment systems exemplify the manipulative and unjust abuses or practices that the Act was designed to prevent. They cited arbitrary, unjust, or punitive distribution of inputs and production variables, all of which are controlled by integrators; potential manipulation of the group composition for similar purposes; and penalties for even small deviations below average. Some commenters noted that LPDs often supply insufficient information with respect to requested or required upgrades and deceptively induce growers to make costly ACIs. Commenters also asserted that LPDs demand costly upgrades that are arbitrary and apparently untethered to any reasonable assurance of increased compensation. Some asserted that the tournament system operates instead as a cost-shifting mechanism that controls growers like employees while keeping them from collaborating in furtherance of their best interest. Commenters stated that proposed rulemaking would help address bargaining power imbalances for growers, provided proper enforcement. Commenters also requested that AMS establish a guaranteed base payment floor that would ensure the producer does not suffer a loss of income and can earn enough to exceed incurred debts. Trade organizations commented on how input variability affects pay and that LPDs are known to take action to reduce unpredictability in grower outcomes. Monitoring and intervention to remedy unfairness requires an LPD to expend effort and incur cost, and the LPD does not directly benefit from the increased fairness to growers. Therefore, the LPD has an incentive to shirk this responsibility.

Commenters echoed many of the same concerns that were voiced in the 2010 workshops and that animated previous unfinished rulemaking efforts. A survey conducted by the Rural Advanced Foundation International USA (RAFI) in preparation for its comments to the ANPR was particularly striking. The survey covered 105 growers from 17 States, with 90% active growers and 10% retired growers. At the broadest level, 94% of its growers expressed significant dissatisfaction with the design and operation of the tournament system, indicating that, ''1. Tournament systems are generally unfair and pit growers against each other (75%). 2. Tournament systems are too often used to retaliate or discriminate against

[21] See Transcript, United States Department of Justice, United States Department of Agriculture, Public Workshops Exploring Competition in Agriculture: Poultry Workshop May 21, 2010, Normal, Alabama.

[22] Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA, ''Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act,'' 75 FR 35338 (June 22, 2010) *and* ''Poultry Grower Ranking Systems,'' 81 FR 92723 (Dec. 20, 2016).

growers (70%). 3. Tournament systems often negatively impact grower income (68%).''

Surveyed growers reported an astoundingly high percentage of problems, including: flock health problems (92%); suboptimal layer flock (92%); 6-hour feed disruption (90%); suboptimal flock pickup time (88%); 12-hour feed disruption (83%); incorrect feed mix (75%); extended layout times (73%); reduced stocking density (72%); arbitrarily disadvantageous tournament group placement (63%); low revenue generating breed (59%); feed delivery discrepancy (59%); reduced annual flock placement (54%); non-randomized flock gender (40%); retaliation via any of the above (25%); and more.[23] That comment also included multiple direct quotations from growers describing these types of experiences. The challenges that RAFI's growers report in their comments highlight the range of concerns with current practices in the broiler grower industry that remain unaddressed. ''They don't have to cut you off, they can just bleed you dry,'' said one grower in the RAFI letter, which encapsulates the challenge with both the arbitrariness and the control inherent in the design and operation of tournaments that benefits LPDs at the expense of growers. Commenters, including RAFI, highlighted expensive additional capital upgrades that unexpectedly burden growers, as well as inhibit the ability to switch integrators. Growers also reported informal ''no poach'' agreements and conscious parallelism among LPDs. According to the most recent large USDA survey on the topic, growers with the choice of only one integrator are paid six percent less than those with four or more integrators.[24]

Some of the largest LPDs have begun adopting contracts that ameliorate certain aspects of these persistent complaints. For example, some LPDs offer contracts where the base pay rate is the minimum pay and there are no negative performance adjustments. In response to an enforcement matter, one of the largest LPDs has also already limited the magnitude of comparison-based pay, in part to address related concerns.[25] This proposed rule takes note of and builds on that progress to align important farmer protections across the industry.

III. Broiler Grower Compensation Design (Proposed § 201.106)

Current tournament contracts are unfair and deceptive when they mislead growers about expected revenue and the potential range of payment outcomes on a settlement-by-settlement basis—particularly when they are unclear about growers' practical ability to control the range of the payment outcomes. Both the lack of grower control over payment outcomes and the variability of the outcomes can be unfair. The complexity and opacity of current tournament contracts impair growers' ability to compare contract offers between LPDs. This section describes this problem in depth, discusses AMS's proposed regulation, and provides questions for commenters to consider, including around an additional proposal to limit excessive variability in pay.

A. Degradation of Contract Pay Rates in Tournament Payments

As explained in section II, ''Industry Background and Need for the Rulemaking,'' tournament contracts contain one or more pay rates that LPDs use as a basis to allocate compensation among growers in a flock settlement group. These pay rates are generally expressed in cents per pound. In most tournament contracts, positive relative performance (bonuses) will add to these rates while poor relative performance (discounts) will deduct from these rates, to reflect the grower's performance within a settlement group. Applying these adjustments, whether positive or negative, significantly affects growers' effective rates of compensation and net income.

In a 1999 survey conducted by Schrader and Wilson, 43 percent of growers reported earning income below their expectations.[26] In response to the ANPR for this proposed rule, some commenters contended that any ranking system is fundamentally unfair if it lacks a firm base pay rate. Some commenters stated that premiums should be determined by objective and transparent criteria, and a few suggested a capped or limited premium such as 25% of base pay or a percentage based on performance. An agricultural advocacy organization further acknowledged that a system in which performance-based incentives include only additive bonuses and not negative discounts could still be effective in fostering competition among growers. Another commenter noted that LPDs entice growers by representing that they can expect to earn the average pay provided to all growers, obscuring the fact that every settlement has winners and losers regardless of an individual grower's absolute performance. The Chair of the FTC, in response to the 2022 ANPR, commented that ''poultry companies often function as local monopsonists or oligopsonists with the power to control prices, prescribe contract terms, and retaliate against growers who object to these tactics,'' and that disclosure was valuable but insufficient to address the problem. A consumer advocacy group said tournament systems that dock pay based on relative performance can lead to capricious pay differences that do not accurately reflect differences in performance, such as cases where a grower who ranks last in a tournament at 10 percent below the average feed-to-weight conversion receives a 50 percent pay cut. Many of these and other commenters further recommended that AMS should set a price floor for grower pay rates to ensure growers can, among other things, earn reasonable profits and cover costs.

An organization representing LPDs countered that most poultry contracts already have a minimum ''base'' payment floor that performance-based adjustments to growers' ''standard'' or ''average'' pay cannot go below, and that AMS should not regulate this issue.

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[23] Rural Advancement International Foundation—USA, ''Letter to S. Brett Offutt, Packers and Stockyards Division, USDA–AMS, Fair Trade Practices Program,'' Filed as a comment to ''Poultry Grower Tournament Systems: Fairness and Related Concerns,'' Sept. 2022, pp. 15–18, available at *https://www.rafiusa.org/blog/comments-on-poultry-tournament-system/; https://www.rafiusa.org/wp-content/uploads/2022/09/RAFI-USA-Comment-on-Poultry-Growing-Tournament-System-Fairness.pdf.*

[24] James MacDonald and Nigel Key, Economic Research Services, USDA, ''Market Power in Poultry Production Contracting? Evidence from a Farm Survey,'' *Journal of Agricultural and Applied Economics,* November 2012, 44(04):477–490, available at *https://www.researchgate.net/publication/305948391_Market_Power_in_Poultry_Production_Contracting_Evidence_from_a_Farm_Survey.*

[25] *See United States* v *Cargill Meat Solutions Corp. et al.* Civil Action No.: 1:22–cv–1821, District of Maryland, Final Judgement entered June 5, 2023.

[26] The 1999 survey was conducted by Lee Schrader of Purdue University and John Wilson of Duke University and included responses from over a thousand broiler growers in ten of the largest broiler-growing States (Alabama, Arkansas, Delaware, Georgia, Maryland, Mississippi, North Carolina, South Carolina, Texas, and Virginia). This survey is cited frequently in this document because it included questions meant to assess the impact of broiler company practices on growers in contract poultry production. Although the survey is older, it was conducted by respected academic experts and provides information on the experiences of a broad sample of growers and covers specific questions of concern in this rulemaking. Based on AMS's experience, the survey is still relevant and useful as a reasonable reflection of the views of growers today. Lee Schrader and John Wilson, ''Broiler Grower Survey Report,'' in Farmers' Legal Action Group, Assessing the Impact of LPD Practices on Contract Poultry Growers, ed. Farmers' Legal Action Group (FLAG Survey) (September 2001). *http://www.flaginc.org/publication/assessing-the-impact-of-LPD-practices-on-contract-poultry-growers/,* last accessed 07/28/2023.

According to the commenter, if LPDs wanted to avoid passing on costs to consumers, they would be forced to lower their new base pay rate to keep the overall pool of money allocated to grower pay at a similar level, which means they would calculate all performance-based compensation bonuses based on this lower rate rather than on a rate equivalent to the current average pay. This commenter asserted this outcome would lead to an income redistribution from high-performing growers to low-performing growers, encouraging less efficient, and therefore costlier and less profitable, poultry production.

In carefully considering this issue, AMS analyzed a sampling of current contracts from a cross-section of ten LPDs, including at least one contract from each of the top five broiler companies identified in the WATT 2021 rankings [27] to evaluate their contract terminology and the significance of the gap between ''base'' and ''minimum'' pay rates. Seven out of ten, including the top five companies ranked, use the term ''base'' with reference to a pay rate that the LPD adjusts by tournament ranking. Two use the term ''average'', and one uses the term ''middle.'' The differences between the ''base'' or ''average'' rate and the ''minimum'' rate were as high as 42 percent and as low as 13 percent, with an average of approximately 27 percent with ''minimum'' pay always lower than ''base'' pay. This serves as a rough proxy for the range of variation that may exist under different contracts, and thus demonstrates that the stated base pay rate is not representative of actual, ultimate pay to growers. In general, there is no limit (maximum) on bonus payments in most contracts. No contract in our sample used the term ''base'' to identify the actual minimum payment possible. This analysis also demonstrates that the disparity between ''base'' and ''minimum'' rates is often significant.

After considering public comments and the results of its contract and settlement analyses, AMS has determined that the practice of discounting or reducing contract pay rates creates significant risk of deception or unfairness for growers. This practice conceals the true payment baseline, which makes it difficult for growers to compare broiler production contracts from LPDs competing for their services. This can reduce competition among LPDs for grower services and result in market inefficiencies. It can also inhibit growers' ability to plan and manage their businesses. A grower evaluating the expected value of these contracts can estimate potential earnings by reviewing a contract's stated ''base'' or ''average'' pay rates; however, growers are not able to precisely evaluate the ''downside risk'' (used here to refer to the financial risk associated with performing in the bottom half of the settlement pool). It is very difficult for a grower to estimate how much their pay rate might be discounted (*i.e.,* reduced below the stated base pay rate) based on their relative performance in the settlement pool. This is especially problematic because the design of the tournament system means that roughly half of growers will rank below average. Significant factors that affect tournament rankings—such as settlement groupings, inputs, and flock ages, the timing of collection for delivery, and weights—are outside growers' control.

Moreover, empirical research has shown that franchisees (whose relationships with franchisors in some respects look similar to the relationships growers have with LPDs) are overly optimistic in their expectations of their performance under the franchise agreement. In their review of the empirical literature, Benoliel and Buchan report that ''although franchisees are often perceived as sophisticated business people, they systematically suffer from a common psychological bias: over-optimism about the future.'' [28] Benoliel and Buchan's findings are consistent with previously cited comments from grower organizations suggesting that growers underestimate the possibility of below average outcomes, reflecting the same type of optimism bias reported for franchisees.

Under section 202 of the P&S Act, the practice of discounting disclosed ''base'' pay rates in broiler contracts is an unfair and deceptive practice. The use by LPDs of contracts that fail to clearly state an accurate rate of compensation obscures substantial and unavoidable downside risk. Under this system, growers must estimate future earnings using contractually stated ''base'' pay rates, rates that, by the design of the system, LPDs know will not be realized by roughly half of the settlement group. Additionally, this lack of clarity in contracting terms impedes growers' ability to meaningfully compare competing offers from other LPDs in markets where growers are fortunate enough to have more than one or two LPDs to contract with. AMS's analysis of unfair and deceptive trade practices in poultry contracts is informed by prior P&S Act case law and States' unfair practice laws. Additionally, the FTC's extensive experience enforcing prohibitions against unfair practices and unfair methods of competition arising under the FTC Act has, in part, informed this proposal.[29]

In conclusion, deductions from the contractually stated base pay rate create variance in pay that harms growers and their ability to accurately assess the risk they are taking, which is particularly problematic given the risk they bear. Further, these growers cannot reasonably avoid this harm if they wish to become or continue to be growers. Finally, AMS has not found any evidence that poultry tournament systems that include deductions from the base pay rate provide a benefit to growers or competition in the market for grower services that outweighs the harm to growers. Deductions in other livestock contracts commonly reflect performance within the control of the producer. This deceptive poultry discounting practice creates an unfair competitive advantage for LPDs who use it relative to LPDs who do not discount the base pay rate. The widespread adoption of these types of contracts has frustrated fair competition, instead of enhancing it. Such discounting also is a reflection of the market power of the LPDs.

B. Summary of Proposed § 201.106

AMS is proposing to add a new § 201.106 titled, ''Broiler grower compensation design.'' This proposed provision would prohibit the reduction, or discounting, of any compensation rate under the broiler growing arrangement on account of a comparison to other growers. That is, when a broiler growing arrangement between an LPD and the grower provides for the grower's compensation (which is commonly determined by a weight-based rate), the broiler growing arrangement would

[27] WATT PoultryUSA Top Companies Survey, 2021; *www.WATTPoultry.com;* accessed 12/13/2023.

[28] Benoliel, U. and J. Buchan. ''Franchisees' Optimism Bias and the Inefficiency of the FTC Franchise Rule.'' *DePaul Business and Commercial Law Journal* 2015 13(3): p. 414.

[29] See *e.g.* Michael Kades, ''Protecting livestock producers and chicken growers,'' Washington Center for Equitable Growth (May 2022), discussing FTC Policy Statement on Unfairness, 1980, available at *https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness* (last accessed Jan. 2024); Federal Trade Commission: Policy Statement on the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act, Nov. 2022, available at *https://www.ftc.gov/legal-library/browse/policy-statement-regarding-scope-unfair-methods-competition-under-section-5-federal-trade-commission.*

clearly state that rate and not provide for further mechanisms or calculations that would reduce that rate based on the grower's performance relative to other growers. The broiler growing arrangement could provide for the rate to be increased based on the broiler grower's performance relative to others, but in no event could the rate be decreased or discounted by that comparison. As used in this proposed rule, ''rate of compensation'' refers to any payment amount that the LPD utilizes to compensate the grower under a broiler growing arrangement, which could include ''base pay,'' ''minimum pay,'' or any other rate defined in the contract. That rate would have to be prominently and clearly defined as the guaranteed level of pay a grower will receive if they perform to the minimum specifications of the relevant provisions of the contract. To the extent that a broiler growing arrangement had more than one rate of compensation, none of the rates could be reduced or discounted by a comparison. Under existing AMS regulations, a broiler growing arrangement must include all payment terms in the contract (9 CFR 201.100(c)(2).

Prohibiting the discounting or reduction of rates of compensation would provide growers greater clarity regarding the minimum payments they could earn under compensation rates stated in the broiler growing arrangement, thus better enabling them to properly evaluate their base pay rate under the arrangement prior to entering the contract. The proposed rule's prohibition against discounting or reducing the rate of compensation disclosed in the contract would provide growers with an assured minimum payment when they satisfy their responsibilities under the agreement. Increased clarity regarding the rate of compensation may also enable new growers to better determine how they will perform under the tournament system before they undertake costly investments. Experienced growers may benefit as well, especially in advance of any potential capital investments.

This proposed rule would prohibit LPDs from misleading growers with the presentation of a compensation design whereby the grower receives an income lower than expected under a rate of compensation in the broiler growing arrangement. As noted above, minimum pay is a payment term that would be required be disclosed under the terms of broiler growing arrangement. (9 CFR 201.100(c)(2).) This proposed rule would also protect growers against the risk of unavoidable discounts. While a grower may miss out on additional income, the LPD would not be permitted to discount the grower's pay below the expected rate of compensation that was disclosed to the grower and relied upon by the grower when making the decision to participate in the broiler growing arrangement. AMS emphasizes that it may also be a deceptive practice were an LPD to make representations during the contracting process that implied most growers will get bonuses or are otherwise likely to earn more than the minimum where such representations were false, misleading, or contained material omissions or were otherwise not in compliance with other relevant rules and regulations under the Act. (9 CFR 201.102.)

AMS expects that LPDs will still be able to pay a grower to elicit a competitive level of performance using a design that conforms to the requirements of this proposed rule. The LPD could reward performance for feed efficiency relative to the growers in the settlement with a minimum base pay rate per pound and an upward adjustment to the payment formula. A compensation structure without a penalty or reduction from a true guaranteed minimum pay rate, however, may still be unfair and/or deceptive if facts and circumstances demonstrate an unlawful exercise of market power or other legally unjustified means. For example, if the variable income (from the range of bonuses) is large relative to the grower's potential total compensation, the grower may still be unable to reasonably estimate actual payments. The variability of payments alone may create unjustifiable risk for the grower. As a result, the compensation system could still be unfair and/or deceptive. We are seeking comment, as noted below, on the best way to assess such unfairness and/or deception.

Based on AMS experience (including investigations and reviews of contracts), many LPDs already separately identify bonuses to incentivize capital investments as additions to a base pay rate. Under most current LPD grower contracts, growers receive these additions to the base pay rate before the performance adjustment. Under the proposed rule, LPDs would be prohibited from making any adjustments to discount or reduce the rate of compensation disclosed in the contract. LPDs can adhere to this requirement without changing the total expenditure per pound of broilers or performance incentive structure used in most contracts, despite the new base pay rate being the true guaranteed minimum pay rate. Clearly rewarding performance above the base would give growers clarity regarding which elements of their pay are based solely on the weight of the delivered flock and which elements reflect their performance relative to other growers. Virtually all growout contracts currently have a minimum pay, but it is often not clear how that minimum relates to performance pay. As noted earlier, some of the largest LPDs have already adopted contracts at some complexes where the base pay rate is the minimum pay and there are no negative performance adjustments.

AMS emphasizes that the proposed rule would not absolve the LPDs of liability under section 202 of the Act arising in other ways from any particular tournament system or tournament systems overall, including from any rate, distribution, or variability of compensation. Excessive variability in total pay can make it difficult for growers to estimate likely earnings and can unfairly transfer costs or risk from the LPDs to growers. Such a system also means a substantial number of growers may not be able earn a reasonable return. For example, if an LPD set the base pay rate at $0.01, AMS would almost certainly find that this violates section 202. If the base pay rate does not reasonably guarantee that the grower can make loan payments, which are known to the LPD, the compensation system is likely unfair. Likewise, if the base pay rate is suppressed below competitive levels (due to an unlawful exercise of market power or other legally unjustifiable means) and does not provide a reasonable return considering the operating costs and the costs of investments over the long term, the compensation system may still be unfair.

Neither this proposed § 201.106, nor proposed §§ 201.110 or 201.112, purport to alleviate all potential unfair aspects of the tournament system or of the integrated model of broiler production. At this time, AMS proposes enforcement on a case-by-case basis to remedy other particular aspects of tournament system unfairness, including issues arising from excessive variability in payments. For example, the Department of Justice, upon referral by USDA, entered into a settlement with LPDs for P&S Act violations.[30] That settlement barred processors from discounting base pay rate compensation and capped total relative (comparison-based) compensation at 25 percent of the total of base pay rate plus

[30] See *United States* v *Cargill Meat Solutions Corp. et al.* Civil Action No.: 1:22–cv–1821, District of Maryland, Final Judgement entered June 5, 2023.

performance compensation. AMS believes that this approach alleviates extreme variability as an aspect of existing tournament system unfairness and believes that compensation variability beyond 25 percent is presumptively unfair, whether as a function of the tournament system or as a result of other payment practices utilized by LPDs in the integrated model of broiler production.[31]

In support of that goal, AMS believes that the clarity and simplicity provided by the proposed rule's prohibition on deductions will assist AMS and growers in identifying the presence of such concerns, and thus will assist AMS in any further review regarding unfairness overall. As noted, we are also seeking comment on whether other options would work more effectively. In particular, AMS asks below (in section III.C.) whether it should be more prescriptive in the proposed rule, including whether it should adopt requirements to document or disclose processes related to the proportion of relative pay to the base pay rate, whether this proportion should be limited in all circumstances, and whether and how to establish a methodology for evaluating unfairness where the minimum base pay rate for growers was not reasonably likely to deliver a fair return. It also seeks feedback on whether these requirements should apply to payment systems that are not a tournament but may be otherwise unfair or deceptive due to asymmetrical power and other dynamics in the integrated model of broiler production. We also seek comment on the economic outcomes from these possibilities, including whether they would change the performance incentive structure, in particular whether it would raise total grower compensation by increasing total expenditure or whether it would adjust performance payments within the existing total expenditure.

Under proposed § 201.106, LPDs may not reduce any rate of compensation under a broiler growing arrangement based upon the grower's grouping, ranking, or comparison to other growers in the grower ranking system. Further, because optimism bias may dilute the effect of disclosure—and because disclosure is not always a sufficient remedy for an unfair act or device—this proposed rule is intended to complement existing regimes aimed at improving transparency and fairness in the poultry industry.[32] Improved clarity in the presentation of payment systems would enhance the effectiveness of disclosure requirements and is intended to bring to light unfairness in other aspects of payment systems.

AMS expects that LPDs would comply with this proposed rule by desisting from discounting any rate of pay under the broiler growing arrangement and instead utilizing a minimum rate of pay with comparison-based performance bonuses paid in addition to the new minimum base pay rate. AMS is attentive to the risk that LPDs would lower the base pay rate beyond what the grower expects to be the minimum based on the broiler growing arrangement or LPD promises and grower expectations. Those concerns may be particularly acute where the bonus is large relative to the base compensation. AMS is also attentive to concerns that growers may not have entered into their current contracts had a clear base pay rate been disclosed.

Accordingly, AMS also asks questions below regarding whether to establish limitations on the lowering of the base pay rate, such as by establishing a backstop or criteria based on existing obligations under the present contract with the grower; by using a relationship between pay per pound (pool payments) at the complex and the minimum pay; by setting a hard limitation on the proportion of comparison-based pay to total pay (such as 25 percent of the sum of base plus comparison-based performance pay [33]); or by requiring a base pay rate that makes a reasonable return likely if the grower delivers under the contract. In addition, AMS inquires on the advisability of AMS reviewing contracts for compliance with the transition limitations, as well as for how long those limitations should be in place.

Enforcement of § 201.106 could occur in several ways. Growers would contact AMS to submit a complaint regarding an alleged violation of § 201.106. AMS would investigate, which could lead to referral to DOJ for appropriate action or, where failure to pay is implicated, USDA enforcement through administrative action.[34] AMS also would review LPD contracts, along with other required records from the LPD (including with respect to actual payments made), in connection with routine compliance reviews and investigations. Injured individuals would also have a right to proceed directly in Federal court.

C. Questions

AMS specifically invites comments on various aspects of the proposal 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:

1. Does proposed § 201.106 effectively and appropriately address concerns that growers have expressed in increasing transparency, understandability, fairness, or certainty as to compensation under a comparison system or otherwise benefit growers in reducing deception and/or unfairness? How might this rulemaking more effectively and appropriately ensure that what growers can reasonably expect regarding their compensation (based on disclosures in the contract or otherwise) matches what growers actually receive? If the proposal will be effective, why? If not effective, in what ways can it better do so?

2. AMS has indicated that if the base pay rate is suppressed below the competitive levels, such as due to the LPD's unlawful exercise of market power or other legally unjustified means, and does not provide a reasonable return considering the operating costs and the costs of investments over the long term, the compensation system may be unfair. Should AMS adopt a rule that more prescriptively requires that the base pay rate must be expected to provide a reasonable opportunity for a grower that delivers under the contract to earn a reasonable return if they comply generally with the specified production practices? If so, please describe the rationale and methodology to be applied (including whether and how it should account for local market power dynamics); and, if not, would another approach be more effective?

3. Is it presumptively unfair for comparison-based compensation to equal or exceed 25 percent of total (base pay rate plus comparison-based) compensation for any grower? If so, is the 25 percent threshold the appropriate portion to presume unfairness, and is it most effective if calculated at the complex level or at the individual grower level?

[31] Ibid.

[32] *See, e.g., generally* 9 CFR 201.100, 9 CFR 201.215–218.

[33] Wayne-Sanderson, DOJ Consent Decree, June 25, 2022, available at *https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decrees-end-long-running-conspiracy.*

[34] Additional information on reporting violations of the P&S Act can be found here: *https://www.ams.usda.gov/services/enforcement/psd/reporting-violations* (last accessed 11/13/2023).

4. Is case-by-case enforcement on the fairness of the total comparison-based bonus effective? Should AMS include a paragraph (b) to proposed § 201.106 stating that, ''Although unfairness will be determined on a case by case basis, the LPD shall be deemed presumptively in violation of this paragraph (b) if: on an annual basis at any complex [for any grower] of the LPD, the amount of Performance Payments exceeds 25% of the sum of Performance Payments and Base Payments, where 'Performance Payments' are the compensation paid to broiler grower that is subject to adjustment based upon the relative performance in a grouping, ranking, or other comparison of broiler growers; and 'Base Payments' are all compensation that is guaranteed to be paid to broiler growers.''?

5. Please comment on the expected response to the inclusion of the provision described in question 4. In particular, how likely is the provision to be a binding constraint at either the grower or complex level? When the constraint is binding, would LPDs be likely to raise base pay and/or limit performance payments—thus reducing the difference between top and bottom performing growers—without increasing total grower compensation expenditures? Would LPDs also change the types of growers they contract with, for example in terms of size or performance?

6. If AMS were to include the provision described in question 4, would LPDs be likely to provide non-comparison-based incentives (such as per pound or per square foot compensation for housing known to provide efficiencies to the LPD), or deploy other incentives (such as fixed performance bonuses)? Would total grower compensation expenditures by LPDs be expected to increase under these other incentives? How would this vary with or depend upon grower characteristics (*e.g.,* size, individual management ability, or investment) or market conditions?

7. How would the inclusion of the provision described in question 4 affect the relationship between tournament compensation systems and additional capital investments? Would it help to ensure that growers receive adequate compensation for ACIs?

8. What additional requirements would help ensure compliance with this proposed rule such that grower comparison-based unfair and deceptive reductions or discounts to compensation are eliminated, while continuing to permit payment designed to incentivize performance? Please provide as much detail as possible regarding the relationship between payment and performance, any injuries to growers and whether they can be avoided, the effects on other growers and competition, and what data sources AMS should examine to evaluate these concerns more effectively.

9. Should AMS require LPDs to document or disclose the process they use to establish the proportion of total grower pay that is determined by comparing a grower's performance to other growers' performance? Should regulations require documentation of comparisons designed to prevent unfair or unreasonable levels of relative performance-based pay? Should regulations require companies to report how the proportion of comparison-based performance pay to total pay incentivizes effort, grower investment, and other outcomes? If AMS creates these documentation responsibilities, should this be done based on an individual grower or complex-wide basis?

10. What specific burdens might LPDs face in complying with this proposed rule? Would this require LPDs to substantially modify their business model? If so, what specific modifications would be required and why?

11. What risks might growers and/or LPDs face during any transition to the proposed § 201.106? How might AMS mitigate transition risks? How might AMS more fully account for unfairness and deception that may have occurred in the course of contracting for the current broiler growing arrangement? Should AMS establish a backstop for this regulation or set out criteria based on existing obligations under the present contract with the grower (*e.g.,* requiring that the current base pay rate be the new minimum rate, or requiring current payments overall remain comparable), on a relationship between compensation per pound (pool payments) at the complex and the minimum pay, or on the proportion of comparison-based compensation for a grower (such as a limit to 25 percent of total compensation). If so, how long should any transition limitations extend?

12. To minimize transition risks to growers, should AMS include a requirement that LPDs submit to AMS for review any contracts modified or revised to comply with new § 201.106? Should compensation data be required to be submitted for review? Should AMS review of modified or revised contracts during any transition assess the changes made to ensure LPDs have not reduced total aggregated and individual grower payments in such a way that is inconsistent with payment expectations under the original contracts?

13. Should AMS make the effective date for the provisions of this proposed rule 180 days following publication of the final rule in the **Federal Register**? If you recommend shorter or longer for some or all of the provisions, please explain why.

IV. Operation of Broiler Grower Ranking Systems (Proposed § 201.110)

Under the tournament system, LPDs control the inputs and production practices assigned to growers. Therefore, LPDs unfairly affect grower payments when they compare growers without taking action to manage and mitigate unequal inputs or unfavorable production practices over one or more tournament settlements. This section describes this issue in depth, discusses AMS's proposed regulation, and provides questions for commenters to consider.

A. The Act Prohibits Certain Aspects of Current Tournament Practices

As described above in section II, ''Industry Background and Need for the Rulemaking,'' LPDs control the inputs and production practices growers use to compete under the tournament system. LPDs generally promise that tournaments provide growers with the same inputs, production practices, and contract-related services.[35] Yet LPDs do not have sufficient incentive to ensure the design or operation of a fair ranking system for growers. LPDs commonly do not adequately specify in their contracts their obligations regarding the operation of the tournament. LPDs benefit from information asymmetries relative to their growers. LPDs also commonly do not adequately perform under their contracts with growers, failing to meet growers' reasonable expectations relating to contractual performance or behaving in a punitive or inequitable manner to growers.

The harms of an unfair tournament system fall disproportionately on growers. The benefits of increasing fairness in the tournament to the LPD may not justify the costs in providing greater fairness. Many growers and grower representatives responding to the ANPR for this proposed rule expressed concern regarding the extent to which variability in inputs can affect

[35] See, *e.g.,* ''How the Tournament System Works'', National Chicken Council (informing farmers that: ''1 All farmers are provided the same quality of chicks, the same feed, and access to veterinary care.''; available at *https://www.chickencheck.in/faq/tournament-system/* (last accessed May 22, 2024).

grower performance and thus pay. Commenters stressed the problematic nature of LPD control over inputs and the resulting potential for poor-quality inputs to affect broiler grower compensation. These commenters said LPDs' discretion over the distribution of inputs and flock production practices gives them control over almost all factors affecting a grower's final performance, such as health, breed, and gender composition of flocks; age of breeder flocks; number of birds placed; amount, quality, and timing of food; medical care provided; and flock pick-up. Although some industry trade associations commented in response to the ANPR that the tournament system worked effectively to manage these risks, other industry commenters noted that without adequate safeguards to manage and mitigate input and production practice differences, the tournament system is coercive, predatory, and deceptive because it denies growers the ability to earn based on their skills, efforts, and investments.

Several of these commenters emphasized that LPDs are unlikely to acknowledge variability in their distribution of these inputs to growers or engage in timely communication and cooperation to address what growers believe is the inappropriate provision of input or production practices. Commenters also asserted that LPDs sometimes intentionally deliver inappropriate inputs and assign inappropriate production practices to growers (*e.g.,* by providing high percentages of sick chicks, delivering feed designed for older birds to new birds, or delaying pickup) to penalize growers or force contract termination. According to commenters, even unintentional input variability can lead to unfair comparisons within a tournament group. These commenters indicated poultry growers who receive lower quality inputs (including inputs inappropriate for the type or age of the bird) are likely to rank lower compared to those who receive better inputs, and consequently, receive lower pay than the rate disclosed in the growing contract. Some commenters asserted that issues with the availability and quality (including appropriateness) of feed are especially common. In response to the ANPR, a North Carolina non-profit organization conducted an anonymous contract grower survey in 2022.[36] Ninety-six percent of poultry growers surveyed reported a negative impact on their income due to feed disruption, receipt of incorrect feed mixes for a flock's growth stage, or receipt of less feed than stated on their feed load receipt.

Studies demonstrate that differences in production practices and inputs, such as stocking density, slaughter weight, bird gender, and breeder flock age, can impact the performance metrics used in determining the performance adjustments in tournament payment systems.[37] Some breeds, for example, may exhibit faster growth rates, which may result in heavier farm weights and better feed conversion rates than other breeds.[38] A major genetics company, Cobb-Vantress, reports substantially different feed conversion rates and finishing weights for three of the most commonly used commercial broiler breeds. AMS investigations and analyses have likewise found situations where growers' performance increased with some inputs compared to others and that growers performed better when assigned certain production practices rather than others.[39]

In response to the ANPR, LPDs and trade associations representing them noted the challenges in trying to determine standards to regulate distribution of inputs and production practices among growers. A meat industry trade association indicated that LPDs are known to take action to reduce unpredictability in grower outcomes, such as contracts that evaluate performance over multiple flocks and contract pay adjustments for factors outside growers' control. For example, some LPDs adjust payments for different densities of birds placed or provide credits for excess seven-day death loss. AMS investigations have also found that some LPDs will attempt to ensure that broiler growers do not receive chicks from young laying hens too often because this can negatively affect growers' tournament performance. Some LPDs will communicate and correct ordinary problems on a timely basis, which helps growers avoid unintentionally punitive outcomes than would otherwise be the case. Yet these claimed practices are not universal and depend extensively on the goodwill of the LPD, commonly via the manager of the local complex. This dynamic leaves considerable room for local complexes to make discretionary decisions that may harm growers. While LPDs regularly maintain extensive grower manuals, there is currently no requirement that manuals address the range of situations that can undermine a fair comparison or monitor whether the local complexes comply with that manual in practice.

LPDs would incur the costs associated with ensuring the fair operation of their tournaments, while the benefits of a fairly operated tournament would accrue primarily to broiler growers. However, LPDs' substantial bargaining power, growers' risk, and growers' inability to reasonably avoid the tournament system (or other payment systems that effect similar dynamics arising from unfair distribution of inputs and assignment of production practices) require that LPDs provide a basic level of fairness for growers.

AMS acknowledges that some variability in input quality is unavoidable: not all chicks or inputs controlled by the LPD could ever be identical. Moreover, the ability of an LPD to adapt regarding input decisions and production practices is necessary to respond to external conditions. While these changes can dramatically, and sometimes disastrously, affect overall compensation for growers, these changes may not significantly affect the distribution of the relative performance component of compensation among rival growers. That is, if LPDs provide all growers in a tournament group similar-quality inputs and compare growers using similar flock production practices, or if they take steps to balance these differences over time or otherwise adjust pay to account for the relevant differences, these components under LPD control may not unfairly affect growers. In situations where LPDs rank

[36] Rural Advancement Foundation International-USA, ''Comment on AMS–FTPP–22–0046: Poultry Growing Tournament Systems: Fairness and Related Concerns'' (received Sept. 26, 2022), available at *https://www.regulations.gov/comment/AMS-FTPP-22-0046-0166.*

[37] Dozier III, W.A., et al. ''Stocking Density Effects on Growth Performance and Processing Yields of Heavy Broilers,'' *Poultry Science* 84 (2005): 1332–1338; Puron, Diego et al. ''Broiler performance at different stocking densities.'' *Journal of Applied Poultry Research* 4.1:55–60 (1995). Burke, William and Peter J. Sharp. ''Sex Differences in Body Weight of Chicken Embryos.'' *Poultry Science* 68.6 (1989): 805–810; Beg, Mah, et al. *Effects of Separate Sex Growing on Performance and Metabolic Disorders of Broilers.* Diss. Faculty of Animal Science and Veterinary Medicine, Sher-e-Bangla Agricultural University, Dhaka, Bangladesh, 2016; Wilson, H.R. ''Interrelationships of Egg Size, Chick Size, Posthatching Growth and Hatchability.'' *World's Poultry Science Journal* 47.1 (1991): 5–20; Washburn, K.W., and R.A. Guill. ''Relationship of Embryo Weight as a Percent of Egg Weight to Efficiency of Feed Utilization in the Hatched Chick.'' Poultry Science 53.2 (1974): 766–769; Weatherup, S.T.C., and W.H. Foster. ''A Description of the Curve Relating Egg Weight and Age of Hen.'' British Poultry Science 21.6 (1980): 511–519; University of Kentucky/Kentucky Poultry Federation, Poultry Production Manual, *https://afs.ca.uky.edu/poultry/production-manual* (uky.edu), last accessed 08/21/2023.

[38] Cobb500TM Broiler Performance & Nutrition Supplement (2022), Cobb-Vantress; Cobb700TM Broiler Supplement, Cobb-Vantress, 2022; Ross 308/Ross 308FF Broiler Performance Objectives 2019, Aviagen Ross, *http://eu.aviagen.com/tech-center/download/1339/Ross308-308FF-BroilerPO2019-EN.pdf,* accessed March 25, 2022.

[39] *See, e.g.,* Dkt. No. 12–0123 (USDA March 8, 2013).

growers against growers who have received higher-quality inputs–or who operated under more favorable production practices–without taking effective steps to make appropriate adjustments, the tournament operation itself is unfair because the growers who received lower-quality inputs or less favorable production practices will likely receive lower pay compared to the rest of the tournament group through no fault of their own. The ranking in the tournament will not reflect the grower's actual performance.

Because different inputs and flock production practices affect performance under the tournament, and therefore a component of grower payments, an LPD has committed an unfair and deceptive practice under the Act when it operates a tournament that uses arbitrary or inequitable delivery of inputs and production practices—that is, without establishing systems to manage and mitigate material differences in inputs and production practices among growers in a comparison group. This duty of a fair comparison also arises out of the Act's prohibitions on unjust discrimination, the manipulation of prices, and failure to pay. Violations of the Act include an LPD failing to maintain policies and procedures necessary to document the company's compliance with those fair comparison duties, owing to the Act's recordkeeping authorities (7 U.S.C. 221).

Current tournament practices are persistent and prevalent across the industry, giving rise to industry-wide harm because even small pay differences cause significant harms in the aggregate. As supported by the response to the ANPR, growers have complained to AMS over the years of arbitrary, inequitable, and sometimes punitive delivery of adverse inputs or unfavorable production practices in successive tournaments. Growers cannot avoid the impact of adverse inputs and unfavorable production practices on their performance. For example, LPDs determine the type, quality, and number of chicks delivered to a grower per square foot of housing, handle the delivery of feed, and determine the age at which they collect the chickens.

As discussed in section II, the tournament system can sometimes reduce harm to growers from external shocks (such as adverse weather conditions) and may enhance competition among growers in ways that, at least in theory, can improve grower productivity. Yet arbitrary or inequitable differences in inputs and production practices are not an essential feature of delivering those benefits; in fact, they undermine them. Arbitrary or otherwise inequitable differences run contrary to the theoretical design of the tournament system and the description of the tournament system that the industry itself provides.

In theory, LPDs would provide the optimal mix of inputs to all growers to yield an overall better final product and in turn yield a larger profit. However, differences in inputs will exist, and LPDs want to obtain full value out of all usable inputs—even if those inputs perform differently. LPDs also have limited financial incentive to engage in the effort to evenly distribute inputs and production practices across growers in a settlement pool. Indeed, growers have commonly asserted that the ''noisy'' grower who complains more to local agents is commonly believed to more readily be tendered ''bad'' or otherwise inappropriate, untimely, etc., inputs or flock production practices. The question is thus how to manage those differences to ensure a fair comparison between growers. For example, breeders have a lifecycle of 50 weeks. They produce optimal chicks between weeks 20–34, but they also produce chicks that have value outside the optimal window. The LPD has a financial incentive to grow all these chicks to maturity, and therefore will distribute higher- and lower-quality chicks in any one settlement period. Growers who receive a higher proportion of suboptimal chicks are disadvantaged in a relative comparison to growers who received a higher proportion of optimal chicks. The LPD's general incentive is to use all the chicks, regardless of how they are distributed among growers.

Because the tournament system functions to allocate a component of grower pay, LPD practices that impair the fairness of the comparison result in a misallocation of performance compensation, thereby unfairly reducing the compensation that may otherwise be due to some growers in violation of section 410 of the Act. Section 410 requires full payment if LPDs fail to compensate or supplement the compensation of affected growers though alternative means. Further, AMS's analysis of unfair and deceptive trade practices in the operation of these comparisons has been informed by prior P&S Act case law, States' unfair practice laws, as well as the FTC approach to unfair practices and unfair methods of competition.

For this part of the proposed rule, AMS seeks to build on the series of poultry practices regulations that it has adopted over the years, including 9 CFR 201.100 (which requires various settlement and other disclosures), 9 CFR 201.215 through 218 (which provide various protections against unfair and deceptive practices relating to the suspension of delivery of birds, additional capital investments, reasonable time to remedy a breach of contract, and arbitration), and other provisions, as well as enforcement actions in response to grower complaints about the tournament system and its operation. This proposed rule would require that broiler grower ranking systems contain adequate safeguards necessary to ensure that they function fairly and as described to growers in their contracts.

When an LPD describes the tournament system under the broiler growing arrangement as delivering certain outcomes for growers, yet the LPD does not implement sufficient processes to ensure a fair comparison in the tournament system, the LPD is exploiting the asymmetric information gap, as well as the gap in bargaining power and hold up, between the LPD and growers. From the perspective of a reasonable grower, this is misleading and harmful. It also gives rise to harms that growers cannot avoid. Such harm includes the loss of earnings. In some cases, it includes targeted coercion, retribution, or manipulation of prices from the strategic deployment of inappropriate inputs or flock production practices, as well as LPD failure to communicate or address concerns. These unfair and deceptive practices are impermissible under the Act.

In addition, under those circumstances, LPDs compete in a market in which the incentive is to avoid their obligations and at times deploy tournament operational differences to obtain coercive or punitive ends. Pervasive deception in contractual relationships, breach of contract, or the use of coercion or retribution in markets are not beneficial to competition. The grower may not have entered into the contract knowing that the tournament would be deceptively or unfairly manipulated to the grower's disadvantage, and the grower has an expectation that the LPD will make a good faith effort to distribute inputs and production practices evenly. Boilerplate disclosure that seeks to limit an LPD's commitment to good faith implementation of tournament practices does not cure the deception either, because the LPD maintains full control over the inputs and flock production practices, which are at the very heart of the LPD's offer to growers under a contract. Disclosure is not a remedy for unfair practices by LPDs.

LPDs' existing recordkeeping regarding the design and ongoing

operation of their tournaments is insufficient for AMS to monitor the ongoing transactions between LPDs and growers as it relates to allocation of payment for grower services. LPDs do not currently maintain clearly written processes describing how and when the LPD distributes inputs and deploys flock production practices, makes adjustments to comparisons or deploys non-comparison compensation methods, and responds to complaints. Existing LPD records have tended to lack sufficient documentation that would allow for systematic examination of the reasoning for changes in the inputs, flock production practices, or communication practices assigned to particular growers, either as designed or during operation of the tournament. Therefore, even when LPDs provide the details of those input or flock production practices to AMS investigators, the insufficiency of the documentation impedes AMS's ability to reconstruct an LPD's reasoning for its decisions. LPD communications and complaint monitoring documentation has also been lacking. Further, AMS has encountered challenges within LPD organizations regarding corporate management's ability to record and monitor practices occurring at local complexes. AMS's enforcement of the Act is hampered when corporate management lacks documented processes and records to explain why coercive and retributive practices appear to have been deployed at local complexes despite corporate management's assurance that coercion and retribution are not a factor in the assignment of inputs and flock production practices; enforcement is also hampered when LPD corporate management lacks documented processes and records to explain an LPD's purported failure to address complaints.

B. Summary of Proposed § 201.110

AMS is proposing to add a new § 201.110, ''Operation of broiler grower ranking systems,'' to regulate LPDs' operation of ranking systems (*i.e.,* tournaments) for broiler growers. Paragraph (a) establishes an LPD duty of fair comparison in tournaments. This duty of fair comparison would require LPDs to structure their tournament system in a manner that will provide a fair comparison among growers. AMS acknowledges that there may be instances in which a fair comparison is not possible. AMS recognizes unforeseen differences in inputs or other circumstances occasionally prevent fair comparison in a tournament. In those instances, an LPD must compensate growers through a non-comparison method specified in the contract that reflects a reasonable compensation to the grower for its services.

Thus, under § 201.110(a) the Secretary would evaluate specific factors to determine if a poultry grower ranking system (*i.e.,* tournament) is reasonably designed to deliver a fair comparison among growers. Paragraph (a)(1) would require that LPDs providing compensation to broiler growers based upon a grouping, ranking, or comparison of growers delivering poultry design and operate their poultry grower ranking system in a manner that would provide a fair comparison among growers. Paragraph (a)(2) would establish the factors the Secretary will consider in determining whether an LPD reasonably designed its poultry grower ranking system to deliver a fair comparison among growers or whether the LPD must utilize a non-comparison compensation method. Paragraph (a)(3) would require that when an LPD uses a poultry grower ranking system and cannot conduct a fair comparison for one or more growers, the LPD must compensate those growers through a non-comparison method specified in the contract that reflects reasonable compensation to the grower for its services. The non-comparison method is intended to fairly compensate the grower and therefore, absent special circumstances where a rationale and an agreement to do otherwise are reasonable and appropriate (and documented as such), would need to be equal to or more than what the comparison-based compensation rate would have delivered. The provisions of paragraph (a) are described in more detail below.

Paragraph (b) would establish documentation requirements regarding the processes (policies and procedures) the LPD maintains for the design and operation of poultry grower ranking systems for broiler growers. AMS is proposing this provision to ensure that the LPD would maintain a full and complete record of every aspect of the tournament system structure. This recordkeeping system would provide AMS with the information needed to determine whether the tournament is, in fact, following principles of fairness laid out in proposed paragraph (a). Paragraph (b)(1) would require that LPDs establish and maintain written documentation of their processes for the design and operation of a poultry grower ranking system that is consistent with the duty of fair comparison; paragraph (b)(1) also delineates the items the written documentation must include. Paragraph (b)(2) would require that LPDs review their compliance with those processes not less than once every two years and delineates the requirements of that review. Paragraph (b)(3) would require that LPDs retain all written records relevant to their compliance with paragraph (b) for no less than five years from the date of record creation. These provisions, their anticipated effect, and compliance requirements are discussed in more detail below.

Section 201.110(a)(1) would require LPDs to design and operate their poultry grower ranking system to provide a fair comparison among growers. The proposed rule would focus on how LPDs address inputs and flock production practices, as well as flexibility and communications practices controlled by the LPD that impact grower payment. LPDs have a multitude of means to maintain fair comparisons, including correcting inputs or production practices inappropriately delivered, extending the time period over which the comparison is made, adjusting payment for certain inputs or production practice differences, removing growers from tournaments where a fair comparison is not possible, etc. LPDs are in violation of the Act when they do not design and deploy, based on the particular circumstances of their businesses, those tools to deliver a fair comparison.

Section 201.110(a)(2) describes the factors that AMS would consider when determining whether an LPD reasonably designed or operated its poultry grower ranking system to deliver a fair comparison among growers or whether the LPD must utilize a non-comparison compensation method. The factors are listed in subparagraphs (i) through (vi).

Paragraphs (a)(2)(i) and (ii) address whether an LPD's distribution of inputs and assignment of flock production practices would cause material differences in performance that growers cannot avoid, and whether the LPD will make appropriate adjustments to compensation. Fair comparison of growers requires that growers do not receive a distribution of inputs or assignment of production practices that cause material differences in performance from other growers to whom they are being compared and are caused by factors outside of a grower's control. Material differences in performance are differences that meaningfully (from the perspective of the grower) impact grower payments.

To comply with these requirements, LPDs would need to identify inputs and flock production practices under their control that impact grower payment.

LPDs would also be required to improve systems to monitor and, as appropriate, adjust the allocation of inputs and flock production practices to reduce the unequal distribution among growers settled together. LPDs would be required to adjust grower pay to compensate growers if a fair comparison is impractical due to unavoidable inequitable allocations. For example, the LPD may determine that a grower payment adjustment, such as a five-flock average, may be appropriate when the LPD provided chicks that are later discovered to be diseased, and no fair comparison is possible. Such a grower payment adjustment would need to employ a non-comparison method specified in the contract that reflects reasonable compensation to the grower for its services. Ensuring that the payment adjustments agreed to are fair will be part of regular AMS poultry compliance reviews.

Paragraph (a)(2)(iii) would address whether the designated time period used in the LPD's comparison is appropriate, including whether the LPD uses one or more groupings, rankings, or comparisons of growers to mitigate the effects of any differences in inputs over the designated time period. Fair comparison of growers does not necessarily require that LPDs provide all growers precisely equal inputs and identical production practices for each flock. This proposed rule would permit LPDs to minimize production inefficiencies that would arise from a literal equality standard while avoiding an unfair comparison of grower performance by ensuring that LPDs compare growers fairly over a flexible but reasonable period of time. AMS considers a period of one year or less to be a reasonable timeframe across which to compare growers' performance because it provides sufficient time to limit variation from one event while ensuring that LPDs treat growers fairly over a reasonable timeline. The one-year period coincides with commonly used five-flock averages and with one-year comparisons used in some live poultry growing arrangements.

Paragraph (a)(2)(iv) would address whether conditions and circumstances outside the control of the LPD render comparison impractical or inappropriate. A settlement group may have differences among LPD-provided inputs, LPD-assigned production practices, or other factors beyond the control of LPDs and growers that render a reliable comparison impossible. The Secretary will consider the facts and circumstances applicable to each case. One example might be the previously described situation where an LPD unknowingly delivered chicks to a grower that are later discovered to be diseased so that no fair comparison is possible. Pursuant to paragraph (a)(3) of this section, under these circumstances the LPD is required to compensate growers using an alternative to the tournament system through a non-comparison method specified in the contract. One approach is to pay the grower for pounds delivered at a rate that is the sum of the grower's base pay rate and the average per pound performance compensation rate for the tournament from which the grower was excluded, or for the last several tournaments in which the grower participated. An average of the grower's own per-pound total compensation rate over the previous 12 months—commonly, a 5-flock average, variable depending on the size of the birds—might be a useful non-comparison alternative if the prior tournaments were not also affected by unfair conditions and circumstances that would reduce their utility as reference points. AMS may review documentation maintained by the LPD to ensure that such conditions and circumstances were not present.

Paragraph (a)(2)(v) would address whether an LPD has made reasonable efforts to resolve concerns in a timely manner that a grower may raise regarding the LPD's exercise of discretion over the implementation of its fair comparison processes. In determining compliance with this requirement, through audit or in response to a complaint, AMS would consider whether an LPD has demonstrated responsiveness and commitment to resolving legitimate concerns in an appropriate manner that would avoid potential secondary harm to the grower. ''Reasonable efforts'' and ''timely'' resolution of a grower's concerns will depend on the facts and circumstances of each case, with particular attention placed on whether the situation adversely impacts the fairness of the comparison(s) for the grower. For example, if a grower raises immediate and urgent concerns about feed quality, such as the delivery of feed meant for older chicks than the grower has, the LPD's resolution of this concern should be as immediate as possible to limit any additional undue damage to the grower's flock due to lack of adequate nutrition. If a grower raises concerns about feed persistently being delivered late or in an insufficient quantity, the Agency would examine the LPD's ''reasonable efforts'' taken to adjust the method of delivery. Additionally, an LPD would be prohibited from retaliating against a grower in any manner for raising concerns as to whether a fair comparison method was used.

Lastly, paragraph (a)(2)(vi) would state that the Secretary would consider any other factor relevant to a fair comparison. This provision would give AMS the authority to address any other facts or circumstances that adversely affected the fairness of the design or operation of the poultry grower ranking system. AMS would determine compliance with this requirement by examining the facts and circumstances, and in particular, whether the LPD took specific actions to undermine the comparison process. For example, were the LPD to intentionally group together certain growers for a comparison as a means of manipulating or adversely affecting their comparison-based outcomes, this prong would enable AMS to consider those facts and circumstances.

AMS underscores that it would, when determining whether an LPD has designed and operated their broiler grower ranking system to provide a fair comparison among growers, consider the fair comparison factors set forth in § 201.110(a)(2) against the backdrop of the magnitude and design of the relative performance pay. Where relative performance compensation forms a very small portion of grower compensation net of long-term debt and other fixed costs, AMS would expect that differences in inputs and flock production practices would cause fewer material differences in pay. AMS would expect this to operate on a sliding scale. AMS would also consider the design of the formula to determine its impact on the magnitude or distribution of compensation, if any.

In some situations, differences among LPD-provided inputs, LPD-assigned flock production practices, or factors beyond the control of both LPDs and growers can make a reliable comparison impossible. In such cases, the proposed rule under § 201.110(a)(3) would require that an LPD must fairly compensate growers through a non-comparison method. The non-comparison method must be specified in the contract and would have to reflect a reasonable effort to fairly compensate the grower. For example, if an LPD is unable to pick up a flock in a timely manner because of processing disruptions (as occurred during the COVID–19 pandemic), the LPD may remove the grower from the settlement rather than compare that grower's flock performance against growers delivering flocks of a significantly different age. In such cases, the LPD must compensate the grower

using a reasonable non-comparison alternative. Multiple approaches could be considered reasonable depending on the particular circumstances. For example, AMS is aware that LPDs often pay the grower an amount equal to the average rate they received over their previous five flocks.

Compliance with § 201.110(a) would require that LPDs establish a standard for fairness in the operation of tournament compensation systems. The proposed regulation creates a framework for holding an LPD to account under the Act for using an unfair comparison between growers because of the LPD's unequal distribution of inputs and assignment of flock production practices. The proposed rule would require LPDs to assess input allocations and flock production practices to meet the standard of fairness delineated in § 201.110(a)(2). LPDs could meet the standard through a range of approaches deployed over time, allowing the LPD to take into account the natural variability in living systems while protecting growers from substantial injuries they cannot avoid owing to the distribution of those inputs. For example, typically, flocks are settled with chickens ready for slaughter in a particular week. Sometimes, if there are not enough similar birds (*e.g.,* similar weight) ready in one week, LPDs may use all birds slaughtered over two or three weeks. Alternatively, some contracts settle a grower's last five flocks (approximately one year) against all other growers' last five flocks to help choose a comparable settlement pool. AMS considers a period of up to one year to be reasonable because that provides sufficient time to limit variation from one event, while assuring that LPDs treat growers fairly over a reasonable timeline. Relying on the documentation of written processes set out in proposed § 201.110(b), AMS would evaluate compliance based on the extent to which the LPD carefully evaluated the factors and took reasonable measures to protect growers from substantial injuries that they could not avoid.

Inputs like breed of chick, feed, and medication can vary independently of production practices like density, target weight and slaughter age, and vice versa. The proposed rule would provide LPDs flexibility in managing these elements within the framework of their duty to provide a fair comparison, as documented by the written processes required under proposed § 201.110(b). Based on their evaluation of these elements as set forth in their written processes, LPDs would use allocation and grouping strategies that promote a fair comparison among tournament participants, provide remedial action to offset unavoidable circumstances in which fair comparison is not possible, and resolve grower concerns. With respect to both the distribution of inputs and the assignment of flock production practices, an LPD's duty is to design and operate a tournament to enable a fair comparison between growers. While AMS acknowledges the possibility of variability in inputs and production practices, the LPD should not design and operate their contract with the grower in manner that would impose on the grower injuries that the grower cannot reasonably avoid which the LPD could reasonably prevent.

Section 201.110(b) would set forth documentation requirements regarding LPDs' duty to ensure the fair design and operation of broiler grower ranking systems. Under section 401 of the Act, AMS is authorized to prescribe ''the manner and form in which such accounts, records, and memoranda shall be kept'' whenever the Secretary finds that the records of an LPD do not fully and correctly disclose the LPD's business transactions (7 U.S.C. 221). Paragraph (b)(1) would require that LPDs establish and maintain written documentation of their processes for the design and operation of a poultry grower ranking system that is consistent with the duty of fair comparison. This proposed rule would require documentation to include written processes, informally called policies and procedures, regarding the process for (i) inputs under LPD control, (ii) flock production practices under LPD control, (iii) comparison flexibility, and (iv) communication and cooperation with growers. The written processes would provide a general description of the items that the proposed rule requires be set forth, yet must contain sufficient detail to provide a reasonable user of the processes—such as the local manager that directs the operation of a tournament at a complex—with an understanding of the processes, including any policies that the LPD adopts governing the relevant parts of its operation and any discretion it or its agents may exercise under those policies, as well as the procedures it or its agents may deploy.

Under paragraph (b)(1)(i), LPDs would be required to create written processes for selecting and distributing inputs to growers, including how and when the LPD delivers inputs, how and when the LPD manages similarities and differences of quality and quantity in the delivery of inputs, how and when the LPD identifies differences in inputs and the potential effects of those differences on grower performance, how and when the LPD adjusts the inputs the grower receives, and any steps the LPD takes to adjust compensation calculations based on inputs growers receive. LPDs unfairly harm growers when they distribute inputs in a manner that disadvantages a grower relative to other growers in a tournament. Growers cannot control inputs such as quality of chicks or high- or low-quality feed, yet receipt of low-quality inputs has an unfair impact on their performance in a tournament. LPD processes would require ongoing accounting and monitoring of inputs supplied to each producer using objective measures of quality that are generally accepted in the industry. Processes developed by LPDs would be required to address key areas of concern, including management of chicks that differ in quality and performance and variation in quality or quantity of feed or medication provided to growers, as well as conscious selection and delivery of inputs to specific growers for specific purpose to facilitate fair comparisons. To the extent possible, LPDs should include policies and procedures for balancing disparity of inputs either within a single flock or over multiple flocks as appropriate and feasible.

Under paragraph (b)(1)(ii), LPDs would be required to create written processes for production of live poultry, including how and when the LPD assigns density at delivery; how and when the LPD manages pickup of birds with respect to slaughter weight and bird age, including documenting any variation by pounds and number of growout days; how and when the LPD adjusts how a grower is compared to other growers with different assigned flock production practices or otherwise adjusts the flock production practices the grower receives; any steps the LPD takes to adjust compensation calculations based on the flock production practices the grower receives; and how and when the LPD minimizes, adjusts, or otherwise accounts for differences in production practices. LPDs can unfairly manipulate grower payments when they compare growers within a single tournament settlement group for which LPDs have required different types of production practices. Under the proposed rule, LPDs must develop policies and procedures that describe the processes for ongoing accounting and monitoring of LPD-determined flock production practices allocated to each producer. The LPD's processes must provide a consistent approach to minimize differences in production practice assignments and describe methods to

compensate growers for differences that result in harms, for example, if differences do not equitably balance out over time as set forth in the LPD's written processes.

Under paragraph (b)(1)(iii), LPDs would be required to create written processes for the LPD's grower comparison flexibility methods. If an LPD evaluates growers over one or more groupings or rankings (rather than within each grouping or ranking), these policies and procedures would need to describe how the LPD sets a reasonable time period over which the LPD fulfills its duty of fair comparison. Additionally, if the LPD might remove a grower from a ranking group, the LPD would be required to describe the circumstances under which the LPD would remove a grower and how the LPD would compensate the grower to satisfy the non-comparison compensation method required under proposed § 201.110(a)(3). For example, LPDs may not have enough comparable growers with which to make a reliable comparison in the current grouping and may use growers settling in previous periods to make a reliable comparison. Likewise, a specific grower may have received undesirable inputs or production practices that materially impacted the grower's performance, necessitating removal of the grower from the grouping and compensation under a non-comparison compensation method. Lastly, if the LPD groups growers based on criteria other than in the manner grouped in previous settlements, the LPD would need to set out written processes for how and when that is to be done. Settlement groupings, also called league composition, are most commonly based on their chronological availability for slaughter within the complex but could be by housing type or on other ways. Generally, the settlement is determined by flock placement timing, which commonly varies based on chronological needs by the LPD and grower. For example, one or the other may need additional layout time between flocks for cleaning, maintenance, vacation, or other similar reasons. This proposed rule would not seek to disturb that ordinary decision-making but would rather serve to identify practices or circumstances that would diverge from those ordinary reasons. While there are legitimate reasons to deviate from a strict chronological availability-based grouping, this provision is principally meant to ensure that LPDs do not inappropriately use comparison flexibility to interfere with fair comparison by intentionally grouping specific growers together to lower their pay, or to otherwise manipulate pay to deliberately benefit certain growers over others.

Under paragraph (b)(1)(iv), LPDs would be required to create written processes for how the LPD will resolve a grower's concerns with the LPD's exercise of discretion over the implementation of the policies required by this section, including the timeliness of the resolution. A tournament system cannot be fair if it fails to permit growers to contest negligent or malicious actions taken by the LPD that may impact grower performance without fear of retribution. The proposed rule would provide flexibility on how LPDs can satisfy this requirement. A range of procedures are available, such as timely communication with complex management, communication with LPD headquarters, and grower councils, wherein disputes are resolved with input from other growers. The implementation of processes to manage and resolve grower disputes can serve to alert LPDs to potential unfairness in their comparison of growers and enable them to resolve issues in a timely manner.

Section 201.110(b)(2) would require LPDs to review their compliance with the processes set forth in paragraph (b)(1) not less than once every two years. Under this requirement, (i) the reviewer must be independent of the management chain of a particular complex and qualified to conduct the review; (ii) the review must include examination of compliance practices of the complex management, production supervision, and all agents that have discretion in contract implementation, including an analysis of how often growers must be paid outside of the tournament system in order to meet the duty of fair comparison and whether the payments given were in fact greater than or equal to what the growers would otherwise have received; and (iii) the LPD must prepare a written report with the conclusions of the review, which must be based on work papers of the review and other documentation relevant to the review.

Under this proposed rule, LPDs would have a duty to monitor compliance with the processes established under paragraph (b)(1). LPDs would be required to formalize tournament operation standards and assemble either internal or external teams of reviewers to perform compliance reviews. An LPD's failure to run a tournament that provides a fair comparison between growers may result from decisions made at the complex level rather than at corporate headquarters. The requirement for periodic compliance reviews will ensure regular supervision of local complex employees' adherence to the LPD's processes. AMS anticipates that complex management will adopt practices to comply with LPD standards with respect to tournament operation. A qualified reviewer would be a person familiar with broiler growout operations who has experience analyzing the management, operations, settlement procedures, and documentation commonly used by poultry complexes of the scale and complexity being reviewed and who is familiar with and able to apply relevant principles of internal accounting controls or a comparable internal control methodology appropriate to the industry. Under this proposal, AMS would require that LPDs create a written report providing the conclusions of the compliance review to aid AMS in enforcing the requirements of this section. Section 201.110(b)(2)'s requirement that LPDs establish documented, ongoing review of compliance processes would contribute to the operation of fair tournaments by preventing harms such as LPD manipulation of prices or delivery of subpar inputs and assignment of undesirable production practices by local complex managers.

Section 201.110(b)(3) would require LPDs to retain all written records relevant to their compliance with paragraph (b) for no less than five years from the date of record creation. Relevant records would include, for example, copies of existing processes (policies and procedures); written documentation of LPD processes used within the last five years, including documentation of inputs and flock production practices provided to growers; compliance review reports covering the last five years; board minutes discussing compliance with this section for five years from the date of the board meeting; current and expired grower contracts for five years for the date of last effectiveness of the contract; disclosures provided to growers for five years from the date of the disclosure is provided to the grower; information on payments to growers or other forms of adjustment made to ensure a fair tournament, etc. Under this proposal, AMS would require that LPDs retain these records for five years to enable the Agency 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. As noted

earlier in this section, section 401 of the P&S Act authorizes AMS to prescribe the manner and form in which LPDs keep business records. This recordkeeping requirement would enhance LPD management's ability to establish and monitor compliance, as well as AMS's ability to supervise and enforce the proposed rule.

Compliance with proposed § 201.110(b) would require LPDs to document processes for the design and operation of broiler grower ranking systems that are consistent with the duty of fair comparison. These policies and procedures are necessary to document compliance precisely because the options for delivering a fair comparison are so diverse. Policies and procedures developed pursuant to the proposed rule should describe the LPD's framework for assigning inputs and LPD-determined flock production practices, comparing grower performance, and resolving growers' concerns regarding the LPDs' implementation of its policies and procedures. Recordkeeping should enable periodic review by the LPD to examine and report on the LPD's compliance with its established written processes and, as such, with its compliance with the duty of fair comparison.

Enforcement of § 201.110 could occur in several ways. Growers could contact AMS–PSD to submit a complaint regarding an alleged violation of § 201.110. PSD would then investigate, which could lead to referral to DOJ for appropriate action or, where failure to pay is implicated, to USDA enforcement through administrative action.[40] AMS would also review LPD contracts, along with other required records from the LPD, in connection with routine compliance reviews and investigations to ensure LPD compliance. Injured individuals would also have a right to proceed directly in Federal court.

C. Questions

AMS specifically invites comments on various aspects of the proposal 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:

1. Does proposed § 201.110 effectively and appropriately benefit growers in reducing unfairness and deception? If so, why? If not, in what ways can it better do so?

2. Are the duty of fair comparison and the factors for evaluating whether the LPD reasonably designed its ranking system to deliver fair comparison appropriately designed? If not, how should they be changed?

3. Are the policies and procedures and the compliance review requirement effective and appropriate tools for documenting and enhancing compliance with the fair comparison duty? Why or why not? If not, what additional tools are needed? Is additional documentation on the inputs provided, timing of input delivery, and requirements for growing methods needed? Why or why not?

4. What means exist for LPDs, growers, and AMS to evaluate performance differences stemming from inputs and production practices? To the extent that information asymmetries continue to exist, please offer any views or suggestions on ways to address them.

5. How should the non-comparison methods of compensation be set to ensure that growers are fairly compensated outside of the tournament system, if needed? Should the proposed rule permit other non-comparison methods of compensation that are not specified in the broiler grower contract to be used as long as they are mutually agreed upon by both parties (*i.e.,* both the affected grower and the LPD)?

6. Should AMS be more specific regarding what constitutes ''reasonable efforts'' made by the LPD to resolve disputes, and if so, for which circumstances and how?

7. What specific burdens might LPDs face in complying with this proposed rule? Would this require LPDs to substantially modify their business model? What specific modifications would be required and why?

8. Is this proposal's standard for determining if a difference in inputs was material to grower performance—*i.e.,* whether it meaningfully impacts pay from the perspective of the grower—appropriately designed? Should the Agency set a threshold for change in pay (*e.g.,* a percentage) that is always material? If so, what threshold?

9. Are there simpler means to achieve the ends proposed in § 201.110? For example, would a limitation on the proportion of comparison-based compensation to total compensation—like comparison-based compensation limited to 10 percent of total compensation—be sufficient to provide flexibility to LPDs and protect growers from variability in inputs and flock production practices?

10. Should AMS's final rule expressly clarify that a pattern or practice (including, but not limited to, intentional, arbitrary, or punitive distribution) of unequal, dissimilar, or inappropriate inputs or flock production practices would be an unfair practice under the Act under any payment system that relies upon grower performance relative to inputs or production practices provided by the LPD (such as feed efficiency) irrespective of whether the payment system was a tournament? In particular:

a. Please explain why or why not or suggest alternative approaches to address particular concerns with non-tournament pay systems that rely on grower performance.

b. Would some or all of the criteria with respect to the duty and the requirement for written processes set forth in § 201.110 be useful to address concerns with these non-tournament performance pay systems? If so, please explain under what circumstances and how.

c. Are there specific circumstances where AMS should articulate additional protection for growers against punitive actions by LPDs through the differential provision of inputs or other processes?

11. Should AMS make the effective date for the provisions of this proposed rule 180 days following publication of the final rule in the **Federal Register**? If you recommend shorter or longer for some or all of the provisions, please explain why.

V. Broiler Grower Capital Improvement Disclosure Document (Proposed § 201.112)

LPDs often request or require that growers make costly additional capital investments. These ACIs may benefit LPDs by enabling them to profit from growers' investment in more efficient technology or by otherwise enabling LPDs to meet changing consumer demand for different products (for example, because growers have invested in producing antibiotic-free chickens). ACIs may also benefit growers by enabling them to earn more in some cases.

At the same time, ACIs can be problematic. The LPD requesting an ACI may be exploiting its bargaining leverage and forcing the grower to bear unreasonable risk. The terms of the ACI may also be complicated or difficult to evaluate. Because of the tournament system, the grower's benefits may dissipate over time as other growers

[40] Additional information on reporting violations of the P&S Act can be found here: *https://www.ams.usda.gov/services/enforcement/psd/reporting-violations* (last accessed 11/13/2023).

adopt similar ACIs. In such cases, the grower may face increased debt with only a small increase in revenue. Growers, however, are often not in a financial position to avoid making an ACI. Generally, growers have already incurred debt to enter into a broiler growing arrangement. They need to repay their existing broiler-production related debts. If their LPD threatens them with termination or reduced compensation, growers may have no choice but to make the investment. Further, growers have limited options to switch to alternative LPDs, and the cost of switching LPDs can be high. Undertaking an ACI increases growers' debt, which can further increase growers' dependence on their relationship with their LPD. These problems were identified in a USDA rule published in 2011 (which added § 201.216 governing USDA's evaluation of unfairness in ACIs (76 FR 76874; December 9, 2011)) and were among the concerns raised by growers in the ANPR for this proposed rule.

Even when a grower has sufficient bargaining leverage, the LPD may not provide sufficient information for the grower to assess the risk and reward of undertaking the ACI. Many growers undertake ACIs without the opportunity to fully understand the ACI's purpose, design, risks, and impacts on their financial well-being. Information asymmetry impairs growers' ability to negotiate, effectively exercise independent decision-making to reject an ACI, and, more broadly, manage their farming operation. When information asymmetries prevent growers from evaluating whether they are able to recoup their investment or whether they can engage in other farming practices that could achieve the goals of the ACI, growers cannot effectively protect their financial interests or freely exercise decision-making with respect to their farming operation. Growers and AMS may also be unable to identify circumstances where LPDs are seeking to compete through ACI practices that shift or hide costs to growers, which subverts the competitive process.

AMS has identified as deceptive those LPD contracting practices that fail to disclose key information about ACIs. AMS emphasizes that disclosure under proposed § 201.112 is not, and is not intended to be, a remedy to unfairness in and of itself; rather, disclosure provides AMS and growers with information necessary to enforce their rights under existing § 201.216, and the P&S Act more broadly, when terms are unfair.

This section describes the problem in depth and further discusses AMS's proposed regulation to require disclosures to facilitate AMS's and growers' ability to better identify and enforce growers' rights against unfair ACIs under the existing ACI criteria in § 201.216. Lastly, this section provides questions for commenters to consider regarding the proposed regulation, including whether additional substantive limits on additional capital investments are needed in addition to the proposed disclosure.

A. Problems Related to ACIs in Broiler Contracts

ACIs in poultry growing facilities can improve growout productivity, satisfy customer demands related to broiler production (*e.g.,* animal welfare), qualify an operation for USDA's Process Verified Program,[41] and help growers conform to other product or process attributes demanded by LPDs. ACI programs, however, impose costs and risks borne largely, and often solely, by growers. Due to asset specificity and hold-up problems (discussed in section II, ''Industry Background and Need for the Rulemaking'') many growers are uncomfortable taking on additional financial risk—especially absent appropriate compensation—but for all practical purposes are compelled to when LPDs unilaterally impose ACI costs and risks.

These costs and risks are particularly problematic when growers lack relevant information about the purpose, risks, and returns of the ACI. As a result, growers may be unable to protect themselves against insufficient compensation or other unfair practices including by, for example, attempting to switch LPDs. The ability to make such a switch is extremely limited because of LPD-specific housing specifications. Even when the ACI is presented as voluntary, it can be as coercive as a mandatory ACI if the grower cannot evaluate risks and rewards or if the grower has few or no options to switch to an alternative LPD. Indeed, the LPD often has substantial bargaining power: switching may be difficult or costly, alternative LPDs may not need additional growers, differing requirements may increase the cost of switching, and preexisting debt that has not been fully recouped (owing to mismatches between the duration of growers' contracts and the duration of their borrowing terms) can aggravate costs and risks to growers. Given these challenges, growers are commonly unable to negotiate with LPDs over ACIs or decline to make a particular investment and thus limit their risk.

Assuming a well-designed ACI that results in improved efficiency, failing to implement an ACI when other growers do will likely result in inherently weaker performance under the tournament. An LPD may offer an incentive payment (commonly added to base pay rates) to a grower to make a desired ACI, but growers have limited, if any, ability to negotiate those incentive payments. LPDs continually benefit from ACIs to the extent they improve production efficiency for growers or enable growers to match consumer preferences by switching to specific production processes, such as limited antibiotic usage. But any relative performance advantage gained by early adopters of an ACI will fade as other growers make the investment and gain the same productivity advantages. The incentive payments thus may not sufficiently compensate for the additional risk and cost of the debt or enable growers to fully share in the cost-savings or improvements to the product.

Further, when LPDs do not provide important information about the nature of the ACI growers cannot determine the extent to which incentive payments could be expected to compensate them for the costs of these investments. Nor can they evaluate the risks relating to the structure of those incentives—including whether the opportunity for recoupment is undermined by other growers adopting the same technology.

Without sufficient, simple, and clear disclosures, growers cannot assess the benefits or risks of making the investment. Growers cannot determine whether a program presented as voluntary is, for all practical purposes, mandatory. AMS notes that LPDs may not retaliate against a grower's refusal to engage in ACI programs—for example by the intentional delivery of subpar or inappropriate inputs or production practices—under the P&S Act.

Past grower concerns and comments in response to the ANPR add further context from both sides of this issue. The 1999 FLAG survey found that 33 percent of broiler growers believed that making improvements to housing as recommended by their LPD did not make them better off financially. As the cost of poultry growing infrastructure has increased over the past two decades, the financial risk of ACIs appears to be increasing. Multiple ANPR commenters indicated that contracts are not long enough to ensure return on costly infrastructure investments. One State farm bureau, for example, commented that upgrades of equipment and housing typically benefit the LPD at the cost of

[41] *See https://www.ams.usda.gov/services/auditing/process-verified-programs.*

the grower. Another State farm bureau commented that LPDs should provide documentation citing relevant research to justify mandatory modification of buildings and equipment and that LPDs should offer contracts for a sufficient length of time to recoup the cost of poultry growers' investment. Grower advocate organizations stated that some LPDs require poultry growers to make unnecessary upgrades and further urged AMS to consider the practice of demanding large capital investments without commensurate assurance of income from those capital investments to be an unfair and deceptive practice.

Organizations representing LPDs countered that existing protections and regulations sufficiently address this issue. A commenter on the ANPR cited the list of criteria in 9 CFR 201.216, ''Additional capital investments criteria,'' that the Agency may use in considering whether capital investment requirements violate the Act. This commenter also underscored the prevalence of existing industry practices that address this issue, such as the practice of LPDs offering compensation through contract amendments to growers when they make equipment changes during the term of that contract. The commenter also stated that existing causes of action for breach of contract protect growers in cases where an LPD refuses to honor a signed contract by cancelling or modifying it.

The Agency agrees with the commenter's perspective that the existing regulation in § 201.216 may allow the Agency to partially mitigate the effects of these problems. The regulation sets forth criteria for whether ACIs would be an unfair practice or other violation of the Act. These criteria include whether the grower can decide against the ACIs; whether the ACIs were a result of coercion, retaliation, or threats by the LPD; and whether the ACIs can result in reasonable recoupment, or adequate compensation for the ACIs, among other non-exhaustive criteria. However, AMS has found that the presence of the criteria alone is insufficient to effectively address problems stemming from ACIs. AMS and growers lack the data necessary to analyze whether an ACI violates the criteria. Moreover, once an investment is made and a grower incurs debt, it can be nearly impossible to unwind. Technical specifications can make switching costly (where even possible), and alternative uses at similar compensation rates are nearly nonexistent.

A key component of the criteria, expectation of recoupment (§ 201.216(f)), is impossible to assess in the absence of reliable and accurate projections of revenue and earnings and is best evidenced by data possessed by the LPD who is asking the grower to make the ACI. Insufficient information about ACIs also, for example, impacts the criteria seeking to preserve the grower's discretion to decide against an ACI (§ 201.216(a)), in that a grower is unable to effectively analyze the extent to which without the ACI they would still be able to compete against other growers. AMS has encountered these issues in investigations regarding ACI programs.

As the practice of LPDs requiring or seeking ACIs in tournament system growing arrangements has become standard practice, Congress enacted section 208 of the Act to inform unsuspecting growers that such potential investments may be required.[42] The need for such a disclosure emphasizes the prevalence of the practice and its perceived unavoidability owing to growers' lack of reasonable alternatives and the pervasiveness of ACIs across the industry. A grower may not have meaningful opportunity to choose whether to make an ACI if a grower only has one or two LPDs to choose between, faces obstacles switching LPDs, is denied the key information needed to understand the risks and returns of the ACI, and/or fears retaliation from an LPD if it refuses an ACI.

In carefully considering this issue, AMS is concerned that some growers are unable to negotiate or refuse contracts to prevent the imposition of ACIs and that the imposition of some particular ACIs are unfair under a § 201.216 analysis. When LPDs can impose ACIs on unfair terms, they expose growers to financial risk that growers cannot mitigate during the contracting process. While the statutory ACI disclosure tells growers there is a potential risk of ACIs, the majority of contracts contain no information relating to when ACIs may be required, nor the costs of any such ACI, nor what, if any, limits there are on an LPD's ability to unilaterally impose ACIs that do not materially improve production efficiency or meet consumer demands.

AMS is also concerned that if growers are precluded from negotiating on ACIs, they also lack the ability to demand increased transparency related to ACI programs. Transparency will not cure unfairness, but it may help growers and AMS assess the risks and benefits of an ACI. For example, growers have asserted that some ACIs have been experimental in nature, which may implicate unfairness concerns in § 201.216. Compliance with these disclosures would also create the records necessary to analyze the § 201.216 criteria.

To better enable AMS and growers to protect against unfairness and deception, LPDs must disclose and record more information regarding the ACIs they request from broiler growers. The disclosures must occur before growers take on the financial burden and risks of the ACI. The provision of such information is not, in and of itself, the cure for unfairness, but rather a key tool for AMS and growers to halt abusive practices by arming them with the ability to identify those challenges sooner.

Growers bear all, or nearly all, of the costs and risks of ACIs. LPDs do not own the production capital and therefore do not share in these risks, although they frequently dictate grower investments. The system of ownership of poultry production capital provides no direct incentive for LPDs to carefully consider the extent to which the ACI will improve individual grower production efficiency, whether the ACI will result in financial benefit to growers, and whether the cost of the ACI is proportionate to any such benefits. Even when LPDs share in some of the costs by providing ACI incentive payments, the payments may not cover all the costs or risks that the grower bears. These are problems this proposed rule alone cannot and does not purport to solve; however, the disclosure required in this proposed rule will provide data points for analysis under § 201.216 that have been lacking based on AMS's experience.

When considering new investment, growers seek to maximize net productivity benefits subject to cost. However, when LPDs do not bear investment cost, they have incentives only to maximize their benefits and encourage growers to over-invest in poultry-specific production capital to the point of negative returns for the grower. LPDs' use of incentive payments to compensate growers for ACIs can help to align investment incentives. For these arrangements to work properly, however, growers must clearly understand the parameters of the investment and its future revenue potential to evaluate potentially unfair ACIs under § 201.216.

LPDs possess material information that is critical for growers and for the recordkeeping of ACI transactions.

[42] Section 208 requires all poultry production contracts to include a ''required disclosure'' that ''additional large capital investments may be required of the poultry grower or swine production contract grower during the term of the poultry growing arrangement or swine production contract.'' 7 U.S.C. 197a(b)(1).

When LPDs withhold important information about ACI programs, they prevent growers from making fully informed decisions, understanding the extent of over-investment, and assessing the fairness of the transaction. LPDs can exploit this information asymmetry to impede growers' ability to evaluate contracts and manage farms effectively; in more competitive markets, LPDs can impede growers' ability to compare contracts among LPDs, bargain efficiently with competing LPDs, and enforce their rights under the Act. This type of deceptive conduct results in misallocation of grower resources, enhanced LPD bargaining power, exacerbation of hold-up problems, significant financial risk to growers, and reduced competition among LPDs for grower services. An increase in grower investment also leads to increased grower dependency on LPDs to generate returns on that investment through poultry contracting. Additionally, in some cases the presence of few or no other poultry contracting options in a grower region further focuses dependence on a single LPD. The misalignment of incentives coupled with growers' inability to bargain creates deceptive and unfair conditions. These practices may amount to unfair and deceptive trade practices under an analysis informed by Packers and Stockyards Act case law and States' unfair practice laws, as well as the FTC approach to unfair practices and unfair methods of competition.

Clear disclosure of ACI parameters will enhance growers' ability to enforce their rights relating to unfair practices under § 201.216 (such as recoupment and discretion to refuse to make an ACI), as well as other provisions of the P&S Act and regulations. Disclosure alone is not a remedy for an ACI that is unfair if, for example, an LPD with the advantage of hold-up power (*e.g.,* there are no alternative LPDs for growers to contract with) requires an ACI that is likely to have unreasonably low or negative financial returns for growers who in good faith have invested in a long-term relationship with that LPD. Nevertheless, the disclosures required by proposed § 201.112 will create a record that will facilitate the Agency's ability to enforce the Act under § 201.216.

In section V.C. below, AMS asks commenters questions regarding proposed § 201.112 to determine whether the proposed disclosure requirement will help growers effectuate their rights under § 201.216. In that section, we are also seeking comment on whether to strengthen the substantive protections for reasonable capital investments and adopt a requirement preventing an LPD from mandating an ACI unless the cost of the required ACI can reasonably be expected to be recouped by the grower or another similar requirement to ensure that ACIs are reasonable for growers.

B. Summary of Proposed § 201.112

AMS is proposing to add new § 201.112, ''Broiler grower Capital Improvement Disclosure Document,'' which would require that LPDs use a Capital Improvement Disclosure Document (Disclosure Document). Paragraph (a) of the new section states that when an LPD requests that a grower make an ACI, the LPD must provide the grower with a Disclosure Document. Paragraph (b) describes the disclosures that the LPD would be required to include in the Disclosure Document. These disclosures include the purpose of the ACI and a summary of relevant research or other supporting material that the LPD has relied upon in justifying the ACI (paragraph (b)(1)). LPDs must also disclose all relevant financial incentives and compensation for the grower associated with the ACI (paragraph (b)(2)), along with all relevant construction schedules related to the request for the ACI (paragraph (b)(3). LPDs must also identify the housing specifications associated with the ACI (paragraph (b)(4)) and any required or approved manufacturers or vendors (paragraph (b)(5)). The proposed rule would also require LPDs to provide an analysis—including any assumptions, risks, or uncertainties—of projected returns the grower can expect related to the ACI sufficient to allow the grower to make their own projections (paragraph (b)(6)). Lastly, the proposed rule (in paragraph (b)(7)) would require LPDs to provide a specific statement in the Disclosure Document. The statement indicates that USDA has not verified the information contained in the Disclosure Document and that if the Disclosure Document contains any false or misleading statement or a material omission, a violation of Federal and/or State law may have occurred which may de determined to be unlawful under the P&S Act. The statement also includes contact information for use in filing a complaint with PSD and a web address to find additional information on rights and responsibilities under the Act. The specific provisions of the proposed rule are discussed in more detail below.

Proposed § 201.112(a) would require that LPDs assemble a Disclosure Document and provide the document to growers before requesting an ACI. This disclosure provision would require LPDs to make explicit representations about the nature of required ACIs. Growers would review the disclosure information provided by LPDs when making the further investment decisions contemplated by the ACI. This disclosure would not cure any unfairness in the ACI itself, but the requirement would alleviate some asymmetric information problems and better enable growers and agencies to identify problematic practices relating to ACIs including to assess and apply the criteria in § 201.216.

Information provided in the Disclosure Document would then help growers protect themselves at an earlier stage—before the investment—from unfair practices, by enabling them to report to AMS potentially unfair ACI practices or bring their own action. Improved documentation will also enable AMS to take earlier and more effective action against problematic ACI practices, owing to past insufficiency in obtaining a timely and clear understanding of the full range of costs, risks, and/or benefits relating to the ACI. Transparency will also enable some growers, where sufficient choice exists, to make better additional investment decisions. The Disclosure Document would be required to clearly state the intended and expected outcome of LPD ACI requirements. As such, LPDs would demonstrate the extent and likelihood that growers would benefit from or be put at risk by the ACI.

The requirement to provide the disclosure would be triggered when the LPD requests the grower make an ACI. At a minimum, this would occur when the LPD provides any new or modified housing specifications to the grower. AMS has chosen to utilize this timing as the trigger because capital investments generally take months, not days, to plan, finance, and operationalize, affording the grower sufficient time during the steps that advance that process forward (such as engaging in planning and borrowing) to be able to act on the information provided in the Disclosure Document, including contacting AMS to report concerns. Accordingly, providing the grower with the Disclosure Document no later than when the LPD provides any new or modified housing specifications to the grower, will provide the grower with ample opportunity and flexibility for review to effectuate their rights. Additionally, an LPD may not restrict growers from sharing the Disclosure Documents with legal counsel, accountants, family, business associates, and financial advisors or lenders.

Proposed § 201.112(b) lists the items the Disclosure Document is required to disclose. These disclosures must be

prominently presented in a clear, concise, and understandable manner. Paragraph (b)(1) would require that the Disclosure Document provide the purpose of the ACI for both the LPD and the grower and a summary of any relevant research or other supporting material linking the specific infrastructure modification/housing specification with that purpose. Growers, and AMS, face significant obstacles in assessing the potential costs, benefits, and risks relating to any ACI, and therefore are hamstrung in their ability to take action against problematic ACI practices. LPDs almost always have superior information regarding the outcomes of and risks around the contemplated ACI. LPDs commonly research and design ACIs and usually have a plan or intended outcomes with respect to their request for the adoption of an ACI. Growers have limited to no access to that information, yet they are asked to expend hundreds of thousands or even millions of dollars to implement ACIs.

As part of any assessment of risks or benefits relating to an ACI, growers need to understand the intended purpose of the ACI and have access to any relevant research or other supporting material regarding that ACI. Over the years and in response to the ANPR, growers have raised concerns that ACIs are often experimental, that it is difficult to determine whether ACIs are necessary, and whether ACIs would be profitable. Providing the information proposed in this paragraph would assist growers, and in turn AMS, in evaluating whether a requested or required ACI raises those concerns or other potentially unfair practices. An ACI for which the LPD does not clearly provide this information is more likely to be deceptive because growers are unable to evaluate the real purposes and material risks relating to the ACI. For example, without disclosures indicating that an ACI was designed to improve growout productivity, growers would be unable to evaluate the real implication of the structures and the incentives offered. Similarly, without disclosures indicating that an ACI was designed for animal welfare, compliance with a USDA Process Verified Program, or other similar reasons, growers would be unable to assess the risks and incentives for them to implement the ACI.

Under this proposal, LPD failure to adequately disclose this information would be deceptive and harmful to growers by imposing undue financial risk and increasing the likelihood of a poor financial outcome on the investment. Omissions of this information would prevent growers from making an informed business decision. This proposal would also help AMS and growers identify unfair practices because it would require LPDs to provide increased transparency regarding ACIs. The provision of transparency under this proposed rule is not itself a cure for the unfair practices, relief for which would be sought through separate enforcement action under § 201.216 and otherwise under the P&S Act. AMS believes that the provision of this information will assist AMS and growers in their efforts to halt unfair practices in their incipiency and potentially deter some violations.

Under proposed § 201.112(b)(2) through (5), LPDs would be required to provide clear ACI schedules and specifications to growers and state any compensation promised to growers for the ACI. Growers must plan loan repayment schedules based on expected LPD payments. Incentive payments often constitute an important component of grower repayment capacity. Paragraph (b)(2) requires the disclosure of such payments prior to the investment. LPD construction schedules, housing specifications, and approved manufacturers or vendors are critical components to any ACI. The provision of these basic details regarding the ACI would enable a grower to understand the workings, process, and design characteristics of the ACI. They thus would enable a grower to identify certain risks relating to the ACI and potentially unfair or otherwise impermissible ACI practices under § 201.116, for example, if favoritism (*e.g.,* to relatives of LPD employees or to certain growers) were present in the vendors chosen. Additionally, failure to provide such information is likely to be deceptive. The information is material to any contracting and investment decision, and the absence of such information is likely to mislead the grower. Therefore, AMS would require those disclosures under proposed § 201.112(b)(3) through (b)(5). LPDs harm growers when they refuse to pay promised additional compensation, discontinue a contract, or require further investment by growers to align with LPD expectations that growers fail to meet because of LPDs' initial nondisclosure.

Under § 201.112(b)(2) and (3), LPDs would be required to disclose all relevant financial incentives and compensation associated with an ACI and establish a schedule of expected grower construction for new ACIs. Financial incentives would include all incentives relating to the ACI, including explicit incentive payment additions to base pay rates or performance compensation amounts, as well as what assumptions and risks undergird or may put at risk those incentives. Clearly disclosing financial incentives would assist the grower in assessing the relative risks of non-recoupment, as the reliability of those incentives may vary based on the duration of the contract and whether other growers are likely to incorporate the ACI technology in a way that would make recoupment through performance pay less reliable. Clearly disclosing expected grower construction schedules and other repayment schedules also would assist the grower in assessing incentives and risks relating to borrowing, construction, and payment timing. Similarly, the requirement under § 201.112(b)(4) and (5) for LPDs to clearly disclose their expectations regarding housing specifications and required or approved manufacturers or vendors will position growers to better analyze the business risk in undertaking an ACI.

By enabling growers to clearly understand each component of the ACI being requested by the LPD, the disclosures proposed in § 201.112(b)(2) through (5) would address key information asymmetries that exist between the LPD and the grower with respect to LPD's purposes, bases, and expectations for an ACI. Growers will be better positioned to evaluate the true costs and risks from the ACI, as well as the operational implications for their farming enterprise.

The provision of this information is essential for AMS and for growers to identify and take action against unfair practices as contemplated under § 201.216 and otherwise. Failure to provide this information is deception because growers are asked to make investment and contracting decisions without information that is material to those decisions; the lack of this information is likely to mislead growers. Section 201.112(b)(6) would require that LPDs provide a financial analysis—including any assumptions, risks, uncertainties—that can be relied upon by growers facing ACI decisions. This provision is designed to enable the grower to evaluate the reliability of the financial returns that the grower could receive over the duration of the contract. Such information would include, where relevant, assumptions regarding the expected likelihood of whether other growers will adopt the ACI and the impacts on the reliability of returns in relation to the incentives. The financial analysis would also be expected to clearly describe the risks relating to the duration of the contract. For example, the LPD may need to take into account whether and how the LPD terminated

any growers without cause during the last 5 years as potentially informing those risks. That analysis may also describe the extent of any compensation provided to terminated growers (*e.g.,* if the remaining X number of years a contract was paid off or if any assistance was provided to reduce or pay off the remaining X number of years of a loan), and whether the LPD provided any risk-sharing mechanisms to assist it and the grower in managing changing consumer demand and preferences for poultry.

LPDs possess information about the expected returns on ACIs that producers do not have and cannot obtain independently. Therefore, LPDs exert substantial control over growers' ability to evaluate the economic and financial feasibility of an ACI while possessing the power to impose all ACI costs on growers. Growers lack the bargaining power to demand the information they need to make decisions for their financial benefit. In addition to being deceptive, inability to access this information frustrates growers' and AMS's ability to identify and therefore halt unfair practices in a timely manner. AMS has found transaction records around the financial incentives and the financial analysis insufficient to evaluate the compliance of ACIs under the Act generally.

The proposed rule would require LPDs to prepare analyses of expected grower returns for ACIs using information at their disposal about investment purpose, expected benefit, and grower performance. LPDs would provide this information and analysis to assist growers in evaluating the ACI request or requirement and to assist growers and AMS in evaluating whether LPDs have complied with the requirements of § 201.216. Growers can then review and consider this information when deciding whether to make proposed new investments and whether to pursue their rights under § 201.216 or other legal protections.

As noted above, the disclosures in proposed § 201.112 would significantly assist AMS in analyzing and applying the criteria under § 201.216. For example, an ACI with a speculative purpose or one not grounded in research and reasonable estimates—a concern that growers have reported to AMS regarding ACIs—would be more apparent if AMS and growers were able to review an LPD's representations about the purpose of an ACI, the research associated with it, and an LPD's expectation of costs, construction schedules, and approved vendors for the ACI. Such information would benefit growers in engaging in their own analysis of potential unfairness and would not otherwise be accessible to growers since the purpose and bases of an ACI are entirely under the control of the LPD. It has also proven difficult for AMS to collect this information in investigations, thus necessitating the proposed disclosures to create records of these transactions.

Additionally, these disclosures, in particular the disclosures regarding financial incentives and projected returns, would be highly valuable to AMS and growers in identifying ACI instances or programs that raise concerns relating to whether the grower, as a practical matter, could refuse to participate in an ACI; whether the ACI was a result of coercion, retaliation, or threats by the LPD; and whether the grower can reasonably recoup the investment. For example, and as discussed above, whether a grower has a reasonable opportunity to recoup the cost of the investment depends on the financial incentives, the projected returns, and the contract duration of the proposed ACI. Similarly, the grower should understand whether, and to what degree, relative performance in the tournament system determines whether the grower will recoup the investment required by the ACI. If the fixed portion of compensation is too low to cover the costs of the ACI, recoupment would be unlikely as other growers adopted similar improvements making the first grower's initially above-average performance simply average over time. Under these circumstances, the LPD (and not the growers) would obtain most or all of the benefit of efficiency gains from grower investments.

This dynamic is an additional reason why a limitation on comparison-based performance bonuses may be necessary. As discussed above under proposed § 201.106, after a referral from AMS to DOJ on a potential P&S Act violation, DOJ in cooperation with USDA reached a settlement in 2022 which limited the proportion of comparison-based performance compensation to 25% of base-plus-comparison total compensation (*i.e.,* compensation from the guaranteed base pay rate plus compensation from comparison-based bonuses). Other forms of performance pay were not affected, such as non-comparison-based bonuses that rewarded or incentivized performance, including to invest in more efficient technology.[43] As noted above, based on the facts and circumstances AMS is engaged in a case-by-case enforcement strategy with respect to whether performance bonuses in the tournament system can be unfair, and the existence of an ACI may affect AMS's assessment—though we have requested information under the questions to proposed § 201.106 to assess whether alternative strategies are more apt. In sum, conducting the analysis necessary to determine compliance under the Act is challenging today—especially for the grower, but also for AMS. AMS has noted limitations in the records available to conduct those analyses, especially on the timely basis necessary to protect growers being asked to enter into potentially illegal ACIs or otherwise difficult contracting decisions.

Section 201.112(b)(7) would require that LPDs include in the Disclosure Document a statement, the text of which is provided in paragraph (b)(7). The statement includes the disclosure that the Disclosure Document has not been reviewed by USDA, and that false and misleading statements or material omissions may be violations of State and/or Federal laws. The statement also indicates that violations of Federal and State laws may be determined to be unfair, unjustly discriminatory, or deceptive and unlawful under the P&S Act, as amended. AMS does not intend for the proposed Disclosure Document to be a means by which LPDs may waive any unfairness provisions in law or regulation. AMS maintains that a determination of unfairness is dependent on a facts and circumstances analysis of each case. The required statement also includes Packers and Stockyard Division contact information that growers can use to report violations and other concerns. Lastly, the statement provides website contact information for those seeking additional information on rights and responsibilities under the P&S Act.

Compliance with § 201.112 would require LPDs to include the information and topics described in § 201.112(b)(1) through (7) in the Disclosure Document and provide that document to growers when requesting an ACI.

Enforcement could occur in several ways. Growers could contact AMS–PSD to submit a complaint regarding an alleged violation of § 201.112. PSD would investigate, which could lead to referral to DOJ for appropriate action or, where failure to pay is implicated, USDA enforcement through administrative action.[44] As necessary

[43] Wayne-Sanderson DOJ Consent Decree, June 25, 2022, available at *https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decrees-end-long-running-conspiracy.*

[44] Additional information on reporting violations of the P&S Act can be found here: *https://www.ams.usda.gov/services/enforcement/psd/reporting-violations* (last accessed 11/13/2023).

for compliance enforcement or during investigations, AMS would review Disclosure Documents to ensure completeness. Injured individuals would also have a right to proceed in Federal court.

C. Questions

AMS specifically invites comments on various aspects of the proposal 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:

1. Do the Capital Improvement Disclosure Document provisions of the proposed rule assist growers in identifying and appropriately addressing concerns that growers have expressed relating to ACIs? If so, why? If not, what ways can it better do so?

2. Are there specific ACI-related programs or other related conduct that LPDs engage in that are not solved by the proposed disclosures? If so, identify the conduct and whether additional disclosures, presumptions, or prohibitions would effectively address the harms from the conduct. Please explain both the problematic programs/conduct and any harms in detail.

3. What considerations, if any, should AMS take into account with respect to the timing, delivery, or readability with respect to the Disclosure Document? For example, should AMS include a provision requiring that LPDs, at the time they deliver the Disclosure Document to the grower, make reasonable efforts to assist the grower in translating the Disclosure Document and to ensure that growers are aware of their right to request such translation assistance?

4. Should proposed § 201.112(b)(5), which requires LPDs to disclose required or approved manufacturers or vendors, also require the disclosure of any material financial benefits that the LPD, or any officer, director, employee or family member of any such person, receives from the use of the required or approved vendor? If so, please explain why for each party recommended to be covered, including examples and explanation where available.

5. Proposed § 201.112(b)(6) does not include a specific format for reporting projected returns. Should LPDs be required to follow a specific format for the analysis required in § 201.112(b)(6)? If so, what individual components would be most usual to growers contemplating ACIs?

6. What other disclosures should be required of LPDs when they request or require broiler growers to make ACIs, and why? In particular, are there other disclosures that could enhance the Secretary's consideration of criteria in current regulations in § 201.216?

7. What specific burdens or obstacles might LPDs face in complying with this proposed rule? Would this require LPDs to substantially modify their business model? What specific modifications would be required and why?

8. Should disclosures or prohibitions be scaled based on the size of the investment? If so, how and based on what scaling? If so, please explain the reasons and implications for LPDs and growers?

9. What disclosures, forms, presumptions, or prohibitions could AMS require or incentivize of an LPD to align the length of any contract following an ACI with any debt that the grower undertook as part of the ACI? In particular:

a. Should AMS establish a categorical presumption of unfairness when the duration of the contract is shorter than the duration of the loan or other similar requirement?

b. What other requirements or presumptions might be needed or useful to design or enforce such a presumption? Should these relate, for example, to a grower's assignment of payments from the LPD, monitoring practices by the LPD of the grower's farm financial circumstances, the timing of ACI programs with respect to the existing loans that grower holds, or the 5-year turnover rate of growers for the LPD?

c. To what extent might such a presumption give rise to disparate treatment between growers based on the particular financial circumstances of the farm, and if presented, how much those circumstances be addressed?

d. Please provide as much specificity as possible in your responses regarding why or why not to the above items, including examples and data if possible.

10. Should AMS amend § 201.216 to revise or include additional criteria that may be considered as categorial presumptions of unfairness or otherwise as violations of the Act? Please provide as much specificity as possible in your responses regarding why or why not, including examples and data if possible. In particular:

a. Should AMS revise or include as an additional requirement that ''A live poultry dealer shall not mandate an additional capital investment unless the cost of the required additional capital investment can reasonably be expected to be recouped by the poultry grower''?

b. With respect to recoupment, how should AMS evaluate factors that go into an analysis of ''reasonably be expected,'' such as: the costs of investments at a local complex; any variation between growers; the duration of likely borrowing by growers: the contractual terms including guaranteed and not guaranteed compensation rates and flock placements, etc.; and other factors including the extent to which they are known to the LPD?

c. Should AMS set a standard or presumption for contracts in ACI circumstances such that no less than 85, 90, or 100 percent of the projected recoupment must come from compensation methods that are not based on performance? If so, at which level and why?

11. Should AMS make the effective date for the provisions of this proposed rule 180 days following publication of the final rule in the **Federal Register**? If you recommend shorter or longer for some or all of the provisions, please explain why.

VI. Severability (Proposed § 201.290)

AMS is proposing to add new § 201.290, ''Severability,'' to subpart N of part 201 to ensure that if any provision of subpart N or any component of any provision is declared invalid, or the applicability thereof to any person or circumstances is held invalid, it is AMS's intention that the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby with the remaining provision, or component of any provision, to continue in effect. Such a provision is typical in AMS regulations that cover several different topics and is included here as a matter of housekeeping.

This rulemaking proposes to add three new sections to subpart N to address different harms common in the broiler production industry: lack of payment transparency in boiler growing arrangements, unfairness in tournament operations, and lack of disclosure from LPDs regarding ACIs. Each of these provisions can operate independently in the absence of the others. Conduct that violates one provision is not dependent on protections put in place by other sections. For example, if an LPD discounts the rate of compensation provided in a broiler grower arrangement in violation of proposed § 201.106, the Agency would remain able to enforce this provision even if the provision requiring the fair operation of

broiler growing ranking systems (§ 201.110) were struck down. These are not inextricably connected regulations: § 201.110 focuses on establishing a fair comparison among growers in a tournament, while the focus of § 201.106 is prohibiting an LPD from reducing a grower's rate of pay from that disclosed in the contract. As another example, were the proposed provision regarding ACIs (proposed § 201.112) struck, AMS would still retain criteria under § 201.216 to evaluate whether required an ACI constitutes a violation of the P&S Act.

AMS intends for the proposed severability provision to operate to the fullest extent possible. For example, under § 201.110(b)(1), ''Policies and procedures,'' if the comparison flexibility requirement in paragraph (b)(1)(iii) is severed, this does not necessarily negate the benefits or make unenforceable the other processes requirements contained in paragraphs (b)(1)(i) (inputs under LPD control), (ii) (flock production practices under LPD control), and (iv) (communication and cooperation). In other words, if the benefits of a section in subpart N remain intact without the unenforceable provision, AMS's intent is to retain the enforceable provisions of the section. AMS notes that this discussion is illustrative and not exhaustive.

VII. Regulatory Notices and Analyses

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), AMS has requested OMB approval of new information collection and recordkeeping requirements related to this proposed rule. AMS invites comments on this new information collection. All comments received on this information collection will be summarized and included in the final request for OMB approval. Below is summary information on the burdens of these new information collection and recordkeeping requirements. Additional detail can be found in the Regulatory Impact Analysis (RIA). Comments on this section or the details in the RIA will be considered in the final rule analysis.

Title: Poultry Growing Tournament Systems: Fairness and Related Concerns.

OMB Number: 0581–NEW.

Expiration Date of Approval: This is a NEW collection.

Type of Request: Approval of a New Information Collection.

Abstract: The information collection requirements in this request are essential to improve transparency and forestall deception and unfairness in the use of broiler growing arrangements, in accordance with the purposes of the Packers and Stockyards Act, 1921. Proposed revisions to the Packers and Stockyards regulations would require that live poultry dealers (LPDs) establish, maintain, and review written documentation regarding their processes for the design and operation of a poultry grower ranking system that is consistent with the LPD duty of fair comparison, and provide information disclosures to growers when requesting that growers make additional capital investments. Under the proposal, LPDs would develop and document policies and procedures to meet a duty of fair grower comparison in tournaments and prepare written reports based on internal reviews of compliance conducted not less than once every two years. All LPD documentation will be provided to USDA on request, maintained for no less than five years, and used for ongoing internal compliance activities. The proposed rulemaking would also require that LPDs provide a Capital Improvement Disclosure Document to growers at times when LPDs request that growers make additional capital investments.

The estimates provided below apply only to LPDs that would be required to provide the information to growers or create documentation for internal use and review. Poultry growers would not be required to provide information but would be able to use the information provided by LPDs to analyze additional capital investment decisions.

Operation of Broiler Grower Ranking Systems Under § 201.110(b)(1)(i) Through (iii) and (b)(2)

Estimate of Burden: Public burden for this collection of information is estimated to average 301.89 hours per response (first year), 220.66 hours per year thereafter.

Respondents: Live poultry dealers.

Estimated Number of Respondents: 42.

Estimated Number of Responses: 188.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 56,756 hours in the first year, and 41,484 hours per year thereafter.

Communication and Cooperation Under § 201.110(b)(1)(iv)

Estimate of Burden: Public burden for this collection of information is estimated to average 45.24 hours per response (first year), 16.00 hours per year thereafter.

Respondents: Live poultry dealers.

Estimated Number of Respondents: 42.

Estimated Number of Responses: 42.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,900 hours in the first year, and 672 hours per year thereafter.

Broiler Grower Capital Improvement Disclosure Document Under § 201.112

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.53 hours per response (first year), 0.53 hours per year thereafter.

Respondents: Live poultry dealers.

Estimated Number of Respondents: 42.

Estimated Number of Responses: 990.

Estimated Number of Responses per Respondent: 24.

Estimated Total Annual Burden on Respondents: 526 hours in the first year, and 526 hours per year thereafter.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

AMS estimates that 42 LPDs would each establish, maintain, and review documentation of written processes designed to operate a poultry grower ranking system that is consistent with a duty of fair comparison as required under proposed § 201.110.[45] AMS arrived at its estimate that four (4) responses would be produced per LPD in complying with new requirements for broiler tournament fairness policies and procedures by dividing the 188 broiler plants (or complexes) indicated in the fiscal year 2021 Annual Report filed by 42 LPDs with broiler production.[46] AMS

[45] Responses and costs related to § 201.110(b)(1)(iv), ''Communication and cooperation,'' are discussed below separately from the other paragraphs of § 201.110. Costs associated with § 201.110(b)(3), ''Record retention,'' are included in cost estimates for § 201.110(b)(1) and (2).

[46] All live poultry dealers are required to annually file PSD form 3002 ''Annual Report of Live Poultry Dealers,'' OMB control number 0581–0308. The Annual Report form is available to the public at *https://www.ams.usda.gov/sites/default/files/media/PSP3002.pdf.*

estimates first year development and production of § 201.110 policies and procedures, including legal, management, administrative, and information technology time, would require an average of 301.89 hours for each response, while ongoing annual maintenance, compliance monitoring, compliance review reporting, production, and distribution would take 220.66 hours. AMS arrived at the estimates of the number of hours per response on an annual basis to set up, produce, distribute, monitor, review, and maintain § 201.110 policies and procedures by dividing the total number of hours required (56,756 first year hours and 41,484 ongoing hours) by the annual number of responses for all LPDs (188). AMS estimated the number of hours for all LPDs to develop, produce, distribute, monitor, review, and maintain each set of processes from the number of hours estimated and the expected cost estimates in tables 6 and 7 in section VII.C., ''Regulatory Impact Analysis.''

AMS estimates that 42 LPDs would each develop and document one set of processes that address communication and cooperation when resolving grower concerns as required under proposed § 201.110(b)(1)(iv). AMS estimates first year set-up and implementation of the plan, including management, legal, administrative, and information technology time, would require approximately 45.24 hours. AMS estimates ongoing annual implementation of communication, cooperation, and dispute resolution processes would require an average of 16.00 hours. AMS estimated the number of hours for all LPDs to set-up and implement each plan from the number of hours estimated and the expected cost estimates in tables 6 and 7 in section VII.C., ''Regulatory Impact Analysis.''

AMS estimates each of 42 LPDs would create and distribute an average of 24 Broiler Grower Capital Improvement Disclosure Documents each year for poultry growers relating to ACIs, as required under proposed § 201.112. AMS arrived at its estimate of 24 developed disclosure documents per LPD per year from AMS records which show 42 LPDs filed fiscal year 2021 Annual Reports with AMS, and their reports indicate that they had 19,808 growing contracts with broiler growers during fiscal year 2021. Based on information provided by subject matter experts, AMS estimates that capital upgrades would be required at 5 percent of complexes each year, triggering creation of a new disclosure document for approximately 5 percent of growers annually. AMS multiplied the 19,808 growing contracts by 5 percent and divided by the 42 LPDs to arrive at 24 disclosure documents per LPD. LPDs would only be required to provide the Broiler Grower Capital Improvement Disclosure Document to growers when requesting or requiring the grower to make an ACI. AMS estimates first year and ongoing development, production, and distribution of the disclosure documents, including management, legal, administrative, and information technology time, would require an average 0.53 hours each. AMS arrived at the estimates of the number of hours on an annual basis to set up, produce, and distribute the Broiler Grower Capital Improvement Disclosure Documents by dividing the number of hours to set up, produce, and distribute the disclosures (526 first year and annual ongoing hours) by the annual number of responses for all LPDs (990). AMS estimated the number of hours for all LPDs to develop, produce and distribute each disclosure from the number of hours estimated and the expected cost estimates in table 8 in section VII.C., ''Regulatory Impact Analysis.''

Proposed § 201.110 would require LPDs to provide a fair comparison among growers when basing compensation on a grouping or ranking of growers delivering during a specified period of time and would also require LPDs to document how they comply with that duty. The documentation of processes required under proposed § 201.110 must describe the manner in which the LPD performs the duty to make a fair comparison among growers when using a grower ranking system to determine compensation for broiler growers. The documentation of processes under proposed § 201.110, must also include a plan for communication and cooperation between the LPD and growers. In addition, LPDs are required to ensure compliance with the proposed rule by conducting a compliance review of each complex and producing a written report of findings no less than once every two years. LPDs are required to document, maintain, and comply with all policies and procedures required under proposed § 201.110 on an ongoing basis and provide them to USDA upon request.

Proposed § 201.112 would require LPDs to provide a Capital Improvement Disclosure Document any time the LPD requests existing broiler chicken growers to make an additional capital investment ($12,500 or more per structure excluding maintenance or repair). The Capital Improvement Disclosure Document must include information about the goal or purpose of the investment, financial incentives and compensation for the grower associated with the additional capital investment, all schedules and deadlines for the investment, a description of changes to housing specifications, and analysis of projected returns.

Costs of Proposed §§ 201.110 and 112

The combined costs to LPDs for compliance with the recordkeeping and disclosure requirements of proposed §§ 201.110 and 112 are expected to be $5,511,000 in the first year, and $3,821,000 in subsequent years. The total hours estimated for the LPDs to create, produce, distribute, and maintain these documents are 59,182 in the first year, and 42,682 in subsequent years. As stated previously, the estimates provided apply only to LPDs who would be required to provide the information to growers.

The amount of time required for recordkeeping and disclosure was estimated by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in AMS's Packers and Stockyards Division (PSD) conducting investigations and compliance reviews of regulated entities.

AMS used the May 2022 U.S. Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics for the time values in this analysis.[47] BLS estimated an average hourly wage for general and operations managers in animal slaughtering and processing to be $61.24 per hour; $31.39 per hour for administrative assistants; $66.07 per hour for IT system managers; and $103.81 per hour for lawyers in food manufacturing. In applying the cost estimates, AMS marked-up the wages by 41.79 percent to account for fringe benefits.

B. Executive Orders 12866, 13563, and 14094

AMS is issuing this proposed rule in conformance with Executive Orders 12866—Regulatory Planning and Review, 13563—Improving Regulation and Regulatory Review, and 14094—Modernizing Regulatory Review, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits,

[47] Estimates are available at U.S. Bureau of Labor Statistics. Occupational Employment and Wage Statistics, available at *https://www.bls.gov/oes/special-requests/oesm22all.zip* (accessed 7/14/2023). Featured OES Searchable Databases: U.S. Bureau of Labor Statistics (*bls.gov*) (accessed July 2023).

including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means.

In the development of this proposed rule, AMS considered several alternatives, which are described in the Regulatory Impact Analysis below.

The proposed rule is not expected to provide, and AMS did not estimate, any environmental, public health, or safety benefits or impacts associated with the proposed rule. We request comment on potential environmental, public health, or safety impacts of the proposed rule as well as data sources and approaches to measure their economic implications.

This proposed rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore has been reviewed by the Office of Management and Budget (OMB). Details on the estimated costs of this proposed rule can be found in the economic analysis provided in sections III.C. and D. below.

Based on its familiarity with the industry, AMS prepared an economic analysis of the proposed rule as part of the regulatory process. The economic analysis includes a cost-benefit analysis of the proposed rule. AMS then discusses the impact on small businesses.

C. Regulatory Impact Analysis

AMS prepared an economic analysis of the costs and benefits of the proposed §§ 201.106, 110, and 112, as a required part of the regulatory process.

As described previously in the preamble for this proposed rule, the organization and structure of broiler production is characterized by a high degree of vertical integration, market power in regional markets, substantial investment in production capital that is specific to a single production purpose, nearly universal use of production contracts, and use of complex grower compensation systems based on relative performance. Market failures caused by asymmetric information, incomplete contracts, and hold-up in poultry contracting motivate specific interventions as discussed in this proposed rule.

The following analysis describes the anticipated impacts of the proposed rule. The value of broiler production in the U.S. for 2022 was approximately $50.4 billion.[48] Our analysis finds that the total quantified cost of proposed §§ 201.106, 110, and 112 will be greatest in the first year at $19.8 million or 0.039 percent of revenues. The costs are low in relation to total industry size. The proposed rule is also expected to provide many benefits of importance to broiler growers that could not be quantified. These include the value to broiler growers of improved fairness and reduced risk of fraud and deception. AMS expects potential benefits to the industry from proposed §§ 201.106, 110, and 112 to be positive.

Regulatory Alternatives Considered

AMS expects proposed §§ 201.106, 110, and 112 to mitigate costs associated with asymmetric information and grower unfairness and deception by establishing a duty of fair comparison for LPDs in poultry tournament administration, requiring LPDs to establish and document processes, requiring LPDs to adopt transparent methods of presenting grower compensation in broiler grower contracts, and requiring LPDs to provide important information to broiler growers. Proposed § 201.106 would prohibit the LPD from using a grower's grouping, ranking, or comparison to other growers to reduce a rate of compensation disclosed in a broiler growing arrangement. Proposed § 201.110 would require LPDs to provide a fair comparison among growers when basing compensation upon a grouping or ranking of growers delivering during a specified period of time and to document how they comply with that duty. Proposed § 201.112 would require LPDs to produce and distribute disclosures when they request growers to make additional capital investments.

AMS considered four alternatives related to the proposed §§ 201.106, 110, and 112, with the second alternative being the proposed rule. The first alternative is the ''do nothing'' approach or maintaining the *status quo.* All regulations under the Packers and Stockyards Act would remain unchanged. This first alternative forms the baseline against which AMS will compare the second alternative, proposed §§ 201.106, 110, and 112.

AMS considered a third alternative that would leave all requirements in proposed §§ 201.106, 110, and 112 the same, but entirely exempt LPDs that meet the criteria to be classified as small businesses by the Small Business Administration.[49] This third alternative would exempt smaller LPDs. However, since larger LPDs do most of the contracting (as quantified later in this analysis), most poultry growers would still receive the benefits of new protections under proposed §§ 201.106, 110, and 112. AMS considered a fourth alternative similar to proposed §§ 201.106, 110, and 112 that includes all small and large LPDs but would exclude two proposed provisions: § 201.110(b)(1)(iv) for development of new communication policies and § 201.110(b)(2) for conducting compliance reviews. Excluding these sections would reduce estimated costs of the proposed rule but would also reduce the benefits and protections afforded to growers. This fourth alternative could also reduce and limit USDA's ability to monitor and enforce rule compliance. Below, AMS provides estimates and comparisons of the costs and benefits of the alternatives and an explanation for why the Agency selected proposed §§ 201.106, 110, and 112 as the preferred alternative.

Benefits of Proposed §§ 201.106, 110, and 112

AMS expects that proposed §§ 201.106, 110, and 112 would provide benefits to growers by reducing the risk of potential fraud and deception by LPDs, improving clarity in grower payment systems, establishing a duty for fair comparison in the administration of broiler grower tournaments, and making more information available to growers. These benefits are difficult to quantify. They depend on the extent to which proposed interventions will mitigate some existing unfairness and deception that results from incomplete contracts, inadequate and asymmetric information, and hold-up problems in an environment where LPDs are able to exert market power. The size of benefits will be directly related to the extent to which the proposed rule will mitigate or reduce these practices. AMS is unable to quantify the benefits and will present a qualitative discussion of the potential types of benefits that growers would receive from proposed §§ 201.106, 110, and 112. The following discussion of non-quantifiable benefits will proceed by proposed rule section.

[48] USDA–NASS. Poultry—Production and Value 2022 Summary (April 2023).

[49] The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). Live poultry dealers, NAICS 311615, are considered small businesses by SBA if they have fewer than 1,250 employees (13 CFR 121.201).

Benefits of Proposed § 201.106

The practice of discounting or reducing disclosed contract ''rates'' creates problems for growers in assessing and comparing broiler production contracts. Growers commonly expect that based on ordinary efforts, they will be able to obtain at least the average rate of pay for growers in a settlement group, which is typically known as the ''base'' pay. If growers are evaluating the expected value of these contracts based upon ''base'' or ''average'' pay rates, downside risk, which affects half of the settlement pool per flock, would be ignored. These are the types of problems that create income expectations that are unlikely to be met for a large segment of broiler growers. Growers thus cannot effectively evaluate their risks on a settlement payment by settlement payment basis, through presentation of base pay rate at the mid-point. Growers are harmed when they incur costs as a result of entering a contract with an LPD and the actual revenue and the range of payment outcomes realized are below those the grower was led to believe they would receive when reviewing the contract based on reasonably expected efforts within the control of the grower. In addition, competition in the market for broiler grower services is harmed when such deception prevents growers from comparing competing offers from LPDs for the services of growers.

Proposed § 201.106 would apply to LPDs that determine grower compensation based upon a grouping, ranking, or comparison of growers delivering poultry during a specified period. LPDs using such a system would be prohibited from using that grouping, ranking, or comparison to reduce a rate of compensation disclosed in a broiler growing arrangement. Proposed § 201.106 requires that any performance or incentive payments made to broiler growers under a poultry ranking system must be in addition to a disclosed rate of compensation (*i.e.,* any adjustments to rates of pay must be non-negative). This establishes a de facto minimum payment that the grower would receive under the growing arrangement. Growers will benefit from increased certainty about the lowest possible revenue outcome under the growing arrangement. Greater certainty about minimum revenue can lead to improved financial planning and ability to manage financial risk. More transparent methods of presenting payments and compensation systems would also facilitate comparisons between alternative LPDs and benefit growers who may be evaluating offers or considering agreements from more than one LPD.

In response to proposed § 201.106, LPDs would be expected to redefine grower payment calculation systems as appropriate to express all payments in the form of bonuses added to a stated pay rate. AMS expects that existing schedules of grower payments can be recreated such that they conform to this proposed rule change. Existing LPD methods of grower payment calculation can be expressed in an alternative format that includes only bonus adjustments added to an existing minimum rate.[50] AMS is aware that several of the largest LPDs currently have existing payment systems that express all ranking bonuses as positive adjustments added to a stated pay rate and would conform to this requirement.

Changes to presentation of grower compensation rates as required by proposed § 201.106 are not expected to change the basic structure of grower compensation schedules for relative performance payments. The benefits that will accrue to growers from the proposed changes will result from increased clarity as growers will be better informed of minimum compensation outcomes that can occur under the broiler growing arrangement There is no expectation that aggregate payments to growers will increase. However, clearer presentation of grower compensation methods and will benefit growers by improving grower understanding of potential revenue outcomes, thereby reducing problems of inadequate and asymmetric information and improving the clarity of defined terms to address incompleteness in contracting.

Benefits of Proposed § 201.110

Market power gives LPDs a considerable bargaining advantage relative to growers in poultry contracting arrangements. As a result, growers lack negotiating power to demand, among other things, transparency and completeness in contracts that would likely reduce the potential for deception and unfairness. The proposed interventions aim to reduce potential adverse impacts of market power by establishing a duty of fair comparison that would provide protections to growers that they do not have bargaining leverage to demand. Currently, most broiler production contracts are incomplete in that they fail to clearly state important terms and provisions related to grower compensation, settlement procedures, and tournament administration. LPDs frequently offer broiler contracts to growers on a take it or leave it basis, providing growers with little insight as to methods the LPD will use to compare growers for purposes of determining compensation, including whether growers will be compared to other growers provided with similar inputs and assigned similar production practices.

Lack of transparency in tournament administration and methods of determining grower compensation has led to risks of deception and unfairness. Growers are often unable to evaluate how payments under a poultry grower ranking system reflect their individual effort, measure and manage risks, and detect possible discrimination or retaliation for disputes arising under the poultry growing arrangement. Growers reasonably assume that they will be fairly compared to other growers under a broiler tournament ranking system. They will be deceived if LPDs do not make a good faith effort to ensure fair comparison among participating growers when operating broiler tournaments. Given the extent of LPD control over grower outcomes through the distribution of inputs such as feed and chicks or production practices such as placement density, target weight, etc., growers are forced to rely heavily on LPD good faith efforts in performing fair comparisons under broiler growing arrangements.

Consistent delivery of fair comparison requires LPDs to incur monitoring costs and take corrective actions when operating poultry grower ranking tournaments. In fact, many LPDs implicitly acknowledge a responsibility to fairly compare growers when they use procedures to identify and correct imbalances and provide remedies when factors beyond the growers' control affect grower payments. These include, for example, provisions to remove a grower from a tournament pool and to pay that grower according to another metric (such as a multi-flock average) if the LPD discovers that inputs provided to the grower were inferior—such as sick chicks. Another example would be a policy of the LPD to avoid providing a grower with inferior inputs on consecutive flocks—such as chicks from excessively young layer flocks that are considered to be lower performing. Although such policies are not uncommon, they are not currently required to be universally employed or uniformly applied by LPDs.

Growers also have no means by which to ensure that LPDs consistently carry out their responsibility of the contract or

[50] All contracts that AMS has previously reviewed include provisions for a minimum grower payment that is greater than zero.

to enforce it. Further, the benefits of monitoring and correcting for unfair grower outcomes accrue to growers and not to the LPD. Therefore, LPDs have insufficient incentive to uphold their end of the bargain, especially in markets where growers have few options of alternative LPDs with whom they could contract. LPDs can therefore essentially ''hold up'' growers by opportunistically minimizing their costs of delivering a fair comparison at the expense of growers and, as a result, failing to deliver on their obligation for good faith and fair dealing under the contract.

Proposed § 201.110 addresses these problems by establishing a duty for LPDs to provide a fair comparison among growers when basing compensation on a grouping or ranking of growers delivering poultry during a specified period and requiring LPDs to document how they comply with that duty. The fair comparison requirement in proposed § 201.110(a) ensures that LPDs will not compare growers to other growers who have been supplied with inputs or assigned production practices that result in material differences in performance metrics used in payment calculations. Duty of fair comparison also requires that LPDs compare growers over appropriate time periods and use appropriate non-comparison payment methods. Proposed § 201.110(b) establishes documentation requirements in the form of processes, commonly known as policies and procedures, to facilitate LPD effective tournament operation under that duty, effective recordkeeping of transactions, and facilitates AMS supervision and enforcement. These provisions would benefit growers by reducing deception and unfairness in the operation of poultry grower ranking systems.

Implementation by LPDs of written processes that promote fair comparison of growers, whether through more consistent allocation of inputs and production practices or adjustments to methods and formulas, would foster more transparent, accurate, and reliable tournaments, and greater ability to monitor and hold LPDs accountable for divergences from high standards of market integrity. Growers would benefit from this proposed regulation because they would be less vulnerable to intentional harm due to deception, retaliation, or bad faith by LPDs. An LPD, AMS, or enforcement body can more easily evaluate grower complaints of intentional harm—for example, LPD employees targeting growers by providing inferior inputs—when they are able to consider whether the LPD has complied with its own stated policies and procedures for ensuring fair comparison. Ongoing monitoring activities conducted and documented by LPDs to fulfill the duty required by proposed § 201.110(a) would also provide safeguards to prevent growers from being substantially disadvantaged by unintentional or inadvertent outcomes. For example, an LPD would take prescribed corrective action if it discovered that a particular grower had randomly received an unusual share of inferior inputs over multiple flocks. Procedures designed to ensure fair comparison would include monitoring to prevent natural variation in input quality and LPD-determined flock production practices among growers within a single settlement group from being allowed to persist as a pattern that disadvantages a particular grower over multiple settlement groups. By establishing a basic duty for LPDs to deliver fair comparison of growers, proposed § 201.110 is structured to provide LPDs flexibility in fulfilling that duty within the context of individual circumstances and complex production processes.

Benefits of § 201.110 deriving from the value to growers of fairness and equity are important. AMS is unable to quantify these benefits. However, compensation for individual growers may more closely match the level of individual grower effort, skill, and investment relative to other growers under a tournament system that guarantees fair comparison. This provision may benefit growers by removing some of the unfairness in the distribution of grower compensation within poultry ranking payment systems. When LPDs fulfill a duty to ensure fair comparisons, no individual grower would receive consistently poor inputs while other growers with whom that grower is compared receive consistently good inputs. The expected benefits of ensuring fair comparisons among growers are highlighted by the consistent widespread reports of harm to individual growers resulting from existing unfair comparisons.[51] A reduction in the occurrence of such harms could potentially lead to reduced grower turnover.

Provisions included in proposed § 201.110(b)(1)(iv) would also require LPDs to maintain written processes for communication and resolution of grower concerns with the design or operation of a system that is consistent with the duty of fair comparison. These processes should address timely resolution of such disputes. Providing an effective method of dispute resolution has the potential to help resolve disagreements involving personality conflicts which can lead to avoidable inefficiencies.

Proposed § 201.110(b)(2) would require a written review of each broiler complex at least every other year to ensure compliance with the policies and procedures developed under this section. While the proposed rule would not require that LPD documentation be distributed to growers, it would be subject to USDA review to ensure ongoing maintenance and compliance. This compliance review requirement would not provide benefits separate from those generated by establishing the duty in § 201.110(a); however, documentation of regular review of LPD procedures would assist in ongoing enforcement of the proposed rule, thereby increasing the likelihood of compliance so that benefits of the proposed rule are realized by growers.

Benefits of Proposed § 201.112

LPDs encourage and often require broiler growers to make additional capital investments in assets that are specific to producing poultry for that LPD. Growers cannot exert bargaining power to demand essential information that would inform such investments. As a result, LPDs can induce growers to make additional investment decisions that do not benefit growers when they do not supply sufficient information for evaluation of requested upgrades. Such investments can cause financial harm to growers and increase the extent of their investments in capital that is specific to poultry production for nearby LPDs (thereby also increasing grower hold-up exposure) while still benefiting those LPDs. Moreover, broiler growers bear all the costs and risks of additional capital improvement investment. LPDs do not own the farm-based production capital and therefore do not share in these risks, although they frequently dictate grower investments. The system of ownership of poultry production capital by growers limits incentives for LPDs to carefully consider the extent to which required additional capital investments will improve individual grower production efficiency and whether they will likely lead to financial success or failure. This misalignment of incentives is consistent with grower complaints that LPDs sometimes require costly investments that are unnecessary or in some cases merely cosmetic.[52] When considering

[51] The preamble section II of this rulemaking documents decades of grower comments to USDA that highlight concerns of persistent unfairness resulting from unfair comparisons in broiler grower tournaments.

[52] AMS sought feedback on proposed rulemaking in a 2022 ANPR. Some commenters noted that LPDs often supply insufficient information with respect

new investment, broiler growers maximize net productivity benefits subject to cost. However, when LPDs do not bear investment cost, they have incentive to maximize only their benefits and encourage growers to over-invest in poultry-specific production capital to the point of negative returns for the grower.

LPDs prevent growers from making fully informed decisions and understanding the true extent of over-investment when they withhold important information about additional capital improvement investments. An increase in grower investment leads to increased grower dependency on LPDs to generate returns on that investment through poultry contracting. The presence of few or no other poultry contracting options in a grower region further focuses dependence on a single LPD. The use of incentive payments by LPDs to compensate growers for additional capital investment can help to align investment incentives. For these arrangements to work properly, growers must clearly understand the parameters of the investment and the breakdown of payment components and financial incentives offered by the LPD.

Proposed § 201.112 would require LPDs to provide a Capital Improvement Disclosure Document when requesting an additional capital investment over the identified threshold of $12,500 (as defined in § 201.2(n)). This disclosure would provide information to existing growers contemplating additional capital investments about the goal or purpose of the investment, grower financial incentives, construction schedules, description of changes to housing specifications, approved manufacturers or vendors, and analysis of projected returns including the assumptions, risks, and uncertainties upon which those projections are based (paragraphs (1) through (6)). As such, the Capital Improvement Disclosure Document would clearly state the intended and expected outcome of LPD additional investment requirements.

Requiring LPDs to provide this information to growers would reduce asymmetric information that contributes to inefficient investment and resource allocation decisions, where such choice exists by growers. LPDs providing this additional information related to grower requirements reduces the cost to growers of identifying and qualifying manufacturers and vendors when making capital improvements. To the extent that disclosures assist growers in understanding the purpose of ACIs, those growers will be more likely to realize any potential benefits from the ACI. For example, growers would be able to tailor ACIs to their particular operation so as to be better positioned to implement the ACI and produce intended production improvements. The clarity provided by ACI disclosure would reduce the likelihood of costly errors caused by miscommunication and misunderstanding and increase the likelihood that growers would be able to correctly implement ACIs. Proposed § 201.112 would generate economic benefits by addressing certain limitations on market functioning arising in part from asymmetric information. Growers operating with better information are less likely to be deceived or unfairly misled by LPDs when additional capital improvement investments are required.

Even where growers may not be able to avoid or negotiate around these terms, growers may be better able to effectuate their rights under the Act, and AMS would benefit from earlier identification of potentially unfair practices. To the extent that occurred, by addressing asymmetric information this section of the proposed rule would help alleviate additional hold-up of growers by LPDs. Even in cases where grower refusal may still result in other adverse consequences, growers may still be better off by preventing additional financial loss and increased specific investment and dependence on the LPD. Financial projections and other analyses of additional capital improvement investments developed by LPDs along with more complete information about investment purpose, expected benefit, and grower performance will be superior to analysis based on limited grower information.

Summary of Benefits of Proposed §§ 201.106, 110, and 112

AMS expects that the proposed rule would provide substantial benefits to the industry and address issues of extreme importance to broiler growers. However, these benefits are non-quantifiable. AMS cannot measure any impact or shift in total industry supply or any corresponding indirect effects on industry supply and demand, including price and quantity effects.

Estimation of Costs of the Proposed Regulations

AMS estimates cost for three alternatives. The first is the proposed §§ 201.106, 110, and 112, which is the preferred alternative. The second alternative is the same as proposed §§ 201.106, 110, and 112 with a complete exemption for LPDs that are considered small businesses by the Small Business Administration.[53] All LPDs are included in the third alternative, but the following two sub-sections of proposed § 201.110 are excluded: § 201.110(b)(1)(iv) and (b)(2).[54] All three alternatives are compared against a baseline of *status quo,* which has no costs or benefits.

The quantified costs of proposed §§ 201.106, 110, and 112 primarily consist of the time required for LPDs to: (1) modify grower contracts to determine compensation in a manner consistent with proposed § 201.106; (2) develop, document, and comply with policies and procedures for ensuring that growers are fairly compared to other growers in poultry grower ranking systems; and (3) gather and document information pertaining to grower additional capital investments and distribute it among the growers. The costs of the proposed rules would fall on LPDs as they modify existing contracts, develop and comply with new policies, and collect and disseminate required information. Costs would also fall on poultry growers based on the value of the time they put into reviewing the disclosures. Though poultry growers are expected to incur costs in reviewing information, they would be the primary beneficiaries of the information, which may be reflected in their ability to make more informed decisions (where they may have more than one or two integrators as options in certain geographic areas). Further, growers will be able to better identify ACI programs that are unfair, which either AMS or growers can challenge as a violation of the Packers and Stockyards Act. This may result in a more efficient allocation of capital within the poultry growing industry.

There were 42 LPDs in the broiler chicken market that filed a fiscal year 2021 Annual Report with AMS, and their reports indicate that they had 19,808 contracts with poultry growers

to requested or required upgrades and deceptively induce growers to make costly ACIs. One commenter, for example, asserted that LPDs demand costly upgrades that some growers have reported to be arbitrary and apparently untethered to any reasonable assurance of increased compensation.

[53] The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). Live poultry dealers, NAICS 311615, are considered small businesses by SBA if they have fewer than 1,250 employees.

[54] Section 201.110(b)(1)(iv) would require LPDs to include written processes related to communication, cooperation, and dispute resolution with growers and § 201.110(b)(2) would require LPDs to conduct regular compliance reviews.

during fiscal year 2021.[55] Of these, 20 LPDs are considered small businesses according to SBA classification, and these have a total of 950 grower contracts. Small LPDs are expected to differ from large LPDs in structure and complexity, particularly with regard to the number of contract types used, management, use of legal services, and divisions of labor. Where noted below, some components of cost estimates are calculated separately for large and small LPDs to reflect these differences.[56]

AMS expects the direct costs of the proposed rule would be small in relation to overall production costs and would not measurably alter poultry supply. AMS also expects that neither LPDs nor poultry growers would measurably change any production practices that would impact the overall supply of poultry.

Expected costs are estimated as the value of the time required to develop and implement new broiler grower contracts and grower payment systems to comply with requirements of proposed § 201.106; develop, implement, and maintain compliance with processes reasonably designed by the LPD to deliver fair comparisons among broiler growers in the operation of broiler contract tournament systems as required by proposed § 201.110; and produce and distribute disclosures when LPDs request or require growers to make additional capital investments as required by proposed § 201.112, as well as the time required to create and maintain any necessary additional records. Grower payment systems required by proposed § 201.106 are substantively similar to many current payment systems already in use and will therefore not require large adjustments for most LPDs. The policies and procedures that LPDs would be required to develop in response to proposed § 201.110 are expected to result in formalization, in many cases, of existing practices LPDs are currently following, albeit sporadically or inconsistently. Nearly all of the information and records required for disclosure to growers under proposed § 201.112 are already kept by and/or available to LPDs.

Although LPDs will need to take several actions to comply with new requirements under proposed §§ 201.106, 110, and 112, this will not require LPDs to substantially change their existing business practices. Therefore, the overall added costs of adjustments, contract modifications, records creation, and compliance under the proposed rules are still expected to be small relative to the overall size of the industry.

AMS also estimates the amount of time that growers would take to review the information provided to them by LPDs. Estimates of the amount of time required by LPDs to modify existing contracts, develop and comply with new policies, and collect and distribute required information, and for growers to review the information were provided by AMS subject matter experts. These experts were supervisors and auditors with many years of experience with AMS in auditing LPDs for compliance with the Packers and Stockyards Act. Estimates for the value of time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimates released May 2022.[57]

Costs of Proposed § 201.106—Preferred Alternative

Under proposed § 201.106, LPDs would be required to redefine grower payment calculation systems as appropriate to express all payments in the form of bonuses added to a stated pay rate. AMS expects that existing schedules of grower payments can be recreated such that they comply with this proposed rule change. Existing LPD methods of grower payment calculation can be expressed in an alternative format that includes only bonus adjustments added to from an existing minimum pay rate. AMS expects that most LPDs would be required to make one-time changes to existing grower contracts and develop new payment systems that are consistent with these provisions. This process would also include producing and filing grower documents and communicating information about the new contract and payment system to growers and staff at each complex.

AMS estimates that the aggregate one-time costs to LPDs of updating grower contracts and developing new grower payment systems, including modifying information systems to include new calculations as well as filing, and reporting to comply with proposed § 201.106, would require 18,048 legal hours,[58] 59,400 management hours, 7,520 administrative hours, and 7,520 information technology hours, costing a total of $8,854,000 [59] in the first year.[60] A more detailed breakdown of the one-time first-year costs associated with proposed § 201.106 is provided in table 5 at the end of this section.

Once LPDs have incurred a one-time cost of developing, documenting, and communicating new contracts and a new system of grower payments, AMS does not expect additional ongoing costs of implementing proposed § 201.106. Once in place, new provisions and modifications resulting from this one-time update are not expected to lead to an increase in costs associated with the ongoing maintenance and updating of grower contracts that would occur in the normal course of business.

Proposed § 201.106 concerns potential changes to the method of payment calculation used in grower tournament settlement systems. LPDs would then provide new contracts that include these updated provisions for review by broiler growers. AMS expects that for the first time a grower receives a new contract containing these modifications, he or she would require about 4 hours to review and consider all new terms and provisions. At $65.35 [61] per hour, the total one-time cost for all broiler growers to review the new contract is $5,178,000.[62] AMS expects that the updated contract provisions and payment systems developed by LPDs pursuant to § 201.106 will not contribute to additional ongoing contract review time by growers beyond an initial one-time review. Therefore, no

[55] 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 at *https://www.ams.usda.gov/sites/default/files/media/PSP3002.pdf.*

[56] Unless otherwise noted, estimated cost or hours estimates for small and large live poultry dealers are the same.

[57] See U.S. Bureau of Labor Statistics, *May 2022 National Occupational Employment and Wage Estimates,* May 2022. *https://www.bls.gov/oes/special.requests/oesm22all.zip.*

[58] Small live poultry dealers are estimated to require 50% as many legal hours as large live poultry dealers on a per company basis for one-time cost of developing § 201.106 one-time changes to grower contracts and payment systems.

[59] 18,048 legal hours × $147.19 per hour + 59,400 management hours × $86.83 per hour + 7,520 administrative hours × $44.51 per hour + 7,520 information technology hours × $93.68 per hour = $8,853,556.

[60] Average hourly wage rates used to estimate dealer costs include a 41.79% markup for benefits and are as follows: Management—$86.83, Legal—$147.19, Administrative—$44.51, and Information Technology—$93.68. Hourly wage rates were established using the following BLS classifications for each labor category as follows (NAICS Code—OCC code—OCC Title): Management (3116—11–1020—General and Operations Managers) for live poultry dealers' managers, Legal (3110—23–1011—Lawyers) for attorneys for live poultry dealers and for growers, Administrative (3116—43–6011—Executive Secretaries and Executive Administrative Assistants) for live poultry dealers' administrative assistants, and Information Technology (3116—11–3020—Computer and Information Systems Managers) for information technology managers.

[61] The average hourly wage rate of $65.35 per hour used to estimate costs for a poultry grower includes a 41.79% markup for benefits. The wage rate was established using BLS classification (1152—11–0000—Management Occupations).

[62] 4 hours to review each disclosure × $65.35 per hour × 19,808 contracts = $5,177,811.

ongoing future costs of grower contract review have been included.

The ten-year aggregate total costs of proposed § 201.106 to LPDs are estimated to be $8,853,000, the ten-year aggregated total costs of proposed § 201.106 to poultry growers are estimated to be $5,178,000, and the combined ten-year aggregate total costs of proposed § 201.106 to LPDs and poultry growers are estimated to be $14,031,000.

Costs of Proposed § 201.110—Preferred Alternative

Proposed § 201.110 would require LPDs to develop, maintain and comply with a set of policies and procedures that ensure the operation of a poultry grower ranking system that is consistent with the duty of fair comparison among growers, including describing processes for supplying or assigning inputs and production practices, communication and cooperation, and facilitating the conduct of ongoing compliance reviews with those processes.

Proposed § 201.110(a) and (b)(1)(i) through (iii) describe objectives and minimum requirements for written documentation of processes, including how LPDs will operate poultry grower ranking systems that are consistent with the duty of fair comparison. Information obtained during previous AMS investigations suggests that LPDs may already have some informal policies and practices or perhaps even some contract provisions in place to address and attempt to remedy situations in which growers have been inadvertently disadvantaged by such factors. For example, AMS is aware of situations where an LPD has removed a grower that received an unreasonable share of lower quality inputs from the grower pool and paid them by another method that would not penalize relative performance (*e.g.,* a five-flock average). Under proposed § 201.110(a) and (b)(1)(i) through (iii), all LPDs would be required to develop formal written processes that meet specific criteria outlined in the proposed regulation.

AMS estimates that the one-time aggregate cost of developing new policies and procedures in response to proposed § 201.110(a) and (b)(1)(i) through (iii) for LPDs will require 4,256 legal hours, 29,000 management hours, 1,504 administrative hours, and 1,504 information technology hours, costing a total of $3,352,000 [63] in the first year. Due to differences in their structure, estimates for small LPDs were calculated with the expectation that they would employ relatively fewer legal (attorney) hours that are offset by a larger share of management hours.[64] A more detailed breakdown of the one-time first-year costs associated with proposed § 201.110 is in table 6 at the end of this section.

LPDs will implement, monitor, and comply with new written processes for the design and operation of a poultry grower ranking system that is consistent with the duty of fair comparison; they will also maintain and update these written processes. AMS expects these annual ongoing costs to require in aggregate 1,440 legal hours,[65] 28,952 management hours which include renewing and updating written processes at the corporate level as well as monitoring activities conducted by managers at each complex to ensure ongoing compliance, 752 administrative hours, and 752 information technology hours for an aggregate annual cost of $2,830,775.[66] A detailed breakdown of the ongoing costs associated with proposed § 201.110 is in table 7 at the end of this section.

Proposed § 201.110(b)(1)(iv) requires that the written processes developed must include a description of how LPDs communicate and cooperate to resolve grower concerns in a timely fashion. AMS expects that the aggregate one-time cost to LPDs of setting up communications and cooperation protocol and implementing them in the first year will require 848 legal hours, 544 management hours, 168 administrative hours, and 340 information technology hours [67] for an aggregate one-time cost of $211,000.[68]

Proposed § 201.110(b)(3) states the length of time for retaining the records relevant to an LPD's compliance with proposed § 201.110(b)(1) and (2). AMS considered record retention when estimating costs for proposed § 201.110(b)(1) and (2) and proposed § 201.110(b)(3) does not impose any costs independently.

AMS expects the ongoing annual costs after the first year of implementing written processes regarding communication, cooperation, and dispute resolution policies and procedures described in proposed § 201.110(b)(1)(iv) to require, in aggregate, 336 legal hours, 168 management hours, 84 administrative hours, and 84 information technology hours for an aggregate annual cost of $76,000.[69]

Under proposed § 201.110(b)(2), LPDs would be required to conduct a compliance review of each complex no less than once every two years to ensure compliance with policies and procedures established under § 201.110 (a) and (b)(1). LPDs would need to first design a compliance review system to be used for conducting written review of compliance by complex managers, production supervisors, and field agents. Compliance reviews would then need to be conducted every two years at each complex.

AMS estimates that the aggregate one-time costs of designing and initiating the compliance review process would require 2,256 legal hours, 15,040 management hours, 752 administrative hours, and 2,444 information technology hours costing $1,900,000 [70] in the first year for LPDs to initially set up their review and compliance policies and procedures and initiate their ongoing compliance review processes.

The ongoing cost for LPDs to conduct ongoing compliance reviews for each complex every two years has been converted to an annual cost by dividing the total cost of conducting reviews on all complexes in half. This could be consistent with, for example, a system where each LPD reviews half of their complexes each year on a rolling basis or, alternatively, where a sinking fund deposit is made each year and used every other year. AMS estimates that total ongoing annual costs on the part of

[63] 4,256 legal hours × $147.19 per hour + 29,000 management hours × $86.83 per hour + 1,504 administrative hours × $44.51 per hour + 1,504 information technology hours × $93.68 per hour = $3,352,348.

[64] Small live poultry dealers are estimated to require 33% as many legal hours and 133% as many management hours as large live poultry dealers on a per-complex basis for one-time cost of developing § 201.110 tournament fairness policies and procedures.

[65] Small live poultry dealers are estimated to require 50% as many legal hours as large live poultry dealers on a per-complex basis in ongoing compliance and maintenance of § 201.110 tournament fairness policies and procedures.

[66] 1,440 legal hours × $147.19 per hour + 28,952 management hours × $86.83 per hour + 752 administrative hours × $44.51 per hour + 752 information technology hours × $93.68 per hour = $2,829,775.

[67] Small live poultry dealers are estimated to require 50% as many legal hours and 125% as many management hours, and 50% as many information technology hours as large live poultry dealers on a per company basis for one-time cost of developing § 201.110 communication, cooperation, and dispute resolution policies and procedures.

[68] 848 legal hours × $147.19 per hour + 544 management hours × $86.83 per hour + 168 administrative hours × $44.51 per hour + 340 information technology hours × $93.68 per hour = $211,382.

[69] 336 legal hours × $147.19 per hour + 168 management hours × $86.83 per hour + 84 administrative hours × $44.51 per hour + 84 information technology hours × $93.68 per hour = $75,651.

[70] 2,256 legal hours × $147.19 per hour + 15,040 management hours × $86.83 per hour + 752 administrative hours × $44.51 per hour + 2,444 information technology hours × $93.68 per hour = $1,900,409.

LPDs will require 752 legal hours, 7,520 management hours, 376 administrative hours, and 940 information technology hours to conduct and document written reviews of compliance of each complex no less than once every two years, for an aggregate annual cost of $868,000.[71]

Written processes developed by LPDs are for internal use, to be complied with and maintained, to be provided to USDA, and as part of ongoing compliance review and monitoring. Under proposed § 201.110, LPDs are not required to provide additional disclosures to contract growers. Therefore, proposed § 201.110 would not impose any additional one-time or ongoing costs on growers to review additional disclosures, and total grower costs of proposed § 201.110 are zero.

The ten-year total costs of proposed § 201.110 to all 42 live broiler poultry dealers are estimated to be $39,429,000. Since expected grower costs for this section are zero, these also represent the total aggregate costs of § 201.110.

Costs of Proposed § 201.112—Preferred Alternative

The new provisions in proposed § 201.112 would require LPDs to provide a Capital Improvement Disclosure Document any time the LPD requests existing broiler chicken growers to make an additional capital investment ($12,500 or more per structure excluding maintenance or repair). The Capital Improvement Disclosure Document must include information about the goal or purpose of the investment, financial incentives and compensation for the grower associated with the additional capital investment, all schedules and deadlines for the investment, a description of changes to housing specifications, and analysis of projected returns.

Proposed § 201.112 would require LPDs to create a Capital Improvement Disclosure Document when new capital investments are required of growers. Based on information provided by subject matter experts, AMS estimates that capital upgrades would be required at 5 percent of complexes each year, triggering creation of a new disclosure document for approximately 5 percent of growers annually. Therefore, AMS estimates the annual cost of creating disclosures for additional requested grower capital investment will require 75 legal hours, 376 management hours, and 75 administrative hours to create and provide a Capital Improvement Disclosure Document for all growers requiring additional capital improvement upgrades, for an aggregate annual cost of $47,000.[72] A detailed breakdown of the ongoing costs associated with proposed § 201.112 is in table 8 at the end of this section.

With the exception of acknowledging receipt, the proposed rule would not impose any requirement on poultry growers to review the information provided by LPDs, but to benefit from the Capital Improvement Disclosure Document, growers would need to review the information provided. For proposed § 201.112, AMS expects that growers would take about four hours to review these documents when they are disclosed as part of a capital improvement request or requirement by the LPD. LPDs would be required to provide disclosures to growers for any of 19,808 contracts for which additional capital investment requests are made.[73] AMS expects that LPDs will make additional capital investment requests for an average of 5 percent of grower contracts annually. At an estimated 4 hours of grower review time per disclosure at $65.35 per hour, growers' aggregate annual costs would be $259,000[74] for reviewing documents required by § 201.112 in the first year and in each successive year.

The ten-year aggregate total costs of proposed § 201.112 to LPDs are estimated to be $471,000, the ten-year aggregated total costs of proposed § 201.112 to poultry growers are estimated to be $2,589,000, and the combined ten-year aggregate total costs of proposed § 201.112 to LPDs and poultry growers are estimated to be $3,060,000.

Indirect Costs of § 201.112

If AMS enforcement of proposed § 201.112 has the effect of preventing broiler growers from making unprofitable additional capital investments (those for which individual grower returns do not exceed costs), then such decisions to forgo investment will likely result in fewer benefits for LPDs, and more for growers. Because LPDs benefit from any productivity gain created by grower investments, whether or not the investment is profitable for the grower in the long-run, LPDs will not receive these benefits if additional information provided under this provision causes growers to avoid additional capital investments that they deem to be unprofitable and inefficient for their operation. AMS is not able to quantify these lost benefits to LPDs. They represent costs to LPDs, but these costs are at least partly offset by gains (or avoided losses) for growers. In addition, to the degree that an ACI requires over-investment, eliminating it benefits society. The benefits to growers and society in such cases would exceed the losses to LPDs.

Combined Costs of Proposed §§ 201.106, 110, and 112—Preferred Alternative

Combined costs to LPDs for proposed §§ 201.106, 110, and 112 are expected to be $14,365,000 in the first year, and $3,821,000 in subsequent years. These combined costs are also reported in the Paperwork Reduction Act section as the combined costs to LPDs for compliance with the reporting and recordkeeping requirements of proposed §§ 201.106, 110, and 112. The combined costs for poultry growers are expected to be $5,437,000 in the first year and $259,000 in subsequent years.

The ten-year aggregate combined costs of proposed §§ 201.106, 110, and 112 to LPDs are estimated to be $48,753,000 and the present value of the ten-year total costs to be $42,830,000 discounted at a three percent rate and $36,691,000 at a seven percent rate. The annualized aggregate combined costs of the PV of ten-year costs to LPDs discounted at a three percent rate are expected to be $5,021,000 and $5,224,000 discounted at a seven percent rate.

The ten-year aggregate combined costs of proposed §§ 201.106, 110, and 112 to poultry growers are estimated to be $7,767,000 and the present value of the ten-year total costs to be $7,235,000 discounted at a three percent rate and $6,657,000 at a seven percent rate. The annualized aggregate combined costs of the PV of ten-year costs to poultry growers discounted at a three percent rate are expected to be $848,000 and $948,000 discounted at a seven percent rate.

The ten-year aggregate combined costs of proposed §§ 201.106, 110, and 112 to LPDs and poultry growers are estimated to be $56,520,000 and the present value of the ten-year aggregate combined costs to be $50,065,000 discounted at a three percent rate and $43,348,000 at a seven percent rate. The annualized aggregate costs of the PV of ten-year costs to LPDs and poultry growers discounted at a three percent rate are expected to be $5,869,000 and $6,172,000 discounted at a seven percent rate. The cost estimates of proposed §§ 201.106, 110,

[71] 752 legal hours × $147.19 per hour + 7,520 management hours × $86.83 per hour + 376 administrative hours × $44.51 per hour + 940 information technology hours × $93.68 per hour = $868,443.

[72] 75 legal hours × $147.19 per hour + 376 management hours × $86.83 per hour + 75 administrative hours × $44.51 per hour = $47,064.

[73] Live poultry dealers reported a combined total of 19,808 contracts for their fiscal year 2021.

[74] 4 hours to review each disclosure × $65.35 per hour × 19,808 contracts × 5 percent of growers that require significant housing upgrades = $258,891.

and 112 presented above appear in the following table.

TABLE 2—ESTIMATED COSTS OF PROPOSED §§ 201.106, 110, AND 112—PREFERRED ALTERNATIVE

Preferred alternative	Expected costs *		
	Live poultry dealers	Poultry growers	Industry total
§ 201.106:			
First-Year	$8,853,000	$5,178,000	$14,031,000
Ten-Year Total	8,853,000	5,178,000	14,031,000
PV of Ten-Year Discounted at 3%	8,596,000	5,027,000	13,623,000
PV of Ten-Year Discounted at 7%	8,274,000	4,839,000	13,113,000
Ten-Year Annualized at 3%	1,008,000	589,000	1,597,000
Ten-Year Annualized at 7%	1,178,000	689,000	1,867,000
§ 201.110:			
First-Year	5,464,000	0	5,464,000
Ten-Year Total	39,429,000	0	39,429,000
PV of Ten-Year Discounted at 3%	33,833,000	0	33,833,000
PV of Ten-Year Discounted at 7%	28,086,000	0	28,086,000
Ten-Year Annualized at 3%	3,966,000	0	3,966,000
Ten-Year Annualized at 7%	3,999,000	0	3,999,000
§ 201.112:			
First-Year	47,000	259,000	306,000
Ten-Year Total	471,000	2,589,000	3,056,000
PV of Ten-Year Discounted at 3%	401,000	2,208,000	2,610,000
PV of Ten-Year Discounted at 7%	331,000	1,818,000	2,149,000
Ten-Year Annualized at 3%	47,000	259,000	306,000
Ten-Year Annualized at 7%	47,000	259,000	306,000
§§ 201.106, 110, and 112:			
First-Year	14,365,000	5,437,000	19,801,000
Ten-Year Total	48,753,000	7,767,000	56,520,000
PV of Ten-Year Discounted at 3%	42,830,000	7,235,000	50,065,000
PV of Ten-Year Discounted at 7%	36,691,000	6,657,000	43,348,000
Ten-Year Annualized at 3%	5,021,000	848,000	5,869,000
Ten-Year Annualized at 7%	5,224,000	948,000	6,172,000

* Rows may not sum to Total Costs due to rounding.

Estimated Costs-and Expected Benefits of Proposed §§ 201.106, 110, and 112—Preferred Alternative

The value of broiler production in the U.S. for 2022 was approximately $50.4 billion.[75] Total quantified cost of proposed §§ 201.106, 110, and 112 is estimated to be greatest in the first year at $19.8 million, or 0.039 percent of revenues. A relatively small improvement in efficiency from improved allocation of capital and labor resources in the industry would more than outweigh the cost of this proposed rule. A reduction in information asymmetry (resulting in more useful information provided to growers), grower uncertainty and risk of potential adverse outcomes, and retaliatory and deceptive practices by LPDs will lead to benefits resulting from the proposed rule. The size of benefits will be directly related to the extent of these reductions. As described previously, AMS expects that the proposed rule will substantially benefit the industry and address issues of extreme importance to broiler growers. However, these benefits are non-quantifiable.

Potential benefits to the industry from proposed §§ 201.106, 110, and 112 will be positive but cannot be quantified. Thus, AMS cannot measure any impact or shift in total industry supply or any corresponding indirect effects on industry supply and demand, including price and quantity effects.

Estimated Costs and Expected Benefits of the Small Business Exemption Alternative

AMS estimated costs for an alternative to the preferred option for the proposed rule. It would be the same as proposed §§ 201.106, 110, and 112, with the exception that the alternative would exempt LPDs that fall under the SBA definition of small businesses from all provisions of the two proposed rules. In the preferred alternative, the requirements in proposed §§ 201.106, 110, and 112 would apply to all LPDs, including those classified as small businesses.

The costs associated with this alternative are similar, but smaller than the preferred option. According to PSD records, small LPDs make up 47.6 percent of all LPDs, but have only 4.8 percent of poultry growing contracts. The estimation of the costs of the small business exemption alternative will follow the same format as the preferred alternative.

Costs of Proposed § 201.106—Small Business Exemption Alternative

AMS estimates that the aggregate one-time costs to LPDs of updating grower contracts and developing new grower payment systems, including modifying information systems to include new calculations as well as filing, and reporting to comply with proposed § 201.106, would require 16,512 legal hours, 56,760 management hours, 6,880 administrative hours, and 6,880 information technology hours, costing a total of $8,310,000 in the first year under the small business exemption alternative. A more detailed breakdown of the one-time first-year costs associated with proposed § 201.106 under the small business exemption alternative is in table 9 at the end of this section. Once LPDs have incurred a one-time cost of developing, documenting, and communicating new contracts and a new system of grower payments, AMS

[75] USDA–NASS. Poultry—Production and Value 2022 Summary (April 2023).

does not expect additional ongoing costs of implementing proposed § 201.106.

For proposed § 201.106, AMS expects that growers would take about 4 hours to review new contract terms and provisions when they are provided in the first year. At $65.35 per hour, the total one-time cost for all broiler growers to review the new contract under the small business exemption alternative is $4,929,000.[76] AMS expects that the updated contract provisions and payment systems developed by LPDs pursuant to proposed § 201.106 would not contribute to additional ongoing contract review time by growers beyond an initial one-time review. Therefore, no ongoing future costs of grower contract review are included.

The ten-year aggregate total costs to LPDs of proposed § 201.106 under the small business exemption alternative are estimated to be $8,310,000, the ten-year aggregate total costs to broiler growers of proposed § 201.106 for the small business exemption alternative are estimated to be $4,929,000, and the first-year and ten-year aggregate total costs to LPDs and poultry growers of proposed § 201.106 for the small business exemption alternative are estimated to be $13,239,000.

Costs of Proposed § 201.110—Small Business Exemption Alternative

AMS estimates that the one-time aggregate cost of developing new policies and procedures in response to proposed § 201.110(a) and (b)(1)(i) through (iii) for LPDs will require 4,128 legal hours, 25,800 management hours, 1,376 administrative hours, and 1,376 information technology hours, costing a total of $3,038,000 in the first year for the small business exemption alternative. A detailed breakdown of the one-time first-year costs associated with proposed § 201.110 for the small business exemption alternative is in table 10 at the end of this section.

After new written processes have been developed, LPDs would be required to implement, monitor, and comply and to maintain and update them. AMS expects these annual ongoing costs for the small business exemption alternative to require in aggregate 1,376 legal hours, 26,488 management hours which include renewal and updating of written processes at the corporate level as well as monitoring activities conducted by managers at each complex to ensure ongoing compliance, 688 administrative hours, and 688 information technology hours for an aggregate annual cost of $2,598,000.[77] A detailed breakdown of the ongoing costs associated with proposed § 201.110 for the small business exemption alternative is in table 11 at the end of this section.

Proposed § 201.110(b)(1)(iv) requires that the written processes developed must include a description for how the LPD would resolve a grower's concerns with the LPD's design or operation of a poultry grower ranking system that is consistent with the duty of fair comparison that is required by this section, including the timeliness of the resolution. AMS expects that the aggregate one-time cost to LPDs of setting up communications and complaint resolution processes as described in § 201.110(b)(1)(iv) for the small business exemption alternative will require 528 legal hours, 264 management hours, 88 administrative hours, and 220 information technology hours for an aggregate one-time cost of $125,000.[78]

Costs associated with proposed § 201.110(b)(3), ''Record retention,'' are included in cost estimates for proposed § 201.110(b)(1) and (2). AMS expects that this section does not incur any additional costs.

AMS expects the ongoing annual costs of implementing communications and complaint resolution processes as described in § 201.110(b)(1)(iv) to require, for the small business exemption alternative, in aggregate, 176 legal hours, 88 management hours, 44 administrative hours, and 44 information technology hours for an aggregate annual cost of $40,000.[79]

AMS estimates that the aggregate one-time costs of designing the compliance review for the small business exemption alternative would require 2,064 legal hours, 13,760 management hours, 688 administrative hours, and 2,236 information technology hours costing $1,739,000[80] in the first year for LPDs to initially set up their compliance review and policies and procedures.

AMS estimates that total ongoing annual costs for LPDs to conduct and document written reviews of compliance for each complex no less than once every two years will require 688 legal hours, 6,880 management hours, 344 administrative hours, and 860 information technology hours for the small business exemption alternative, for an aggregate annual cost of $795,000.[81]

Because proposed § 201.110 does not require LPDs to provide additional disclosures to contract growers, proposed § 201.110 would not impose any additional one-time or ongoing costs on growers to review additional disclosures, and total grower costs of proposed § 201.110 are also zero under the small business exemption alternative.

The ten-year total costs of proposed § 201.110 to the 52.4 percent of live broiler poultry dealers impacted under the small business exemption alternative are estimated to be $35,787,000. Since expected grower costs for this section are zero, these also represent the total aggregate costs of proposed § 201.110.

Costs of Proposed § 201.112—Small Business Exemption Alternative

Proposed § 201.112 would require LPDs to create a Capital Improvement Disclosure Document when new capital investments are requested of growers. Based on information provided by subject matter experts, AMS estimates a five percent annual average probability that capital improvement upgrades will be required for growers at a complex, which would trigger creation of a new Disclosure Document. Therefore, AMS estimates the annual ongoing cost of creating Capital Improvement Disclosure Documents for the small business exemption alternative will require 69 legal hours, 344 management hours, and 69 administrative hours to create and provide Capital Improvement Disclosure Documents for all growers requiring additional capital improvement upgrades, for an aggregate annual cost of $43,000[82] for the small business exemption alternative. A detailed breakdown of the ongoing costs associated with proposed § 201.110 for the small business exemption

[76] 4 hours to review each disclosure × $65.35 per hour × 18,858 contracts = $4,929,481.

[77] 1,376 legal hours × $147.19 per hour + 26,488 management hours × $86.83 per hour + 688 administrative hours × $44.51 per hour + 688 information technology hours × $93.68 per hour = $2,597,561.

[78] 528 legal hours × $147.19 per hour + 264 management hours × $86.83 per hour + 88 administrative hours × $44.51 per hour + 220 information technology hours × $93.68 per hour = $125,166.

[79] 176 legal hours × $147.19 per hour + 88 management hours × $86.83 per hour + 44 administrative hours × $44.51 per hour + 44 information technology hours × $93.68 per hour = $39,626.

[80] 2,064 legal hours × $147.19 per hour + 13,760 management hours × $86.83 per hour + 688 administrative hours × $44.51 per hour + 2,236 information technology hours × $93.68 per hour = $1,738,672.

[81] 688 legal hours × $147.19 per hour + 6,880 management hours × $86.83 per hour + 344 administrative hours × $44.51 per hour + 860 information technology hours × $93.68 per hour = $794,533.

[82] 69 legal hours × $147.19 per hour + 344 management hours × $86.83 per hour + 69 administrative hours × $44.51 per hour = $43,058.

alternative is in table 12 at the end of this section.

For proposed § 201.112, AMS expects that growers would take about four hours to review these documents when they are disclosed as part of a capital improvement request or requirement by the LPD. For the small business exemption alternative, LPDs would be required to provide disclosures to growers for any of the 18,858 contracts for which additional capital investment requests are made.[83] AMS expects that LPDs will make additional capital investment requests for an average of five percent of grower contracts annually. Given that growers require an estimated 4 hours at $65.35 per hour, growers' aggregate annual costs would be $246,000[84] for reviewing documents required by proposed § 201.112 in the first year and in each successive year for the small business exemption alternative.

The ten-year aggregate total costs of proposed § 201.112 under the small business exemption alternative for LPDs are estimated to be $431,000, and the ten-year aggregated total costs to poultry growers of proposed § 201.112 under the small business exemption alternative are estimated to be $2,465,000. The combined first-year aggregate total costs to LPDs and poultry growers of proposed § 201.112 under the small business exemption alternative are estimated to be $290,000, and the ten-year aggregate total costs are estimated to be $2,895,000.

Combined Costs of Proposed §§ 201.106, 110, and 112—Small Business Exemption Alternative

Aggregate combined costs to LPDs for proposed §§ 201.106, 110, and 112 for the small business exemption alternative are expected to be $13,254,000 in the first year, and $3,475,000 in subsequent years. The combined costs for poultry growers are expected to be $5,176,000 in the first year, $246,000 in subsequent years.

The aggregate ten-year combined quantified costs to LPDs of proposed §§ 201.106, 110, and 112 for the small business exemption alternative are estimated to be $44,527,000 and the present value of the ten-year combined costs $39,135,000 discounted at a three percent rate and $33,545,000 at a seven percent rate. The aggregate annualized costs of the PV of ten-year costs to LPDs discounted at a three percent rate are expected to be $4,588,000 and $4,776,000 discounted at a seven percent rate.

The aggregate ten-year combined costs to poultry growers of proposed §§ 201.106, 110, and 112 for the small business exemption alternative are estimated to be $7,394,000 and the present value of the ten-year combined costs are estimated to be $6,888,000 discounted at a three percent rate and $6,338,000 at a seven percent rate. The aggregate annualized costs of the PV of ten-year costs to poultry growers discounted at a three percent rate are expected to be $808,000 and $902,000 discounted at a seven percent rate.

The aggregate combined costs of proposed §§ 201.106, 110, and 112 under the small business exemption alternative for LPDs and poultry growers are estimated to be $18,430,000 in the first year and $3,721,000 in subsequent years. The aggregate ten-year combined costs to LPDs and poultry growers of proposed §§ 201.106, 110, and 112 for the small business exemption alternative are estimated to be $51,922,000 and the present value of the ten-year combined costs are estimated to be $46,024,000 discounted at a three percent rate and $39,883,000 at a seven percent rate. The aggregate annualized costs of the PV of ten-year costs to LPDs and poultry growers discounted at a three percent rate are expected to be $5,395,000 and $5,679,000 discounted at a seven percent rate. The aggregate cost estimates of proposed §§ 201.106, 110, and 112 under the small business exemption alternative presented above appear in the following table. The quantified costs to the industry in the first year under the small business exemption alternative are $18.430 million.

TABLE 3—ESTIMATED COSTS OF PROPOSED §§ 201.106, 110, AND 112—SMALL BUSINESS EXEMPTION ALTERNATIVE

Preferred alternative	Expected cost *		
	Live poultry dealers	Poultry growers	Industry total
§ 201.106:			
First-Year	$8,310,000	$4,929,000	$13,239,000
Ten-Year Total	8,310,000	4,929,000	13,239,000
PV of Ten-Year Discounted at 3%	8,068,000	4,786,000	12,853,000
PV of Ten-Year Discounted at 7%	7,766,000	4,607,000	12,373,000
Ten-Year Annualized at 3%	946,000	561,000	1,507,000
Ten-Year Annualized at 7%	1,106,000	656,000	1,762,000
§ 201.110:			
First-Year	4,902,000	0	4,902,000
Ten-Year Total	35,787,000	0	35,787,000
PV of Ten-Year Discounted at 3%	30,701,000	0	30,701,000
PV of Ten-Year Discounted at 7%	25,477,000	0	25,477,000
Ten-Year Annualized at 3%	3,599,000	0	3,599,000
Ten-Year Annualized at 7%	3,627,000	0	3,627,000
§ 201.112:			
First-Year	43,000	246,000	290,000
Ten-Year Total	431,000	2,465,000	2,895,000
PV of Ten-Year Discounted at 3%	367,000	2,102,000	2,470,000
PV of Ten-Year Discounted at 7%	302,000	1,731,000	2,034,000
Ten-Year Annualized at 3%	43,000	246,000	290,000
Ten-Year Annualized at 7%	43,000	246,000	290,000
§§ 201.106, 110, and 112:			
First-Year	13,254,000	5,176,000	18,430,000
Ten-Year Total	44,527,000	7,394,000	51,922,000

[83] Live poultry dealers that exceed SBA classification criteria for small businesses reported a combined 18,858 poultry contracts in their Annual Reports to AMS.

[84] 4 hours to review each disclosure × $65.35 per hour × 18,858 contracts × 5 percent of growers that require significant housing upgrades = $246,474.

TABLE 3—ESTIMATED COSTS OF PROPOSED §§ 201.106, 110, AND 112—SMALL BUSINESS EXEMPTION ALTERNATIVE—Continued

Preferred alternative	Expected cost *		
	Live poultry dealers	Poultry growers	Industry total
PV of Ten-Year Discounted at 3%	39,135,000	6,888,000	46,024,000
PV of Ten-Year Discounted at 7%	33,545,000	6,338,000	39,883,000
Ten-Year Annualized at 3%	4,588,000	808,000	5,395,000
Ten-Year Annualized at 7%	4,776,000	902,000	5,679,000

* Rows may not sum to Total Costs due to rounding.

Estimated Costs and Expected-Benefits of Proposed §§ 201.106, 110, and 112—Small Business Exemption Alternative

According to PSD records, only 4.8 percent of poultry growing contracts are between small LPDs and poultry growers. Thus, 95.2 percent of all poultry growers will receive the benefits of proposed §§ 201.106, 110, and 112 under the small business exemption alternative. AMS expects the value of non-quantified benefits to growers to exceed the costs of proposed §§ 201.106, 110, and 112 under the small business exemption alternative.

As with the preferred option, the expected value of benefits to the industry from proposed §§ 201.106, 110, and 112 will be positive but cannot be quantified in relation to the total value of industry production. Thus, AMS cannot measure any impact or shift in total industry supply or any corresponding indirect effects on industry supply and demand, including price and quantity effects.

Though the small business exemption alternative would reduce costs to the industry, this alternative would deny the benefits offered by proposed §§ 201.106, 110, and 112 to poultry growers who contract with small LPDs. While most poultry are grown under contract with large businesses, there are many small LPDs who would be exempt from the proposed rules under the small business exemption alternative and whose growers would not benefit. Under the small business exemption alternative, these poultry growers would continue to be exposed to the informational asymmetries and other associated costs discussed above. AMS considered all four regulatory alternatives and determined that the preferred alternative is the best alternative because the benefits of the regulations will be captured by all poultry growers, regardless of the size of the LPD with which they contract.

Estimated Costs and Expected Benefits of Excluded Rule Sections Alternative

AMS estimated costs for a third alternative to the ''do nothing'' option and the last of four total alternatives presented. As for the preferred option, this alternative would include all small and large LPDs, the only difference being the exclusion from the analysis of two provisions that are sub-parts of proposed § 201.110. Specifically, this alternative does not include the provision in proposed § 201.110(b)(1)(iv) requiring LPDs to develop new communications processes or the provision in proposed § 201.110(b)(2) to conduct ongoing compliance reviews. With the removal of these two provisions from the proposed rule, the estimated overall total cost for this alternative is smaller than the preferred option.

The estimation of the costs of the excluded rule sections alternative will follow the same format as the preferred alternative.

Costs of Proposed § 201.106 and § 201.112—Excluded Rule Sections Alternative

No provisions have been removed from proposed § 201.106 or § 201.112 under the excluded rule sections alternative. Therefore, AMS cost estimates are identical to those described under the preferred alternative. Detailed breakdowns of one-time and ongoing costs under this alternative are also in table 13 for proposed § 201.106 and in table 16 for § 201.112 at the end of this section.

Costs of Proposed § 201.110—Excluded Rule Sections Alternative

Proposed § 201.110 would require LPDs to develop, maintain, and comply with a set of policies and procedures that are reasonably designed for the design and operation of a poultry grower ranking system that is consistent with the duty of fair comparison. Two parts of proposed § 201.110 are excluded for purposes of estimating costs of the proposed rule under the excluded rule sections alternative. These exclusions are proposed § 201.110(b)(1)(iv), dealing with communication, cooperation, and dispute resolution, and proposed § 201.110(b)(2), dealing with compliance reviews.

AMS estimates that the one-time aggregate cost for LPDs to develop new processes as required in proposed § 201.110(a) and (b)(1)(i) through (iii) under the excluded rule sections alternative will require 4,256 legal hours, 29,000 management hours, 1,504 administrative hours, and 1,504 information technology hours, costing a total of $3,352,000 [85] in the first year. As discussed previously, due to differences in their structure, estimates for small LPDs were calculated with the expectation that they would employ relatively fewer legal (attorney) hours that are offset by a larger share of management hours.[86] A detailed breakdown of the one-time first-year costs associated with proposed § 201.110 under the excluded rule sections alternative is in table 14 at the end of this section.

AMS expects the annual ongoing costs of implementation, monitoring, and compliance proposed § 201.110(a) and (b)(1)(i) through (iii) under the excluded rule sections alternative to require in aggregate 1,440 legal hours,[87] 28,952 management hours which include renewal and updating of policies and procedures at the corporate level as well as monitoring activities conducted by managers at each complex

[85] 4,256 legal hours × $147.19 per hour + 29,000 management hours × $86.83 per hour + 1,504 administrative hours × $44.51 per hour + 1,504 information technology hours × $93.68 per hour = $3,352,348.

[86] Small live poultry dealers are estimated to require 33% as many legal hours and 125% as many management hours as large live poultry dealers on a per-complex basis for one-time cost of developing § 201.110 tournament fairness policies and procedures.

[87] Small live poultry dealers are estimated to require 50% as many legal hours as large live poultry dealers on a per-complex basis in ongoing compliance and maintenance of § 201.110 tournament fairness policies and procedures.

to ensure ongoing compliance, 752 administrative hours, and 752 information technology hours for an aggregate annual cost of $2,830,000.[88] A more detailed explanation of the ongoing costs associated with proposed § 201.110 under the excluded rule sections alternative is in table 15 at the end of this section.

Written processes developed by LPDs are for internal use, to be complied with and maintained, to be provided to USDA, and as part of ongoing internal monitoring. Under proposed § 201.110, LPDs would not be required to provide additional disclosures to contract growers. Therefore, proposed § 201.110 would not impose any additional one-time or ongoing costs on growers to review additional disclosures, and total grower costs of proposed § 201.110 under the excluded rule sections alternative are zero.

The first-year aggregate total costs of proposed § 201.110 under the excluded rule sections alternative for LPDs are estimated to be $3,352,000 and the ten-year aggregate total costs are estimated to be $28,820,000. Because expected grower costs for proposed § 201.110 are zero, the costs above also represent the total aggregate costs to LPDs of proposed § 201.110 under the excluded rule sections alternative.

Combined Costs of Proposed §§ 201.106, 110, and 112—Excluded Rule Sections Alternative

Aggregate combined costs to LPDs for proposed §§ 201.106, 110, and 112 for the excluded rule sections alternative are expected to be $12,253,000 in the first year, and $2,877,000 in subsequent years. The combined costs for poultry growers are expected to be $5,437,000 in the first year, $259,000 in subsequent years.

The aggregate ten-year combined quantified costs to LPDs of proposed §§ 201.106, 110, and 112 for the excluded rule sections alternative are estimated to be $38,144,000 and the present value of the ten-year combined costs is $33,643,000 discounted at a three percent rate and $28,968,000 at a seven percent rate. The aggregate annualized costs of the PV of ten-year costs to LPDs discounted at a three percent rate are expected to be $3,944,000 and $4,124,000 discounted at a seven percent rate.

The aggregate ten-year combined costs to poultry growers of proposed §§ 201.106, 110, and 112 for the excluded rule sections alternative are estimated to be $7,767,000 and the present value of the ten-year combined costs are estimated to be $7,235,000 discounted at a three percent rate and $6,657,000 at a seven percent rate. The aggregate annualized costs of the PV of ten-year costs to poultry growers discounted at a three percent rate are expected to be $848,000 and $948,000 discounted at a seven percent rate.

The aggregate combined costs of proposed §§ 201.106, 110, and 112 under the excluded rule sections alternative for LPDs and poultry growers are estimated to be $17,689,000 in the first year and $3,136,000 in subsequent years. The aggregate ten-year combined costs to LPDs and poultry growers of proposed §§ 201.106, 110, and 112 for the excluded rule sections alternative are estimated to be $45,911,000 and the present value of the ten-year combined costs are estimated to be $40,878,000 discounted at a three percent rate and $35,626,000 at a seven percent rate. The aggregate annualized costs of the PV of ten-year costs to LPDs and poultry growers discounted at a three percent rate are expected to be $4,792,000 and $5,072,000 discounted at a seven percent rate. The aggregate cost estimates of proposed §§ 201.106, 110, and 112 under the excluded rule sections alternative presented above appear in the following table. The quantified costs to the industry in the first year under the excluded rule sections alternative are $17.69 million.

TABLE 4—ESTIMATED COSTS OF PROPOSED §§ 201.106, 110, AND 112—EXCLUDED RULE SECTIONS ALTERNATIVE

Preferred alternative	Expected cost*		
	Live poultry dealers	Poultry growers	Industry total
§ 201.106:			
First-Year	$8,853,000	$5,178,000	$14,031,000
Ten-Year Total	8,853,000	5,178,000	14,031,000
PV of Ten-Year Discounted at 3%	8,596,000	5,027,000	13,623,000
PV of Ten-Year Discounted at 7%	8,274,000	4,839,000	13,113,000
Ten-Year Annualized at 3%	1,008,000	589,000	1,597,000
Ten-Year Annualized at 7%	1,178,000	689,000	1,867,000
§ 201.110:			
First-Year	3,352,000	0	3,352,000
Ten-Year Total	28,820,000	0	28,820,000
PV of Ten-Year Discounted at 3%	24,646,000	0	24,646,000
PV of Ten-Year Discounted at 7%	20,364,000	0	20,364,000
Ten-Year Annualized at 3%	2,889,000	0	2,889,000
Ten-Year Annualized at 7%	2,899,000	0	2,899,000
§ 201.112:			
First-Year	47,000	259,000	306,000
Ten-Year Total	471,000	2,589,000	3,060,000
PV of Ten-Year Discounted at 3%	401,000	2,208,000	2,610,000
PV of Ten-Year Discounted at 7%	331,000	1,818,000	2,149,000
Ten-Year Annualized at 3%	47,000	259,000	306,000
Ten-Year Annualized at 7%	47,000	259,000	306,000
§§ 201.106, 110, and 112:			
First-Year	12,253,000	5,437,000	17,689,000
Ten-Year Total	38,144,000	7,767,000	45,911,000
PV of Ten-Year Discounted at 3%	33,643,000	7,235,000	40,878,000
PV of Ten-Year Discounted at 7%	28,968,000	6,657,000	35,626,000
Ten-Year Annualized at 3%	3,944,000	848,000	4,792,000

[88] 1,440 legal hours × $147.19 per hour + 28,952 management hours × $86.83 per hour + 752 administrative hours × $44.51 per hour + 752 information technology hours × $93.68 per hour = $2,829,775.

TABLE 4—ESTIMATED COSTS OF PROPOSED §§ 201.106, 110, AND 112—EXCLUDED RULE SECTIONS ALTERNATIVE—Continued

Preferred alternative	Expected cost *		
	Live poultry dealers	Poultry growers	Industry total
Ten-Year Annualized at 7%	4,124,000	948,000	5,072,000

* Rows may not sum to Total Costs due to rounding.

Estimated Costs and Expected-Benefits of Proposed §§ 201.106, 110, and 112—Excluded Rule Sections Alternative

As with the preferred option, the expected value of benefits to the industry from proposed §§ 201.106, 110, and 112 will be positive but cannot be quantified in relation to the total value of industry production. Thus, AMS cannot measure any impact or shift in total industry supply or any corresponding indirect effects on industry supply and demand, including price and quantity effects.

Though the excluded rule sections alternative would reduce costs to the industry, this alternative would deny to poultry growers the benefits offered by proposed § 201.110(b)(1)(iv) and (b)(2). Growers may be denied benefits of improved communication and the ability to pursue dispute resolution directly with LPDs when differences arise with their poultry complex management. Without a requirement for regular compliance reviews, grower confidence that LPDs are complying with policies and procedures developed to ensure fair tournament administration would be diminished. LPDs would not benefit from credibility gained by ongoing compliance reviews. Further, USDA will have substantial difficulty ensuring that LPDs are maintaining and complying with written processes developed under proposed § 201.110 without conducting specific investigations. Without effective means to enforce compliance, the resulting grower benefits from other sections of proposed § 201.110 may not be realized.

After considering all four regulatory alternatives, AMS determined that the proposed alternative is the best alternative.

Details of the Estimated One-Time, First-Year Costs and On-Going Annual Costs of Providing Disclosure Documents Required in Proposed §§ 201.106, 110, and 112 Under the Preferred Alternative

The tables below provide details of the estimated costs to LPDs to comply with the proposed rule sections. AMS expects that the direct costs will consist entirely of the value of the time required to produce and distribute documentation and implement changes as described in the Regulatory Impact Analysis. AMS subject matter experts provided estimates of the average amount of time that would be necessary for LPDs to meet the elements listed in the ''Regulatory Requirements'' column. These experts were auditors and supervisors with many years of experience in auditing LPDs for compliance with the Packers and Stockyards Act. The estimated hours are shown by labor category for two types of LPD: those categorized as either not small or small based on SBA classification. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimated released May 2022. Wage estimates are marked up 41.79 percent to account for benefits. The number of poultry processing plants or complexes (172 non-small and 16 small) was tallied from the annual reports, ''Annual Report of Live Poultry Dealers,'' that LPDs file with AMS.[89] Expected costs for each ''Regulatory Requirement'' and are listed in the ''Expected Cost'' column. Summing the values in the ''Expected Cost'' column provides the total expected costs to LPDs to comply with the proposed rule under the alternative.

[89] PSD form 3002 ''Annual Report of Live Poultry Dealers,'' OMB control number 0581–0308. Op. Cit.

TABLE 5—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.106

Regulatory requirement	Profession	Not small LPDs		Small LPDs		Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex	Number of complexes	Number of hours required for each complex	Number of complexes			
§ 201.106	Legal	96	172	96	16	18,048	147.19	2,656,000
	Management	330	172	165	16	59,400	86.83	5,158,000
	Administrative	40	172	40	16	7,520	44.51	335,000
	Information Tech	40	172	40	16	7,520	93.68	704,000
Total Cost								8,853,000

*Column may not sum to Total Cost due to rounding.

TABLE 6—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH PROPOSED § 201.110

Regulatory requirement	Profession	Not small LPDs		Small LPDs		Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex/LPD	Number of complexes/LPDs	Number of hours required for each complex/LPD	Number of complexes/LPDs			
§ 201.110(a) and (b)(1)(i) through (iii).	Legal	24	172	8	16	4,256	147.19	626,000
	Management	150	172	200	16	29,000	86.83	2,518,000
	Administrative	8	172	8	16	1,504	44.51	67,000
	Information Tech	8	172	8	16	1,504	93.68	141,000
§ 201.110(b)(1)(iv)	Legal	24	22	16	20	848	147.19	125,000
	Management	12	22	14	20	544	86.83	47,000
	Administrative	4	22	4	20	168	44.51	7,000
	Information Tech	10	22	6	20	340	93.68	32,000
§ 201.110(b)(2)	Legal	12	172	12	16	2,256	147.19	332,000
	Management	80	172	80	16	15,040	86.83	1,306,000
	Administrative	4	172	4	16	752	44.51	33,000
	Information Tech	13	172	13	16	2,444	93.68	229,000
Total Cost **								5,464,000

*Column may not sum to Total Cost due to rounding.
** Costs associated with § 201.110(b)(3), "Record retention," are included in cost estimates for § 201.110(b)(1)–(2).

TABLE 7—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.110

Regulatory requirement	Profession	Not small LPDs		Small LPDs		Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex/LPD	Number of complexes/LPDs	Number of hours required for each complex/LPD	Number of complexes/LPDs			
§ 201.110(a) and (b)(1)(i) through (iii).	Legal	8	172	4	16	1,440	147.19	212,000
	Management	154	172	154	16	28,952	86.83	2,514,000
	Administrative	4	172	4	16	752	44.51	33,000
	Information Tech	4	172	4	16	752	93.68	70,000
§ 201.110(b)(1)(iv)	Legal	8	22	8	20	336	147.19	49,000
	Management	4	22	4	20	168	86.83	15,000
	Administrative	2	22	2	20	84	44.51	4,000
	Information Tech	2	22	2	20	84	93.68	8,000
§ 201.110(b)(2)	Legal	4	172	4	16	752	147.19	111,000

TABLE 7—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.110—Continued

Regulatory requirement	Profession	Not small LPDs		Small LPDs		Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex/LPD	Number of complexes/LPDs	Number of hours required for each complex/LPD	Number of complexes/LPDs			
	Management	40	172	40	16	7,520	86.83	653,000
	Administrative	2	172	2	16	376	44.51	17,000
	Information Tech	5	172	5	16	940	93.68	88,000
Total Cost **								3,774,000

* Column may not sum to Total Cost due to rounding.
** Costs associated with proposed § 201.110(b)(3), "Record retention," are included in cost estimates for proposed § 201.110(b)(1) and (2).

TABLE 8—EXPECTED FIRST-YEAR AND ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.112

Regulatory requirement	Profession	Not small LPDs		Small LPDs		Number of total hours	Expected wage ($)	Adjustment (percent)	Expected cost * ($)
		Number of hours required for each complex	Number of complexes	Number of hours required for each complex	Number of complexes				
§ 201.112	Legal	8	172	8	16	75	147.19	5	11,000
	Management	40	172	40	16	376	86.83	5	33,000
	Administrative	8	172	8	16	75	44.51	5	3,000
	Information Tech	0	172	0	16	0	93.68	5	0
Total Cost									47,000

* Column may not sum to Total Cost due to rounding.

Details of the estimated one-time, first-year costs and on-going annual costs of providing disclosure documents required in proposed §§ 201.106, 110, and 112 under the small business exemption alternative.

Costs for the alternative that would exempt LPDs fall under the SBA definition of small businesses were estimated similarly to costs for the proposed §§ 201.106, 110, and 112. The tables below are set up the same as before and summarize expected first-year and ongoing direct costs for the 22 LPDs not categorized as small based on SBA classification to comply with each rule section.

TABLE 9—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.106—SMALL BUSINESS EXEMPTION ALTERNATIVE

Regulatory requirement	Profession	Not small LPDs		Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex	Number of complexes			
§ 201.106	Legal	96	172	16,512	147.19	2,430,000
	Management	330	172	56,760	86.83	4,928,000
	Administrative	40	172	6,880	44.51	306,000
	Information Tech	40	172	6,880	93.68	645,000
Total Cost						8,310,000

* Column may not sum to Total Cost due to rounding.

TABLE 10—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH PROPOSED § 201.110—SMALL BUSINESS EXEMPTION ALTERNATIVE

Regulatory requirement	Profession	Not small LPDs		Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex/LPD	Number of complexes/LPDs			
§ 201.110(a) and (b)(1)(i) through (iii).	Legal	24	172	4,128	147.19	608,000
	Management	150	172	25,800	86.83	2,240,000
	Administrative	8	172	1,376	44.51	61,000
	Information Tech	8	172	1,376	93.68	129,000
§ 201.110(b)(1)(iv)	Legal	24	22	528	147.19	78,000
	Management	12	22	264	86.83	23,000
	Administrative	4	22	88	44.51	4,000
	Information Tech	10	22	220	93.68	21,000
§ 201.110(b)(2)	Legal	12	172	2,064	147.19	304,000
	Management	80	172	13,760	86.83	1,195,000
	Administrative	4	172	688	44.51	31,000
	Information Tech	13	172	2,236	93.68	209,000
Total Cost **						4,902,000

* Column may not sum to Total Cost due to rounding.
** Costs associated with proposed § 201.110(b)(3), ''Record retention,'' are included in cost estimates for § 201.110(b)(1) and (2).

TABLE 11—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.110—SMALL BUSINESS EXEMPTION ALTERNATIVE

Regulatory requirement	Profession	Not small LPDs		Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex/LPD	Number of complexes/ LPDs			
§ 201.110(a) and (b)(1)(i) through (iii).	Legal	8	172	1,376	147.19	203,000
	Management	154	172	26,488	86.83	2,300,000
	Administrative	4	172	688	44.51	31,000
	Information Tech	4	172	688	93.68	64,000
§ 201.110(b)(1)(iv)	Legal	8	22	176	147.19	26,000
	Management	4	22	88	86.83	8,000
	Administrative	2	22	44	44.51	2,000
	Information Tech	2	22	44	93.68	4,000
§ 201.110(b)(2)	Legal	4	172	688	147.19	101,000
	Management	40	172	6,880	86.83	597,000
	Administrative	2	172	344	44.51	15,000
	Information Tech	5	172	860	93.68	81,000

TABLE 11—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.110—SMALL BUSINESS EXEMPTION ALTERNATIVE—Continued

Regulatory requirement	Profession	Not small LPDs		Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex/LPD	Number of complexes/ LPDs			
Total Cost **						3,432,000

* Column may not sum to Total Cost due to rounding.
** Costs associated with § 201.110(b)(3), ''Record retention,'' are included in cost estimates for § 201.110(b)(1) and (2).

TABLE 12—EXPECTED FIRST-YEAR AND ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.112—SMALL BUSINESS EXEMPTION ALTERNATIVE

Regulatory requirement	Profession	Not small LPDs		Adjustment (percent)	Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex	Number of complexes				
§ 201.112	Legal	8	172	5	69	147.19	10,000
	Management	40	172	5	344	86.83	30,000
	Administrative	8	172	5	69	44.51	3,000
	Information Tech	0	172	5	0	93.68	0
Total Cost							43,000

* Column may not sum to Total Cost due to rounding.

Details of the estimated one-time, first-year costs and on-going annual costs of providing disclosure documents required in proposed §§ 201.106, 110, and 112 under the excluded rule sections alternative.

Costs for the third alternative to the *status quo* that would exclude proposed § 201.110(b)(1)(iv) and (2) were estimated similarly to costs for the proposed §§ 201.106, 110, and 112. The tables below provide the details of estimated one-time, first-year and ongoing costs to LPDs to comply with each non-excluded rule section under the excluded rule sections alternative.

TABLE 13—EXPECTED FIRST-YEAR DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.106—EXCLUDED RULE SECTIONS ALTERNATIVE

Regulatory requirement	Profession	Not small LPDs		Small LPDs		Number of total hours	Expected wage ($)
		Number of hours required for each complex	Number of complexes	Number of hours required for each complex	Number of complexes		
§ 201.106	Legal	96	172	96	16	18,048	147.19
	Management	330	172	165	16	59,400	86.83
	Administrative	40	172	40	16	7,520	44.51
	Information Tech	40	172	40	16	7,520	93.68
Total Cost							8,853,000

* Column may not sum to Total Cost due to rounding.

TABLE 14—ONE TIME FIRST-YEAR COSTS ASSOCIATED WITH PROPOSED § 201.110—EXCLUDED RULE SECTIONS ALTERNATIVE

Regulatory requirement	Profession	Not small LPDs		Small LPDs		Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex/LPD	Number of complexes/LPDs	Number of hours required for each complex/LPD	Number of complexes/LPDs			
§ 201.110(a) and (b)(1)(i) through (iii).	Legal	24	172	8	16	4,256	147.19	626,000
	Management	150	172	200	16	29,000	86.83	2,518,000
	Administrative	8	172	8	16	1,504	44.51	67,000
	Information Tech	8	172	8	16	1,504	93.68	141,000
§ 201.110(b)(1)(iv)	Legal	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Management	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Administrative	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Information Tech	N/A	N/A	N/A	N/A	N/A	N/A	N/A
§ 201.110(b)(2)	Legal	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Management	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Administrative	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Information Tech	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Cost **								3,352,000

* Column may not sum to Total Cost due to rounding.
** Costs associated with § 201.110(b)(3), "Record retention," are included in cost estimates for § 201.110(b)(1) and (2).

TABLE 15—EXPECTED ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.110—EXCLUDED RULE SECTIONS ALTERNATIVE

Regulatory requirement	Profession	Not small LPDs		Small LPDs		Number of total hours	Expected wage ($)	Expected cost * ($)
		Number of hours required for each complex/LPD	Number of complexes/LPDs	Number of hours required for each complex/LPD	Number of complexes/LPDs			
§ 201.110(a) (b)(1)(i)–(iii)	Legal	8	172	4	16	1,440	147.19	212,000
	Management	154	172	154	16	28,952	86.83	2,514,000
	Administrative	4	172	4	16	752	44.51	33,000
	Information Tech	4	172	4	16	752	93.68	70,000
§ 201.110(b)(1)(iv)	Legal	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Management	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Administrative	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Information Tech	N/A	N/A	N/A	N/A	N/A	N/A	N/A
§ 201.110(b)(2)	Legal	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Management	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Administrative	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Information Tech	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Cost **								2,830,000

* Column may not sum to Total Cost due to rounding.
** Costs associated with § 201.110(b)(3), "Record retention," are included in cost estimates for § 201.110(b)(1) and (2).

TABLE 16—EXPECTED FIRST-YEAR AND ONGOING DIRECT COSTS ASSOCIATED WITH PROPOSED § 201.112—EXCLUDED RULE SECTIONS ALTERNATIVE

Regulatory requirement	Profession	Not Small LPDs		Small LPDs		Number of total hours	Expected wage ($)	Adjustment (percent)	Expected cost * ($)
		Number of hours required for each complex	Number of complexes	Number of hours required for each complex	Number of complexes				
§ 201.112	Legal	8	172	8	16	75	147.19	5	11,000
	Management	40	172	40	16	376	86.83	5	33,000
	Administrative	8	172	8	16	75	44.51	5	3,000
	Information Tech	0	172	0	16	0	93.68	5	0
Total Cost									47,000

*Column may not sum to Total Cost due to rounding.

D. Regulatory Flexibility Analysis

As part of the regulatory process, a Regulatory Flexibility Analysis (RFA) is conducted in order to evaluate the effects of this proposed rule on small businesses.

AMS is proposing adding new §§ 201.106, 110, and 112 to the regulations under the Packers and Stockyards Act. The proposed § 201.106 would require live poultry dealers (LPDs) to develop and implement new broiler grower contracts and grower payment systems. Proposed § 201.110 would impose a duty on LPDs to establish and maintain compliance with written processes for the design and operation of poultry growing ranking systems consistent with a duty of fair comparison. Proposed § 201.112 would require LPDs to produce and distribute disclosures when they request growers to make additional capital investments.

Proposed § 201.106 would require that the LPD not use a grower's grouping, ranking, or comparison to others to reduce a rate of compensation disclosed in a broiler growing arrangement. As a result, AMS expects that most LPDs would be required to make one-time changes to existing grower contracts and develop new payment systems that are consistent with these provisions. This process would also include producing and filing grower documents and communicating information about the new contract and payment system to growers and staff at each complex. AMS is aware that some LPDs already have contracts in place that meet the proposed requirements.

Proposed § 201.110(a)(1) would require LPDs to provide a fair comparison among growers when basing compensation on a upon a grouping or ranking of growers delivering during a specified period. Proposed § 201.110(a)(2)(i) through (vi) describe factors that the Secretary will consider in determining whether the system was designed to deliver a fair comparison, which include: whether growers will be compared to growers supplied with inputs or assigned production practices that result in material differences in performance metrics used in payment calculations, whether growers will be compared over appropriate time periods, whether any non-comparison payment methods applied are appropriate, whether the LPD has made reasonable efforts to timely resolve concerns a grower raises regarding the LPD's design and operation of its poultry grower ranking system, and any other factor relevant to a fair comparison. Proposed § 201.110(a)(3) would require that when an LPD uses a poultry grower ranking system and cannot conduct a fair comparison for one or more growers, the LPD must compensate those growers through an appropriate non-comparison method specified in the contract that reflects reasonable compensation to the grower for its services.

Proposed § 201.110(b) would require LPDs to establish and maintain written documentation of poultry grower ranking system policies and procedures for the design and operation of a poultry grower ranking system that is consistent with the duty of fair comparison. The written documentation must include policies and procedures regarding the manner in which LPDs will work to ensure a fair comparison among contract growers taking into account the distribution of inputs and assignment of production variables that are controlled by the LPD, any flexibility the LPD has in performing these comparisons, and how the LPD resolves concerns regarding the design and operation of the poultry grower ranking system by the LPD.

Under proposed § 201.110(a) and (b)(1)(i) through (iii), all LPDs would be required to develop policies and procedures that meet specific criteria outlined in the proposed regulation. Information obtained during previous AMS investigations suggests that LPDs may already have some formal or informal policies and practices or perhaps even some contract provisions in place to address and attempt to remedy situations in which growers have been disadvantaged by such factors. For example, an LPD might remove a grower that has received an unreasonable share of lower quality inputs from the grower pool and pay them by some another method that does not penalize relative performance (*e.g.,* a five-flock average).

Under § 201.110(b)(2), LPDs would be required to conduct a compliance review of each complex no less than once every two years to ensure compliance with policies and procedures established under § 201.110(b)(1). LPDs would need to first design a compliance review system to be used for conducting a written review of compliance by complex managers, production supervisors, and field agents. Reviews would then need to be conducted every two years at each complex.

The new provisions in proposed § 201.112 would require LPDs to provide a Capital Improvement Disclosure Document any time the LPD requests or requires existing broiler chicken growers to make an additional capital investment ($12,500 or more per structure excluding maintenance or repair). The Capital Improvement Disclosure Document must include information about the goal or purpose of the investment, all schedules and deadlines for the investment, a description of changes to housing specifications, and analysis of projected returns. Based on information provided by subject matter experts, AMS estimates a 5 percent annual average probability that capital improvement upgrades will be required for growers at a complex, which would trigger creation of a new disclosure document.

AMS expects the requirements in proposed §§ 201.106, 110, and 112 will protect growers from some degree of unfairness and deception by establishing a duty of fair comparison for LPDs in poultry tournament administration and requiring LPDs to establish and document policies, adopt transparent methods of presenting grower compensation in broiler grower contracts, and provide important information to broiler growers to effectuate their legal rights. By increasing transparency at key decision points and establishing a duty of fair grower comparison for LPDs, the proposed regulation would secure a more level playing field among growers. The proposed rules address key decision or financial leverage points for growers and LPDs. These include points in time when LPDs and growers agree to contracts, when LPDs present compensation schedules to growers, when LPDs allocate inputs and production practices during tournaments, and when LPDs request or require growers to make ACIs.

Market power gives LPDs a considerable bargaining advantage relative to growers in poultry contracting arrangements. As a result, growers lack negotiating power to demand, among other things, transparency and completeness in contracts and adequate LPD effort to ensure fair comparison in tournament administration that would likely reduce the potential for deception and unfairness. Currently, most broiler production contracts are incomplete in that they fail to clearly state important terms and provisions related to grower compensation, settlement procedures, and tournament administration. Providing more clear information for growers and establishing a duty for LPDs in administering tournaments would increase transparency of potential grower compensation outcomes and reduce some deception and unfairness in the operation of poultry grower ranking systems, including by enabling AMS and growers

to better identify potentially unfair practices that require enforcement intervention even when growers cannot otherwise avoid those practices. Additional information provided by LPDs about ACIs—including the goal and purpose, timelines, approved manufacturers and vendors, and expected returns and analyses—would help AMS and growers identify potentially unfair ACI practices early. Under some circumstances, and to some extent, it would also enable growers to make more informed business decisions and more readily avoid poor or ineffective investments that result in diminished financial opportunities. AMS acknowledges that many benefits from transparency require certain conditions that are not always present, including that multiple LPDs exist, that switching is accepted by LPDs, and that prior investments in housing design do not tie growers to certain LPDs. Further, growers are unlikely to see the full benefits of transparency when they lack reasonable alternatives. Nevertheless, transparency is likely to be more valuable in markets without unfair practices; eliminating those practices may increase the benefits of transparency for growers.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS).[90] SBA considers broiler producers small if sales are less than $1,000,000 per year. LPDs, classified under NAICS 311615, are considered small businesses if they have fewer than 1,250 employees.

AMS maintains data on LPDs from the Annual Reports these firms file with PSD. Currently, 42 LPDs would be subject to the proposed regulation. Of these, 20 LPDs would be small businesses according to the SBA standard. In their fiscal year 2021, LPDs reported that they had 19,808 production contracts with broiler growers. Small LPDs accounted for 950 contracts (4.8 percent).

Annual Reports from LPDs indicate they had 19,808 contracts, but a poultry grower can have more than one contract. The 2022 Census of Agriculture indicated that there were 14,144 contract broiler growers in the United States.[91] AMS has no record of the number of poultry growers that qualify as small businesses but expects that nearly all of them are small businesses.

Costs of proposed §§ 201.106, 110, and 112 to LPDs would primarily consist of the time required to modify existing contracts, develop and comply with new policies, and collect and distribute it among the growers. Proposed §§ 201.106, 110, and 112 would also cost poultry growers the value of the time they put into reviewing and acknowledging receipt of new contracts and disclosures.

Expected costs are estimated as the total value of the time required by LPDs to modify existing contracts, develop and comply with new policies, and collect and distribute required disclosures that would be required by proposed §§ 201.106, 110, and 112 as well as the time to create and maintain any necessary additional records. Estimates of the amount of time required to create and distribute the disclosure documents were provided by AMS subject matter experts. These experts were auditors and supervisors with many years of experience in auditing LPDs for compliance with the Packers and Stockyards Act. Estimates for the value of the time are U.S. Bureau of Labor Statistics Occupational Employment and Wage Statistics estimate released May 2022.[92] AMS marked up the wages 41.79 percent to account for benefits.

AMS estimated one-time first-year investment to LPDs of updating grower contracts and developing new grower payment systems, including modifying information systems to include new calculations as well as filing, and reporting to comply with § 201.106 would require 1,536 legal hours at $147.19 per hour costing $226,000, 2,640 hours of management time at $86.83 per hour costing $229,000, 640 hours of administrative time at $44.51 per hour costing $28,000, and 640 hours of information technology staff time at $93.68 per hour costing $60,000. Aggregate total first-year setup costs are expected to be $544,000[93] for proposed § 201.106.[94]

Once LPDs have incurred a one-time cost of developing, documenting, and communicating new contracts and a new system of grower payments, AMS does not expect additional ongoing costs of implementing proposed § 201.106. Once in place, new provisions and modifications resulting from this one-time update are not expected to lead to an increase in costs associated with the ongoing maintenance and updating of grower contracts that would occur in the normal course of business.

AMS estimated the total costs of developing new policies and procedures, communications plans, and compliance review systems to comply with proposed § 201.110 would require a one-time first year aggregate investment of 640 legal hours at $147.19 per hour costing $94,000, 4,760 hours of management time at $86.83 per hour costing $413,000, 272 hours of administrative time at $44.51 per hour costing $12,000, and 456 hours of information technology staff time at $93.68 per hour costing $43,000. Total aggregate first-year setup costs are expected to be $562,000[95] for proposed § 201.110.

AMS expects that ongoing aggregate costs of implementation, maintenance, monitoring, and compliance with proposed § 201.110 would annually require an additional 288 legal hours at $147.19 per hour costing $42,000, 3,184 hours of management time at $86.83 per hour costing $276,000, 136 hours of administrative time at $44.51 per hour costing $6,000, and 184 hours of information technology staff time at $93.68 per hour costing $17,000. Total aggregate ongoing costs to small LPDs for proposed § 201.110 are expected to be $342,000 annually.[96]

Proposed § 201.112 would require LPDs to provide a Capital Improvement Disclosure Document any time the LPD requests existing broiler chicken growers to make an additional capital investment.[97] AMS estimated ongoing annual costs of proposed § 201.112 to small LPDs would require on average an additional 6 legal hours at $147.19 per hour costing $1,000, 32 hours of

[90] U.S. Small Business Administration. *Table of Small Business Size Standards Matched to North American Industry Classification System Codes. effective March 17, 2023. https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

[91] USDA, NASS. *2022 Census of Agriculture: United States Summary and State Data.* Volume1, Part 51. Issued February 2024 p. 51. *https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.*

[92] See U.S. Bureau of Labor Statistics, *May 2022 National Occupational Employment and Wage Estimates,* May 2022. *https://www.bls.gov/oes/special.requests/oesm22all.zip.*

[93] 1,536 legal hours × $147.19 per hour + 2,640 management hours × $86.83 per hour + 640 administrative hours × $44.51 per hour + 640 information technology hours × $93.68 per hour = $543,757.

[94] Please note throughout the document that components may not sum exactly to aggregate amounts due to rounding.

[95] 640 legal hours × $147.19 per hour + 4,760 management hours × $86.83 per hour + 272 administrative hours × $44.51 per hour + 456 information technology hours × $93.68 per hour = $562,339.

[96] 288 legal hours × $147.19 per hour + 3,184 management hours × $86.83 per hour + 136 administrative hours × $44.51 per hour + 184 information technology hours × $93.68 per hour = $342,149.

[97] Based on information provided by subject matter experts, AMS estimates that capital upgrades would be required at 5% of complexes each year, triggering creation of a new disclosure document for approximately 5% of growers annually.

management time at $86.83 per hour costing $3,000, and 6 hours of administrative time at $44.51 per hour costing $300. Total aggregate ongoing costs to small LPDs for proposed § 201.110 are expected to be $4,000 annually.[98]

Expected costs of proposed §§ 201.106, 110, and 112 are associated with developing, maintaining, updating, and complying with policies and procedures that will be implemented at poultry growing complexes and communicating changes, and producing and distributing disclosure documents among contract growers. AMS expects that firms with fewer contract types and those that contract with few growers will have lower costs. Larger LPDs will tend to have larger numbers and types of contracts and will likely have more costs. Proposed §§ 201.106 and 201.110 only concern poultry grower ranking systems. Smaller LPDs that do not have grower ranking or tournament contracts will not have any of the costs associated with proposed §§ 201.106 and 201.110. Some LPDs have few contracts with poultry growers and raise poultry in their own facilities. Those dealers will have relatively lower costs.

AMS does not regulate poultry growers, and, with the exception of reviewing and signing contracts that have been updated by LPDs to meet requirements of § 201.106 and acknowledging receipt of Capital Improvement Disclosure Documents at the time of capital investment requests, the proposed rule imposes no requirements on poultry growers. To benefit from the disclosures and to understand the updated contracts, growers would need to review the new contracts and disclosure information provided. Growers that do not expect a benefit from reviewing the disclosure information likely would not review it.

AMS estimates aggregate growers' costs for reviewing updated contracts and disclosures associated with proposed §§ 201.106 and 201.112 combined to be $261,000 in the initial year. After an updated contract has been reviewed and signed in the first year, AMS expects the annual aggregate cost for reviewing disclosures by growers making additional capital investments would be $12,000 each year. This amounts to $300 per grower in the first year. The table below summarizes costs of proposed §§ 201.106, 110, and 112 to small LPDs and small poultry growers.

TABLE 17—ESTIMATED COSTS TO SMALL BUSINESSES OF PROPOSED §§ 201.106, 110, AND 112

Type of cost	Regulated live poultry dealers	Unregulated growers	Total *
Proposed § 201.106:			
First-year Cost	$544,000	$248,000	$792,000
First-year Cost per Firm	27,000	300	N/A
PV of Ten-year Cost Discounted at 3%	528,000	241,000	769,000
PV of Ten-year Cost Discounted at 7%	508,000	232,000	740,000
Ten-year Cost Annualized at 3%	62,000	28,000	90,000
Ten-year Cost Annualized at 7%	72,000	33,000	326,000
Average Ten-Year Cost per Firm Annualized at 3%	3,000	36	N/A
Average Ten-Year Cost per Firm Annualized at 7%	4,000	42	N/A
Proposed § 201.110:			
First-year Cost	562,000	0	562,000
First-year Cost per Firm	28,000	0	N/A
PV of Ten-year Cost Discounted at 3%	3,132,000	0	3,132,00
PV of Ten-year Cost Discounted at 7%	2,609,000	0	2,609,00
Ten-year Cost Annualized at 3%	367,000	0	367,000
Ten-year Cost Annualized at 7%	371,000	0	371,000
Average Ten-Year Cost per Firm Annualized at 3%	18,000	0	N/A
Average Ten-Year Cost per Firm Annualized at 7%	19,000	0	N/A
Proposed § 201.112:			
First-year Cost	4,000	12,000	16,000
First-year Cost per Firm	200	20	N/A
PV of Ten-year Cost Discounted at 3%	34,000	106,000	140,000
PV of Ten-year Cost Discounted at 7%	28,000	87,000	115,000
Ten-year Cost Annualized at 3%	4,000	12,000	16,000
Ten-year Cost Annualized at 7%	4,000	12,000	16,000
Average Ten-Year Cost per Firm Annualized at 3%	200	20	N/A
Average Ten-Year Cost per Firm Annualized at 7%	200	20	N/A
Proposed §§ 201.106, 110, and 112:			
First-year Cost	1,110,000	261,000	1,371,000
First-year Cost per Firm	56,000	300	N/A
PV of Ten-year Cost Discounted at 3%	3,694,000	347,000	4,041,000
PV of Ten-year Cost Discounted at 7%	3,145,000	319,000	3,465,000
Ten-year Cost Annualized at 3%	433,000	41,000	474,000
Ten-year Cost Annualized at 7%	448,000	45,000	493,000
Average Ten-Year Cost per Firm Annualized at 3%	22,000	50	N/A
Average Ten-Year Cost per Firm Annualized at 7%	22,000	60	N/A

* Rows may not sum to Total Costs due to rounding.

LPDs report net sales in Annual Reports to AMS. Table 2 below groups small LPDs' net sales into quartiles, reports the average net sales in each quartile, and compares average net sales to average expected first-year costs per firm for each of proposed §§ 201.106, 110, and 112 and total first-year costs.[99] Estimated first-year costs are higher

[98] 6 legal hours × $147.19 per hour + 32 management hours × $86.83 per hour + 6 administrative hours × $44.51 per hour = $4,005.

[99] AMS expects that recordkeeping costs will be correlated with the size of the firms. AMS ranked live poultry dealers by size and grouped them into quartiles.

than 10-year annualized costs, and for the threshold analysis, first-year costs will be higher than annualized costs as a percentage of net sales. Correspondingly, the ratio of ten-year annualized costs to net sales is lower than their corresponding first-year cost ratios listed in Table 2. If estimated costs meet the threshold in the first year, they will in the following years as well.

Estimated first-year costs per firm are less than 1 percent of average net sales in the three largest quartiles. Total first year costs as a percent of net sales are estimated to be about 0.5 percent for the smallest quartile. However, average first year cost per entity in Table 2 is the average cost of all of the small businesses. Costs for the LPDs in smallest quartile will likely be less than the average for small businesses.

LPDs do not report to AMS whether any of their contracts are tournament style contracts but evaluating the number contracts that LPDs listed in their Annual Reports to AMS, few of the LPDs in smallest quartile contracted with a sufficient number of growers to implement tournament contracts. It is unlikely that any of the LPDs in the smallest quartiles had any tournament contracts. It is unlikely that several of the smaller LPDs in the second quartile had any tournament contracts either.

Since proposed §§ 201.106 and 201.110 only apply to tournament contracts, none of the LPDs in the smallest quartile are likely to incur any costs from proposed §§ 201.106 and 201.110. Their costs are likely only costs associated with proposed § 201.112, which, as percentage of net sales would be 0.002 percent. Because the smallest LPDs have fewer contracts than the other small LPDs, their costs associated with proposed § 201.112 are also likely less than average.

TABLE 18—COMPARISON OF SMALL LIVE POULTRY DEALERS' NET SALES TO EXPECTED ANNUALIZED COSTS OF PROPOSED §§ 201.106, 110, AND 112*

Quartile	Average net sales	First year costs related to § 201.106 as a percent of net sales	First year costs related to § 201.110 as a percent of net sales	First year costs related to § 201.112 as a percent of net sales	Total first year costs as a percent of net sales
0 to 25%	$11,173,037	0.242	0.251	0.002	0.501
25 to 50%	30,021,116	0.090	0.093	0.001	0.187
50 to 75%	73,471,776	0.037	0.038	0.000	0.076
75 to 100%	193,207,736	0.014	0.014	0.000	0.029

*Numbers in the table may not sum to one due to rounding.

AMS also estimated costs of an alternative proposal that excludes two sections of proposed § 201.110 from the requirements for LPDs under the proposed regulations. The alternative would not include the requirements, and therefore the associated costs, of § 201.110(b)(1)(iv) dealing with communication and cooperation and § 201.110(b)(2) dealing with compliance reviews. All sections of § 201.106 were included under the proposed alternative. AMS estimated that proposed alternative § 201.106 would require a one-time first-year investment of 1,536 legal hours at $147.19 per hour costing $226,000, 2,640 hours of management time at $86.83 per hour costing $229,000, 640 hours of administrative time at $44.51 per hour costing $28,000, and 640 hours of information technology staff time at $93.68 per hour costing $60,000. Aggregate total first-year setup costs are expected to be $544,000. AMS does not expect additional ongoing costs of implementing proposed § 201.106 under the alternative.

Two parts of § 201.110 are excluded for purposes of estimating costs of the proposed rule under the alternative for small LPDs: § 201.110(1)(iv), dealing with communication and cooperation and § 201.110(b)(2), dealing with compliance reviews. AMS estimated that proposed alternative § 201.110 would require a one-time first year aggregate investment of 128 legal hours at $147.19 per hour costing $19,000, 3,200 hours of management time at $86.83 per hour costing $278,000, 128 hours of administrative time at $44.51 per hour costing $6,000, and 128 hours of information technology staff time at $93.68 per hour costing $12,000. Total aggregate first-year setup costs for small LPDs under the alternative are expected to be $314,000.

AMS expects proposed alternative § 201.110 would annually require an additional 64 legal hours at $147.19 per hour costing $9,000, 2,464 hours of management time at $86.83 per hour costing $214,000, 64 hours of administrative time at $44.51 per hour costing $3,000, and 64 hours of information technology staff time at $93.68 per hour costing $6,000. Total aggregate ongoing costs to small LPDs for proposed § 201.110 are expected to be $232,000 annually.

All sections of § 201.112 were included under the proposed alternative. AMS estimated that first-year and ongoing annual costs of proposed § 201.112 to small LPDs would require on average an additional 6 legal hours at $147.19 per hour costing $1,000, 32 hours of management time at $86.83 per hour costing $3,000, and 6 hours of administrative time at $44.51 per hour costing $300. Total aggregate ongoing costs to small LPDs for proposed § 201.110 are expected to be $4,000 annually.

The proposed alternative would have a relatively small effect on costs to poultry growers on a per grower basis, and growers will only review the disclosures if they perceive that they are beneficial. AMS estimates growers' aggregate costs for reviewing updated contracts and disclosures associated with proposed §§ 201.106 and 201.112 combined to be $261,000 in the initial year. AMS expects the annual aggregate cost to growers making additional capital investments to be $12,000 each year. Table 3 below summarizes costs of proposed alternative §§ 201.106, 110, and 112 to small LPDs and small poultry growers.

TABLE 19—ESTIMATED COSTS TO SMALL BUSINESSES OF PROPOSED ALTERNATIVE §§ 201.106, 110, AND 112

Type of cost	Regulated live poultry dealers	Unregulated growers	Total *
Proposed § 201.106:			
First-year Cost	$544,000	$248,000	$792,000
First-year Cost per Firm	27,000	300	N/A
PV of Ten-year Cost Discounted at 3%	528,000	241,000	769,000
PV of Ten-year Cost Discounted at 7%	508,000	232,000	740,000
Ten-year Cost Annualized at 3%	62,000	28,000	90,000
Ten-year Cost Annualized at 7%	72,000	33,000	105,000
Average Ten-Year Cost per Firm Annualized at 3%	3,000	40	N/A
Average Ten-Year Cost per Firm Annualized at 7%	4,000	40	N/A
Proposed § 201.110:			
First-year Cost	314,000	0	314,000
First-year Cost per Firm	16,000	0	N/A
PV of Ten-year Cost Discounted at 3%	2,061,000	0	2,061,000
PV of Ten-year Cost Discounted at 7%	1,708,000	0	1,708,000
Ten-year Cost Annualized at 3%	242,000	0	242,000
Ten-year Cost Annualized at 7%	243,000	0	243,000
Average Ten-Year Cost per Firm Annualized at 3%	12,000	0	N/A
Average Ten-Year Cost per Firm Annualized at 7%	12,000	0	N/A
Proposed § 201.112:			
First-year Cost	4,000	12,000	16,000
First-year Cost per Firm	200	20	N/A
PV of Ten-year Cost Discounted at 3%	34,000	106,000	140,000
PV of Ten-year Cost Discounted at 7%	28,000	87,000	115,000
Ten-year Cost Annualized at 3%	4,000	12,000	16,000
Ten-year Cost Annualized at 7%	4,000	12,000	16,000
Average Ten-Year Cost per Firm Annualized at 3%	200	20	N/A
Average Ten-Year Cost per Firm Annualized at 7%	200	20	N/A
Proposed §§ 201.106, 110, and 112:			
First-year Cost	862,000	261,000	1,123,000
First-year Cost per Firm	43,000	300	N/A
PV of Ten-year Cost Discounted at 3%	2,623,000	347,000	2,970,000
PV of Ten-year Cost Discounted at 7%	2,244,000	319,000	2,563,000
Ten-year Cost Annualized at 3%	307,000	41,000	348,000
Ten-year Cost Annualized at 7%	320,000	45,000	365,000
Average Ten-Year Cost per Firm Annualized at 3%	15,000	50	N/A
Average Ten-Year Cost per Firm Annualized at 7%	16,000	60	N/A

* Rows may not sum to Total Costs due to rounding.

Net sales for small LPDs that would be required to make disclosure under proposed alternative §§ 201.106, 110, and 112 averaged $77 million for their fiscal year 2021. Expected first-year cost per LPD would be well below 0.1 percent.[100]

TABLE 20—COMPARISON OF SMALL LIVE POULTRY DEALERS' NET SALES TO EXPECTED ANNUALIZED COSTS OF PROPOSED ALTERNATIVE §§ 201.106, 110, AND 112

Quartile	Average net sales	First year costs related to § 201.106 as a percent of net sales	First year costs related to § 201.110 as a percent of net sales	First year costs related to § 201.112 as a percent of net sales	Total first year costs as a percent of net sales
0 to 25%	$11,173,037	0.242	0.143	0.002	0.385
25 to 50%	30,021,116	0.090	0.053	0.001	0.143
50 to 75%	73,471,776	0.037	0.022	0.000	0.059
75 to 100%	193,207,736	0.014	0.008	0.000	0.022

Clearly, excluding §§ 201.110(b)(1)(iv) and (b)(2) would reduce cost to small LPDs, but the benefits of the proposed rule would also be less. AMS prefers §§ 201.106, 110, and 112 as proposed because it considers grower dispute resolution policies and ongoing compliance reviews to be important for ensuring the successful ongoing implementation of new policies and procedures that are designed to promote fair comparison among growers in poultry grower ranking systems. In addition, many of the smallest LPDs that do not use contracts involving poultry grower ranking systems contracts would be unaffected by proposed § 201.110.

Although costs would be smaller with the alternative, the estimated costs associated with proposed §§ 201.106, 110, and 112 are relatively small. The proposed rule seeks to require LPDs to include standardized grower

[100] The first-year cost per small live poultry dealer of $43,000 divided by the average net sales for all small live poultry dealers of $77 million is equal to 0.056 percent.

compensation information when using poultry grower ranking systems, formalize and follow policies and procedures to ensure fair comparisons in the administration of broiler tournaments (many or most of which will resemble existing practices), and require LPDs to provide its contract growers with information relevant to additional investment decisions. AMS has made an effort to limit disclosures to information that LPD already possessed. While proposed §§ 201.106, 110, and 112 would have an effect on a substantial number (20) of small businesses, the economic impact would be significant for only a few, if any, LPDs.

Costs to growers would be limited to the time required to review and acknowledge receipt of updated grower contracts and disclosures. AMS expects that proposed §§ 201.106, 110, and 112 would have effects on a substantial number of growers, however, the costs would not be significant for any of them. Because AMS does not regulate poultry growers, AMS does not have information regarding the business sizes of poultry growers similar to the information it has concerning LPDs. AMS invites comments concerning the sizes of poultry growing businesses and whether the costs associated with proposed §§ 201.106, 110, and 112 would have a significant effect on any of them.

Based on the above analyses regarding proposed §§ 201.106, 110, and 112, this proposed rule is not expected to have a significant economic impact on a substantial number of small business entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While confident in this assertion, AMS acknowledges that individual businesses may have relevant data to supplement our analysis. We would encourage small stakeholders to submit any relevant data during the comment period.

E. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult with Indian Tribes on a government-to-government basis on policies that have Tribal implications. This includes regulations, legislative comments or proposed legislation, and other policy statements or actions. Consultation is required when such policies 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. The following is a summary of activity to date.

AMS engaged in a Tribal Consultation in conjunction with a previous proposed rule also under the Act (Inclusive Competition and Market Integrity Under the Packers and Stockyards Act, 87 FR 60010) on January 19, 2023, in person in Tulsa, Oklahoma, and virtually. AMS received multiple Tribal comments from that Consultation, many of which were specific to and considered in that rulemaking. In that consultation, Tribes raised legal concerns with respect to the jurisdiction of the AMS enforcement of the P&S Act. Tribes commented that the P&S Act does not apply to Tribes and Tribal entities. Those comments raise a legal issue of statutory interpretation, but these concerns are not directly implicated by this proposed regulation. This proposed rule provides additional standards for individual live poultry dealers or growers, and AMS does not find that this proposed rule carries substantial direct effects on one or more Indian Tribes beyond the purely legal issue raised during consultation.

AMS recognizes and supports the Secretary's desire to incorporate Tribal and Indigenous perspectives, remove barriers, and encourage Tribal self-determination principles in USDA programs, including hearing and understanding Tribal views on legal authorities and cost implications as facts and circumstances develop. If a Tribe requests additional consultation, AMS will work with USDA's Office of Tribal Relations to ensure meaningful consultation is provided in accordance with Executive Order 13175.

F. 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 a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

G. 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, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA. This proposed rule does not contain any requirements related to eligibility, benefits, or services that would have the purpose or effect of excluding, limiting, or otherwise disadvantaging any individual, group, or class of persons on one or more prohibited bases.

In its review, AMS conducted a disparate impact analysis, using the required calculations, which resulted in a finding that Asian Americans, Pacific Islanders, and Native Hawaiians were disproportionately impacted by the proposed rule, insofar as fewer farmers in those groups participate in poultry production than would be expected by their representation among U.S. farmers in general and therefore are less likely to benefit from the enhanced transparency provided by the proposed rule. The proposed regulations would provide benefits to all poultry growers. AMS will institute enhanced efforts to notify the groups found to be more significantly impacted of the regulations and their implications. AMS will conduct mitigation and monitoring strategies, and outreach will specifically target several organizations that regularly engage with or otherwise may represent the interests of these impacted groups.

H. 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.

I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more (adjusted for inflation) in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and

adopt the more cost effective or least burdensome alternative that achieves the objectives of the proposed rule. This rulemaking contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, this rulemaking is not subject to the requirements of sections 202 and 205 of UMRA.

VIII. Request for Comments

AMS invites comments on this proposed rule. Comments submitted on or before August 9, 2024 will be considered. Comments should reference Docket No. AMS–FTPP–22–0046 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–22–0046 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–21–0046, 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 part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. Add § 201.106 to subpart N to read as follows:

§ 201.106 Broiler grower compensation design.

When a broiler growing arrangement between the live poultry dealer and the broiler grower compensates the grower based upon a grouping, ranking, or comparison of growers delivering poultry during a specified period, the live poultry dealer may not use the grower's grouping, ranking, or comparison to others to reduce any rate of compensation under the broiler growing arrangement.

■ 3. Add § 201.110 to subpart N to read as follows:

§ 201.110 Operation of broiler grower ranking systems.

(a) *Fair comparison.*—(1) *Duty of fair comparison.* Live poultry dealers providing compensation to broiler growers based upon a grouping, ranking, or comparison of growers delivering poultry must design and operate their poultry grower ranking system to provide a fair comparison among growers.

(2) *Fair comparison factors.* In determining whether the live poultry dealer reasonably designed or operated its poultry grower ranking system to deliver a fair comparison among growers or whether the live poultry dealer must utilize a non-comparison compensation method, the Secretary shall consider the following:

(i) Whether the distribution of inputs by the live poultry dealer causes material differences in performance, and whether appropriate adjustments to grower compensation will be made.

(ii) Whether the assignment of flock production practices by the live poultry dealer causes material differences in performance, and whether appropriate adjustments to grower compensation will be made.

(iii) Whether the designated time period used in the live poultry dealer's comparison is appropriate, including whether the live poultry dealer uses one or more groupings, rankings, or comparisons of growers to mitigate the effects of any differences in inputs over the designated time period.

(iv) Whether conditions and circumstances outside the control of the live poultry dealer render comparison impractical or inappropriate.

(v) Whether the live poultry dealer has made reasonable efforts to timely resolve concerns a grower raises regarding the live poultry dealer's design and operation of its poultry grower ranking system to deliver a fair comparison among growers.

(vi) Any other factor relevant to a fair comparison.

(3) *Non-comparison compensation method.* When a live poultry dealer uses a poultry grower ranking system and cannot conduct a fair comparison for one or more growers, the live poultry dealer must compensate those growers through a non-comparison method specified in the contract that reflects reasonable compensation to the grower for its services.

(b) *Documentation.*—(1) *Policies and procedures.* A live poultry dealer must establish and maintain written documentation of its processes for the design and operation of a poultry grower ranking system for broiler growers that is consistent with the duty of fair comparison. The written documentation must include the following:

(i) *Inputs under live poultry dealer control.* Processes for selecting and distributing inputs, including:

(A) How and when the live poultry dealer delivers birds, feed, medication, and any other inputs supplied by the live poultry dealer to the growers.

(B) How and when the live poultry dealer manages similarities and differences of quality and quantity in the delivery of inputs to growers.

(C) How and when the live poultry dealer identifies differences in inputs and the potential effects of those differences on grower performance.

(D) How and when the live poultry dealer adjusts the inputs the grower receives.

(E) How and when the live poultry dealer adjusts compensation calculations based on inputs the grower receives.

(ii) *Flock production practices under live poultry dealer control.* Processes regarding the production of live poultry, including:

(A) How and when the live poultry dealer assigns density at delivery.

(B) How and when the live poultry dealer manages pickup of birds with respect to slaughter weight and bird age, including documenting any variation by pounds and number of growout days.

(C) How and when the live poultry dealer adjusts how a grower is compared to other growers with different assigned flock production practices or otherwise adjusts the flock production practices the grower receives.

(D) How and when the live poultry dealer adjusts compensation calculations based on the flock production practices the grower receives.

(E) How and when the live poultry dealer minimizes, adjusts, or otherwise accounts for differences in production practices.

(iii) *Comparison flexibility.* Processes describing the live poultry dealer's grower comparison flexibility, including:

(A) If the live poultry dealer evaluates fair comparison of growers over one or more groupings or rankings (rather than within each grouping or ranking), how the dealer sets a reasonable time period over which the duty of fair comparison is fulfilled.

(B) If the live poultry dealer removes growers from a ranking group, the dealer must describe when growers are removed and how the live poultry dealer compensates the growers to satisfy the non-comparison

compensation method under paragraph (a)(3) of this section.

(C) If the live poultry dealer groups growers for settlement in any manner other than the one used in recent settlements, how the dealer determines such groupings.

(iv) *Communication and cooperation.* Processes for how the live poultry dealer resolves a grower's concerns with the design or operation of a poultry grower ranking system for broiler growers that is consistent with the duty of fair comparison, including the timeliness of the resolution.

(2) *Compliance review.* Not less than once every 2 years, the live poultry dealer must review its compliance with the processes set forth in paragraph (b)(1) of this section.

(i) The reviewer must be independent of the management chain of a particular complex and qualified to conduct the review.

(ii) The review must include examination of compliance practices of the complex management, production supervision, and all agents that have discretion in contract implementation.

(iii) The live poultry dealer must prepare a written report with the conclusions of the review, which must be based on work papers of the review and other documentation relevant to the review.

(3) *Record retention.* The live poultry dealer must retain all written records relevant to its compliance with this paragraph (b) for no less than 5 years from the date of record creation.

■ 4. Add § 201.112 to subpart N to read as follows:

§ 201.112 Broiler grower Capital Improvement Disclosure Document.

(a) When a live poultry dealer requests that a broiler grower make an additional capital investment, the live poultry dealer must provide the broiler grower with a Capital Improvement Disclosure Document, as described in paragraph (b) of this section.

(b) The Capital Improvement Disclosure Document must disclose the following in a clear, concise, and understandable manner:

(1) The purpose of the additional capital investment for both the live poultry dealer and the grower, and a summary of any relevant research or other supporting material that the live poultry dealer has relied upon in justifying the additional capital investment.

(2) All relevant financial incentives and compensation for the grower associated with the additional capital investment.

(3) All relevant construction schedules related to the request for additional capital investment.

(4) The housing specifications associated with the additional capital investment.

(5) Any required or approved manufacturers or vendors.

(6) An analysis—including any assumptions, risks, or uncertainties—of projected returns the grower can expect related to the additional capital investment sufficient to allow the grower to make their own projections.

(7) This statement that ''USDA has not verified the information contained in this document. If this disclosure by the live poultry dealer contains any false or misleading statement or a material omission, a violation of Federal and/or State law may have occurred. Violations of Federal and State laws may be determined to be unfair, unjustly discriminatory, or deceptive and unlawful under the Packers and Stockyards Act, as amended. You may file a complaint at *farmerfairness.gov* or call 1–833–DIAL–PSD (1–833–342–5773) if you suspect a violation of the Packers and Stockyards Act or any other Federal law governing fair and competitive marketing, including contract growing, of livestock and poultry. Additional information on rights and responsibilities under the Packers and Stockyards Act may be found at *www.ams.usda.gov.*''

■ 5. Add § 201.290 to subpart N to read as follows:

§ 201.290 Severability.

If any provision of this subpart or any component of any provision is declared invalid, or the applicability thereof to any person or circumstances is held invalid, it is the Agricultural Marketing Service's intention that the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby with the remaining provision, or component of any provision, to continue in effect.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–12415 Filed 6–7–24; 8:45 am]

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Part IV

Postal Service

39 CFR Part 111
New Mailing Standards for Domestic Mailing Services Products; Final Rule

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: On April 9, 2024, the Postal Service (USPS®) filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective July 14, 2024. This final rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to implement the changes coincident with the price adjustments and other DMM changes.

DATES: Effective July 14, 2024.

FOR FURTHER INFORMATION CONTACT: Doriane Harley at (202) 268–2537 or Dale Kennedy at (202) 268–6592.

SUPPLEMENTARY INFORMATION: On May 30, 2024, the PRC favorably reviewed the price adjustments proposed by the Postal Service. The price adjustments and DMM revisions are scheduled to become effective on July 14, 2024. Final prices are available under Docket No. R2024–2 (Order No. 7155) on the Postal Regulatory Commission's website at *www.prc.gov.*

Different Additional Ounce Rates for First-Class Mail® Flats

Currently, First-Class Mail® flats incur a first ounce price and a uniform additional ounce price that is applied at each level from the second to the thirteenth ounce.

The Postal Service will implement a change to allow the Pricing department to provide a distinct price at each ounce increment.

USPS Marketing Mail Flat-Shaped—Separating Lightweight and Heavyweight Rate Categories

The Postal Service will implement a change that will divide some USPS Marketing Mail flat-shaped pieces into two distinct pricing categories, lightweight (0 to 4 ounces) and heavyweight (from above 4 ounces up to 16 ounces). Lightweight pieces will continue to have only a piece-price component, with dropship discounts available for different entry points. Heavyweight pieces will have per-piece and per-pound price components, the per-pound components apply to the entire weight of the piece, with per-pound dropship discounts available for different entry points.

Business Reply Mail (BRM) Simplification

The Postal Service will incentivize Qualified Business Reply Mail (QBRM) customers to enroll in Intelligent Mail Barcode Accounting (IMbA) by waiving annual account maintenance and quarterly fees and by reducing the per-piece fee. Customers who link current QBRM permits to an Enterprise Payment Account (EPA) and successfully complete the onboarding process will have subsequent annual and quarterly fees waived and receive a reduced QBRM IMbA per-piece fee.

Elimination of Simple Samples (Product Samples)

The Postal Service will eliminate Simple Samples, also referred to as Product Samples, as a product offering due to low customer usage. Alternative, economical products are available.

Catalog Price Incentive—Marketing Mail and Bound Printed Matter

The Postal Service will revise the mailpiece requirements for catalogs and offer a price incentive to mailers who mail catalogs that meet these revised requirements. The incentive and revisions will apply to all USPS Marketing Mail products except for EDDM-Retail and to Bound Printed Matter flats and parcels.

Enlarge Maximum Size for Plus One

The Postal Service will increase the maximum size for Plus One mailpieces to 6″ x 11″.

Adding Optional Preparation Standards to USPS Marketing Mail Carrier Route Automation Letters

The Postal Service will implement an optional tray preparation for High Density and High Density Plus letters. This optional tray preparation will allow mail preparers to combine multiple mail owner's eligible HD and HD+ letters with 5-digit letters in one tray to reduce the volume of residual trays entered in the mailstream.

Matching Nomenclature & Classification Standards to Network Redesign

New Network Future State Nomenclature Mapping—Under Phase 1 of the Postal Service network future state, the Postal Service is revising the DMM to provide site mapping nomenclature for facilities (*e.g.,* NDC/RPDC). Phase 1 will not include site mapping in the Quick Service Guides (QSGs) or revisions to destination entry pricing nomenclature or labeling lists.

In some cases where there is overlapping of nomenclature in the DMM for market dominant and competitive products (*e.g.,* DMM 705.8.0) the site mapping nomenclature is included in the **Federal Register** Notice for the domestic competitive products price change.

Mail Growth Incentives Continuation in Calendar Year 2025

For calendar year 2024, the Postal Service introduced two new incentives designed to promote the growth of First-Class Mail® (the ''First-Class Mail Growth Incentive'') and USPS Marketing Mail® (the ''Marketing Mail Growth Incentive''). The effective dates of both incentives is January 1, 2024, through December 31, 2024.

The Postal Service will continue both incentives for calendar year 2025.

2025 Promotions

The Postal Service has been incenting mailers to integrate mobile technology and use innovative print techniques in commercial mail since 2012. These promotions have become an integral way for industry to try new things and innovate their mail campaigns. A 2025 Promotions Calendar is planned with opportunities for mailers to receive a postage discount by applying treatments or integrating technology in their mail campaigns.

These revisions will provide consistency within postal products and add value for customers.

Market Dominant Comments on Proposed Changes and USPS Responses

The Postal Service did not receive any formal comments on the April 2024 proposed rule (89 FR 27330–27353).

The Postal Service adopts the described changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service amends *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations* as follows (*see* 39 CFR 111.1):

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101,

401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

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

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

* * * * *

100 Retail Mail Letters, Cards, Flats, and Parcels

* * * * *

140 USPS Marketing Mail Flats Every Door Direct Mail-Retail (EDDM-Retail)

* * * * *

145 Mail Preparation

* * * * *

1.0 Preparation of EDDM-Retail Flats

1.1 General Information

[Revise the text of 1.1 to read as follows:]

All pieces mailed as EDDM-Retail mailings must be bundled under 1.3 and presented directly to the correct delivery Post Office or destination delivery unit (DDU)/Sorting & Delivery Center (S&DC), or mailed to the DDU/S&DC via Priority Mail under 146.

* * * * *

146 Enter and Deposit

* * * * *

1.0 Basic Options

1.1 Entry at Delivery Post Office

[Revise the text of 1.1 to read as follows:]

All EDDM-Retail mailings must be entered directly at the Post Office (or DDU/S&DC) responsible for the Post Office Box or carrier route delivery for which the mailing is prepared, or shipped to that Post Office under 1.2.

* * * * *

200 Commercial Mail Letters, Cards, Flats, and Parcels

201 Physical Standards

* * * * *

4.0 Physical Standards for Flats

4.1 General Definition of Flat Size Mail

[Delete item (d) and renumber item (e) as (d):]

* * * * *

[Delete section 201.4.9 titled ''Catalogs'' in its' entirety]

* * * * *

8.0 Additional Physical Standards by Class of Mail

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8.4 USPS Marketing Mail Parcels

* * * * *

8.4.2 Marketing Parcels

* * * * *

[Delete item (e) in its' entirety]

* * * * *

203 Basic Postage Statement, Documentation, and Preparation Standards

* * * * *

3.0 Standardized Documentation for First-Class Mail, Periodicals, USPS Marketing Mail, and Flat-Size Bound Printed Matter

* * * * *

3.2 Format and Content

For First-Class Mail, Periodicals, USPS Marketing Mail, and Bound Printed Matter, standardized documentation includes:

* * * * *

d. For bundles on pallets, list these required elements:

* * * * *

[Revise item d(4) to read as follows:]

4. Separate columns with the number of pieces for each price reported in the mailing, and a continuous running total of pieces (group information either in ZIP Code order and by sortation level or by sortation level and within each sortation level, by ZIP Code). Document SCF/LPC, ADC/RPDC, or NDC/RPDC pallets created as a result of bundle reallocation under 705.8.11, 705.8.12, or 705.8.13 by designating the protected pallet with an identifier of ''PSCF'' (for an SCF/LPC pallet), ''PADC'' (for an ADC/RPDC pallet), or ''PBMC'' (for a NDC/RPDC pallet). These identifiers are required to appear only on the USPS Qualification Report; they are not required on pallet labels or on any other documentation.

* * * * *

3.6 Detailed Entry Listing for Periodicals

* * * * *

3.6.3 Entry Abbreviations

Use the price name or the authorized entry abbreviation in the listings in 3.0 and 207.17.4.2:

[Revise the list in 3.6.3 to read as follows:

Zone abbreviation	Rate equivalent
ICD	In-County, DDU.
IC	In-County, All Others.
DDU/S&DC	Outside-County, DDU.
SCF/LPC (letters/flats)	Outside-County, DSCF.
SCF/RPDC (parcels)	Outside-County, DSCF.
ADC/RPDC	Outside-County, DADC.
OC	Outside-County, All Others.

3.7 Bundle and Container Reports for Outside-County Periodicals Mail

* * * * *

3.7.2 Outside-County Container Report

The container report must contain, at a minimum, the following elements:* * *

[Revise item (d) to read as follows]

d. Container entry level (origin, DDU/S&DC, DSCF/LPC (letters/flats), DSCF/RPDC (parcels), DADC/RPDC, or DNDC/RPDC).* * *

* * * * *

4.0 Bundles

* * * * *

4.6 Address Visibility for Flats and Parcels

* * * * *

[Revise item (d) to read as follows:]

d. Bundles of mailpieces at carrier route prices entered at a destination delivery unit (DDU) or Sorting & Delivery Center (S&DC).* * *

* * * * *

[Revise the heading of 4.10 to read as follows:]

4.10 Additional Standards for Unsacked/Untrayed Bundles Entered at DDU/S&DC Facilities

[Revise the introductory text of 4.10 to read as follows:]

Mailers may enter unsacked, untrayed, or nonpalletized bundles of carrier route, Periodicals, or USPS Marketing Mail flats and unsacked Bound Printed Matter (BPM) flats or irregular parcels (BPM only) at destination delivery units (DDUs)/sorting & distribution centers (S&DCs) if all the following conditions are met:

* * * * *

[Revise the text of item 4.10(b) to read as follows:]

b. Mailers must enter bundles at DDUs/SDCs according to the appropriate deposit and entry standards (*e.g.,* 207.23.4.2 for Periodicals, 246 for USPS Marketing Mail flats).

* * * * *

5.0 Letter and Flat Trays

* * * * *

5.5 Letter Tray Strapping Exception

[Revise the second sentence of 5.5 to read as follows:]

* * * If the processing and distribution manager gives a written waiver, strapping is not required for any mixed AADC or ADC letter tray of First-Class Mail or for any letter tray that originates and destinates in the same SCF/LPC, ADC, or AADC (mail processing plant) service areas.

5.6 Use of Flat Trays

* * * * *

5.6.2 Preparation for Flats in Flat Trays

All flat tray preparation is subject to these standards:

* * * * *

[Revise item 5.6.2(h) to read as follows:]

h. Pieces prepared as automation flats under the tray-based preparation option in 235.8.0 do not have to be grouped by 3-digit ZIP Code prefix in ADC/RPDC trays or by ADC in mixed ADC trays if the mailing is prepared using an MLOCR/barcode sorter and standardized documentation is submitted.

[Revise the first sentence of 5.6.2(i) to read as follows:]

i. When pieces in a Periodicals mailing remain after one or more full trays are prepared for a 5-digit scheme, 5-digit, 3-digit, SCF/LPC, or ADC/RPDC destination, an additional tray to the destination must be prepared if the remaining pieces reach the required volume.* * *

* * * * *

6.0 Sacks

6.1 General Standards

[Revise the introductory text of 6.1 to read as follows:]

Applicable mailings must be prepared in sacks. Containers for Customized MarketMail are specified in 705.1.0. The following additional standards apply:

* * * * *

7.0 Optional Endorsement Lines (OELs)

* * * * *

Exhibit 7.2.5 OEL Labeling Lists

* * * * *

[Revise the text of footnote 2 to read as follows:]

2. L010 if mail entered by mailer at a destination ASF/RPDC or NDC/RPDC or for mail placed on an ASF/RPDC or NDC/RPDC pallet under 705.8.0.

* * * * *

207 Periodicals

* * * * *

2.0 Price Application and Computation

* * * * *

2.1.4 Applying Pound Price

Apply pound prices to the weight of the pieces in the mailing as follows:

* * * * *

[Revise item (b) to read as follows:]

b. In-County pound prices consist of a DDU/S&DC entry price and a non-DDU/S&DC entry price for eligible copies delivered to addresses within the county of publication.

* * * * *

2.1.9 Applying Outside-County Container Prices

[Revise the second sentence of 2.1.9 to read as follows:]

* * * The container level is determined by the least-finely presorted bundle that container could contain according to standards (for example, an ''SCF/LPC pallet'' may contain SCF, 3-digit, 5-digit, and carrier route bundles and would always pay the 3-digit/SCF pallet price).* * *

* * * * *

17.0 Documentation

* * * * *

17.4 Detailed Entry Listing for Periodicals

17.4.1 Basic Standards

[Revise the first sentence of 17.4.1 to read as follows:]

The publisher must be able to present documentation that supports the number of copies of each edition of an issue, by entry level, at DDU/S&DC, DSCF/LPC (letters/flats), DSCF/RPDC (parcels), DADC, All Others, and In-County prices.* * *

17.4.2 Format

Using one of the following formats, report the number of copies mailed to each 3-digit ZIP Code area at entry prices:

* * * * *

[Revise the first sentence of item (b) to read as follows:]

b. Report copies by zone (In-County DDU/S&DC, In-County others, Outside-County DDU/S&DC, Outside-County DSCF/LPC (letters/flats), Outside-County DSCF/RPDC (parcels), Outside-County DADC and Outside-County All Others) and by 3-digit ZIP Code, in ascending numeric order, for each entry level.* * *

* * * * *

17.4.3 Entry Abbreviations

Use the price name or the authorized entry abbreviation in the listings in 17.3 and 17.4.2.

[Revise the list in 17.4.3 to read as follows:]

Zone abbreviation	Price equivalent
ICD	In-County, DDU.
IC	In-County, All Others.
DDU/S&DC	Outside-County, DDU.
SCF/LPC (letters/flats)	Outside-County, DSCF.
SCF/RPDC (parcels)	Outside-County, DSCF.
ADC	Outside-County, DADC.
OC	Outside-County, All Others.

* * * * *

18.3 Presort Terms

Terms used for presort levels are defined as follows:

* * * * *

[Revise items (o) through (q) to read as follows:]

o. *Origin/entry 3-digit(s):* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the sectional center facility (SCF)/local processing center (LPC [letters/flats]) or regional processing distribution center (RPDC [parcels]) in whose service area the mail is verified/entered.

p. *SCF:* the separation includes pieces for two or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC [letters/flats]) or regional processing distribution center (RPDC [parcels]) (see L005).

q. *Origin/entry SCF:* the separation includes bundles for one or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC [letters/flats]) or regional processing distribution center (RPDC [parcels]) (see L002, Column C, or L005) in whose service area the mail is verified/entered.

* * * * *

18.4 Mail Preparation Terms

For purposes of preparing mail:

* * * * *

[Revise items (r) and (s) to read as follows:]

r. An *origin 3-digit* (or *origin 3-digit scheme*) tray/sack contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF/LPC (letters/flats)/RPDC (parcels) in whose service area the mail is verified. A separate tray/sack may be prepared for each 3-digit ZIP Code (or 3-digit scheme) area.

s. An *origin/entry SCF flat tray or sack* contains all 5-digit and 3-digit bundles (regardless of quantity) for the SCF/LPC

(letters/flats)/RPDC (parcels) in whose service area the mail is verified. At the mailer's option, such a flat tray/sack may be prepared for the SCF/LPC/RPDC area of each entry Post Office. This presort level applies only to nonletter-size Periodicals prepared in flat trays/sacks.

* * * * *

[Revise item (v) to read as follows:]

v. *Entry [facility]* (or *origin [facility]*) refers to the USPS mail processing facility (for example, ''entry SCF/LPC/RDPC'') that serves the Post Office at which the mail is entered by the mailer. If the Post Office where the mail is entered is not the one serving the mailer's location (such as for plant-verified drop shipment), the Post Office of entry determines the *entry* facility.

* * * * *

[Revise item aa(1) to read as follows]

aa. *Machinable flats* are:

1. Flat-size pieces meeting the standards in 201.6.0 that are sorted into 5-digit, 3-digit, ADC/RPDC, and mixed ADC bundles. These pieces are compatible with processing on the AFSM 100.* * *

* * * * *

20.0 Sacks and Trays

20.1 Basic Standards

20.1.1 General

[Revise the text of 20.1.1 to read as follows:]

Mailings must be prepared in letter trays (letters), flat trays (flats) under 22.7 and 25.5, or sacks (carrier route, 5-digit scheme cr-rt and 5-digit cr-rt flats, nonpalletized residual 5-digit flats entered at a DDU/S&DC along with carrier route flats, nonpalletized carrier route flats entered at the DSCF/LPC (origin), nonpalletized 5-digit flats entered at the DSCF/LPC (origin), and nonpalletized 3-digit/SCF flats entered at the DSCF/LPC (origin), and all periodicals parcels). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. Palletized mail is subject to 705.8.0. See 203.5.0 and 203.6.0 for tray and sack standards.

20.1.2 Origin/Entry 3-Digit/Scheme Trays

[Revise the text of 20.1.2 to read as follows:]

For letter-size Periodicals, after all finer sort levels are prepared, an origin/entry 3-digit (or for barcoded letters, 3-digit scheme) tray must be prepared for any remaining mail for each 3-digit (or 3-digit scheme) area serviced by the SCF/LPC serving the origin Post Office, and may be prepared for each 3-digit (or 3-digit scheme) area served by the SCF/LPC where mail is entered (if different).

20.1.3 Flats and Irregular Parcels—Origin/Entry SCF Sacks

[Revise text of 20.1.3 to read as follows:]

For flats and irregular parcels, after all finer sort levels are prepared, an origin/entry SCF sack or flat tray (for flats) must be prepared for any remaining bundles for the 3-digit ZIP Code area(s) serviced by the SCF/LPC (letters/flats)/RPDC (parcels) serving the origin Post Office, and may be prepared for the area served by the SCF/LPC/RPDC/plant where mail is entered (if different).

* * * * *

22.0 Preparing Nonbarcoded (Presorted) Periodicals

* * * * *

22.4 Bundles With Fewer Than Six Pieces

* * * * *

[Revise items (a) and (b) to read as follows:]

a. Place bundles in only 5-digit, 3-digit, and SCF/LPC flat trays that contain at least 24 pieces, or in origin/entry SCF/LPC flat trays, as appropriate.

b. Place bundles on only merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 3-digit, and SCF/LPC pallets.

* * * * *

22.6 Sack Preparation

[Revise the introductory paragraph of 22.6 to read as follows:]

Sack preparation is allowed only for the following: Parcels; Nonpalletized residual 5-digit flats entered at a DDU/S&DC along with carrier route flats; Nonpalletized carrier route flats entered at the DSCF/LPC (origin); Nonpalletized 5-digit flats entered at the DSCF/LPC (origin); and nonpalletized 3-digit/SCF flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. For mailing jobs that also contain a barcoded mailing, see 22.1.2. For other mailing jobs, preparation sequence, sack size, and labeling:

* * * * *

[Revise the introductory text of item (c) to read as follows:]

c. *SCF/LPC,* required at 72 pieces, optional at 24 pieces minimum.* * *

[Revise introductory text of item (d) to read as follows:]

d. Origin/entry SCF/LPC, required for the SCF/LPC of the origin (verification) office, optional for the SCF/LPC of an entry office other than the origin office, (no minimum).* * *

[Revise the introductory text of item (e) to read as follows:]

e. *ADC/RPDC,* required at 72 pieces, optional at 24 pieces minimum.* * *

* * * * *

22.7 Tray Preparation—Flat-Size Nonbarcoded Pieces

[Revise the introductory paragraph of 22.7 to read as follows:]

Mailers must place machinable and nonmachinable (26.0) flat-sized pieces in flat trays (203.5.6) instead of sacks, unless prepared as the following: Direct carrier route; 5-digit scheme carrier route; 5-digit carrier route (23.4.1, 705.9.0 and 705.10.0); Nonpalletized residual 5-digit entered at a DDU/S&DC along with carrier-route flats; Nonpalletized 5-digit flats entered at the DSCF/LPC (origin); or nonpalletized 3-digit/SCF entered at the DSCF/LPC (origin). Bundling in flat trays is optional, and any bundles must be trayed and labeled separately from loose flats prepared in flat trays. The trays are subject to a container charge and any bundles are subject to a bundle charge. Tray preparation, sequence, and labeling:

* * * * *

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

d. *SCF/LPC,* required at 72 pieces, optional at 24 pieces minimum.* * *

[Revise the introductory text of item (e) to read as follows:]

e. *Origin SCF/LPC* (required) and entry SCF/LPC(s) (optional), no minimum, labeling: * * *

[Revise the introductory text of item (f) to read as follows:]

f. *ADC/RPDC,* required at 72 pieces, optional at 24 pieces minimum.* * *

* * * * *

23.0 Preparing Carrier Route Periodicals

* * * * *

23.4 Preparation—Flat-Size Pieces and Irregular Parcels

* * * * *

23.4.2 Exception to Flat Traying and Sacking

[Revise the first sentence of 23.4.2 to read as follows:]

Sacking or traying is not required for carrier route bundles entered at a DDU/S&DC when the mailer unloads bundles under 29.6.5.* * *

* * * * *

23.6 Bundles With Fewer Than Six Pieces

* * * * *

[Revise item 23.6(b) to read as follows:]

b. Place bundles on only merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, 5-digit carrier routes, 3-digit, and SCF/LPC pallets.

* * * * *

25.0 Preparing Flat-Size Barcoded (Automation) Periodicals

25.1 Basic Standards

* * * * *

25.1.7 Exception—Barcoded and Nonbarcoded Flats on Pallets

* * * * *

[Revise the last sentence of 25.1.7(c) to read as follows:]

c. * * * The nonbarcoded price pieces that cannot be placed on ADC/RPDC or finer pallets may be prepared as flats in flat trays and paid for at nonbarcoded prices.

25.1.8 Bundles With Fewer Than Six Pieces

* * * * *

[Revise items 25.1.8(a) through (d) to read as follows:]

a. Place 5-digit and 3-digit bundles in only 5-digit scheme, 5-digit, 3-digit, and SCF/LPC flat trays, as appropriate, that contain at least 24 pieces, or in merged 3-digit flat trays that contain at least one 6-piece carrier route bundle, or in origin/entry SCF/LPC flat trays.

b. Place 5-digit and 3-digit bundles on only merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 3-digit, and SCF/LPC pallets, as appropriate.

c. Place 5-digit scheme and 3-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF/LPC flat trays, as appropriate, that contain at least 24 pieces, or in merged 3-digit flat trays that contain at least one 6-piece carrier route bundle, or in origin/entry SCF/LPC flat trays.

d. Place 5-digit scheme and 3-digit scheme bundles on only 3-digit and SCF/LPC pallets, as appropriate.

* * * * *

25.4 Sacking and Labeling

[Revise the introductory paragraph of 25.4 to read as follows:]

Sack preparation is allowed only for nonpalletized residual 5-digit flats entered at a DDU/S&DC along with carrier route flats, nonpalletized 5-digit flats entered at the DSCF/LPC (origin), and nonpalletized 3-digit/SCF flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. For mailing jobs that also contain a machinable nonbarcoded price mailing, see 25.1.9 and 705.9.0. Other mailing jobs are prepared, sacked, and labeled as follows:

* * * * *

[Revise the introductory text of item (c) to read as follows:]

c. *SCF/LPC,* required at 72 pieces, optional at 24 pieces; fewer pieces not permitted; labeling:* * *

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

d. *Origin SCF/LPC* (required) and *entry SCF/LPC(s)* (optional), no minimum; labeling:* * *

[Revise the Introductory text of item (e) to read as follows:]

e. *ADC/RPDC,* required at 72 pieces, optional at 24 pieces; fewer pieces not permitted; labeling:* * *

* * * * *

25.5 Tray Preparation—Flat-Size Barcoded Pieces

[Revise the introductory paragraph of 25.5 to read as follows:]

Mailers must place machinable flats (under 201.6.0) in flats trays (see 24.0) instead of sacks, unless prepared as the following: Direct carrier route; 5-digit scheme carrier route; 5-digit carrier route; Nonpalletized residual 5-digit and entered at a DDU/S&DC along with carrier route flats; Nonpalletized 5-digit flats entered at the DSCF/LPC (origin); or nonpalletized 3-digit/SCF entered at the DSCF/LPC (origin). Mailers must group together all pieces for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, SCF/LPC, and ADC/RPDC destination. Bundling in flat trays is optional, and any bundles must be trayed and labeled separately from loose flats prepared in flat trays. The trays are subject to a container charge, and any bundles are subject to a bundle charge. Tray preparation, sequence, and labeling:

* * * * *

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

d. *SCF/LPC* (required), 72-piece minimum, optional at 24 pieces, fewer pieces not permitted; labeling:* * *

[Revise the introductory text of item (e) to read as follows:]

e. Origin SCF/LPC (required) and entry SCF/LPC(s) (optional), no minimum, labeling:* * *

[Revise the introductory text of item (f) to read as follows:]

f. *ADC/RPDC* (required), 72-piece minimum, optional at 24 pieces, fewer pieces not permitted, no overflow tray allowed; labeling:* * *

* * * * *

28.0 Enter and Deposit

* * * * *

28.3 Exceptional Dispatch

* * * * *

28.3.2 Intended Use

[Revise the first sentence of 28.3.2 to read as follows:]

The provision for exceptional dispatch is intended for local distribution (In-County and DDU/S&DC) of publications with total circulation of no more than 25,000 and is not to be used to circumvent additional entry standards.* * *

* * * * *

29.0 Destination Entry

* * * * *

[Revise the heading of 29.2 to read as follows:]

29.2 Destination Network Distribution Center/Regional Processing Distribution Center

29.2.1 Definition

[Revise the text of item 29.2.1 to read as follows:]

For this standard, destination network distribution center (DNDC)/Regional Processing Distribution Center (RPDC) includes the facilities and ZIP Code ranges as noted in L601 and L602, or a USPS-designated facility.

29.2.2 Price Eligibility

DNDC container prices apply as follows:

[Revise items (a) and (b) to read as follows:]

a. Pieces must be prepared in bundles or in sacks or trays on ADC/RPDC or more finely presorted pallets under 705.8.0.

b. Mailers may claim a DNDC container price if the facility ZIP Code (on Line 1 of the container label) is within the service area of the NDC/RPDC or ASF at which the container is deposited, under L601 and L602.

29.3 Destination Area Distribution Center

* * * * *

29.3.2 Price Eligibility

Determine price eligibility as follows:

[Revise items (a) and (b) to read as follows:]

a. Pound Prices. Outside-County pieces are eligible for DADC pound prices when placed on an ADC/RPDC or more finely presorted container, deposited at an ADC/RPDC (or USPS-designated facility), and addressed for delivery to one of the 3-digit ZIP Codes served by the facility where deposited. Automation pieces in AADC trays placed on optional SCF/LPC pallets under 705.8.10.2 are eligible for DADC prices when the 3-digit ZIP Code on the tray label is within that SCF/LPC/RPDC's service area according to L005.

b. Pieces must be prepared in bundles or in sacks or trays on ADC/RPDC or more finely presorted pallets under 705.8.0.

* * * * *

[Revise the heading of 29.4 to read as follows:]

29.4 Destination Sectional Center Facility/Local Processing Center

29.4.1 Definition

[Revise the text of 29.4.1 to read as follows:]

For this standard, destination sectional center facility (DSCF)/local processing center (LPC [letters/flats])/regional processing distribution center (RPDC [parcels]) includes the facilities listed in L005, or a USPS-designated facility.

29.4.2 Price Eligibility

Determine price eligibility as follows:

[Revise items (a) through (c) to read as follows:]

a. Pound Prices. Outside-County pieces are eligible for DSCF pound prices when placed on an SCF or more finely presorted container, deposited at the DSCF/LPC (letters/flats)/RPDC (parcels) or USPS-designated facility (see also 29.4.2b), and addressed for delivery within the DSCF/LPC/RDPC's service area. Nonletter-size pieces are also eligible when the mailer deposits 5-digit bundles at the destination delivery unit (DDU)/sorting & delivery center (S&DC) (the facility where the carrier cases mail for delivery to the addresses on the pieces) and the 5-digit bundles are in or on the following types of containers:

1. A merged 5-digit scheme or merged 5-digit sack/flat tray.

2. A merged 5-digit scheme, merged 5-digit, or 5-digit scheme pallet.

b. Container Prices. Mailers may claim the DSCF container price for SCF and more finely presorted containers that are entered at and destined within the service area of the SCF/LPC/RPDC at which the container is deposited.

c. Nonpalletized carrier route, 5-digit scheme carrier route, 5-digit carrier route, 5-digit, or 3-digit flats may be prepared in sacks when entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container.

[Revise the heading of 29.5 to read as follows:]

29.5 Destination Delivery Unit/Sorting & Delivery Center

29.5.1 Definition

[Revise the text of 29.5.1 to read as follows:]

For this standard, the destination delivery unit (DDU)/sorting & delivery center (S&DC) is the facility where the carrier cases mail for delivery to the addresses on the pieces in the mailing.

29.5.2 Price Eligibility

Determine price eligibility as follows:

* * * * *

[Revise items (c) and (d) to read as follows:]

c. Container Prices. Outside-County mailers may claim a DDU container price for 5-digit scheme and more finely presorted containers that are entered at and destined within the service area of the DDU/S&DC at which the container is deposited.

d. Nonpalletized residual 5-digit flats remaining after a carrier route sortation may be prepared in sacks and deposited at the DDU/S&DC along with a carrier route mailing.

* * * * *

29.5.4 Deposit Schedule

[Revise the text of 29.5.4 to read as follows:]

The mailer may schedule deposit of DDU/S&DC mailings at least 24 hours in advance by contacting the DDU/S&DC or through FAST, available at *fast.usps.com.* The mailer must follow the scheduled deposit time. The mailer may request standing appointments for renewable 6-month periods by written application to the DDU/S&DC. Mixed loads of Periodicals and other classes of mail require advance appointments for deposit. For mail entered under exceptional dispatch, the application for exceptional dispatch required under 28.3 also serves as a request for standing appointments.

* * * * *

235 Mail Preparation

* * * * *

1.0 General Definition of Terms

* * * * *

1.3 Terms for Presort Levels

1.3.1 Letters and Cards

Terms used for presort levels are defined as follows:

* * * * *

[Revise items (f) and (g) to read as follows:]

f. *Origin/optional entry 3-digit(s):* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the sectional center facility (SCF)/local processing center (LPC) in whose service area the mail is verified/entered. Subject to standard, a separation is required for each such 3-digit area regardless of the volume of mail.

g. *Origin/optional entry SCF:* the separation includes bundles for one or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC) (see L002, Column C, or L005) in whose service area the mail is verified/entered. Subject to standard, this separation is required regardless of the volume of mail.

* * * * *

1.3.2 Flats

Terms used for presort levels are defined as follows:

* * * * *

[Revise items (c) through (e) to read as follows:]

c. Origin/optional entry 3-digit(s): the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the sectional center facility (SCF)/local processing center (LPC) in whose service area the mail is verified/entered. Subject to standard, a separation is required for each such 3-digit area regardless of the volume of mail.

d. ADC: all pieces are addressed for delivery in the service area of the same area distribution center (ADC)/regional processing distribution center (RPDC) (see L004).

e. Mixed ADC: the pieces are for delivery in the service area of more than one ADC/RPDC.

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise items (h) and (i) to read as follows:]

h. An *origin 3-digit* (or *origin 3-digit scheme*) tray contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF/LPC in whose service area the mail is verified. If more than one 3-digit (or 3-digit scheme) area is served, as indicated in L005, a separate tray must be prepared for each. A tray may be prepared for each 3-digit (or 3-digit scheme) area served by the SCF/LPC/plant where mail is entered (if that is different from the SCF/LPC/plant serving the Post Office where the mail is verified). In all cases, only one less-than-full tray may be prepared for each 3-digit (or 3-digit scheme) area.

i. An *origin AADC* tray contains all mail (regardless of quantity) for an AADC ZIP Code area processed by the AADC or SCF/LPC in whose service area the mail is verified/entered. Only one less-than-full tray may be prepared for each AADC area.

* * * * *

[Revise item (l) to read as follows:]

l. *Entry [facility]* (or *origin [facility]*) refers to the USPS mail processing facility that serves the Post Office at which the mail is entered by the mailer. If the Post Office where the mail is entered is not the one serving the mailer's location, the Post Office of entry determines the *entry* facility. *Entry SCF/LPC* includes both single-3-digit and multi-3-digit SCFs.

* * * * *

8.0 Preparation of Automation Flats

* * * * *

8.6 First-Class Mail Optional Tray-Based Preparation

Tray size, preparation sequence, and Line 1 labeling:

* * * * *

[Revise item (c) to read as follows:]

c. Origin 3-digit: required for each 3-digit ZIP Code served by the SCF/LPC of the origin (verification) office; no minimum; for Line 1, use L002, Column A for 3-digit destinations.

[Revise the first sentence of item (d) to read as follows:]

d. ADC: required (90-piece minimum); one less-than-full or overflow tray allowed; group pieces by 3-digit ZIP Code prefix; for Line 1, use L004 (ZIP Code prefixes in Column A must be combined and labeled to the corresponding ADC/RPDC destination shown in Column B).* * *

* * * * *

240 Commercial Mail USPS Marketing Mail

243 Prices and Eligibility

Overview

[Delete index listing 8.0 and renumber 9.0 as 8.0]

* * * * *

1.0 Prices and Fees

* * * * *

1.2 USPS Marketing Mail Prices

USPS Marketing Mail prices are applied as follows:

* * * * *

[Revise item (b) to read as follows:]

b. A price determined by adding the per piece charge and the corresponding per pound charge applies to any USPS Marketing Mail piece that weighs more than the following: Nonmachinable letters and flat-sized mailpieces that weigh more than 4.0 ounces, presorted Marketing Parcels and Irregular parcels that weigh more than 3.3 ounces, and machinable parcels that weigh more than 3.5 ounces.

[Delete item (c) and renumber item (d) as (c):]

[Add new item (d) to read as follows:]

d. Items qualifying as a catalog under 601.10 are eligible for an incentive discount when appropriately identified on the postage statement and/or the eDoc.

* * * * *

1.5 Computing Postage for USPS Marketing Mail

* * * * *

1.5.4 Per Piece and per Pound Charges

[Revise the text of item 1.5.4 to read as follows:]

The per piece charge is computed based on the total number of addressed pieces for each price category claimed. The minimum price may apply to each piece as detailed in 1.2. Otherwise, the per piece charge must be added to the per pound charge to determine total postage. Where applicable, the per pound charge is computed based on the total weight of the addressed pieces for each price category claimed and is added to the per piece charge to determine total postage. For example, a quantity of pieces weighing 100.25 pounds is charged 100.25 times the applicable price per pound, based on the price claimed, plus one unit of the applicable per piece charge for each addressed piece.

1.5.5 Computing Affixed Postage for Piece/Pound Price Mailpieces

[Revise the text of 1.5.5 to read as follows:]

To compute postage to be affixed to each piece/pound price piece, multiply the weight of the piece (in pounds) by the applicable price per pound; add the applicable per piece charge and any surcharge; and round the sum up to the next tenth of a cent. See 244.2.0 for affixing postage.

* * * * *

2.0 Content Standards for USPS Marketing Mail

2.1 General

* * * * *

[Add a second sentence to 2.1 to read as follows:]

* * * Mailpieces prepared as catalogs must meet the standards in 601.10.

* * * * *

3.0 Basic Eligibility Standards for USPS Marketing Mail

* * * * *

3.4 IMpb Standards

[Revise the first sentence of 3.4 to read as follows:]

All USPS Marketing Mail parcels must bear an Intelligent Mail package barcode (IMpb) prepared under 204.2.0.* * *

* * * * *

4.0 Price Eligibility for USPS Marketing Mail

4.1 General Information

[Revise the text of 4.1 to read as follows:]

All USPS Marketing Mail prices are presorted prices (including all nonprofit prices). These prices apply to mailings meeting the basic standards in 2.0 through 4.0 and the corresponding standards for Presorted prices, Enhanced Carrier Route prices, and automation prices under 5.0 through 7.0, or Customized MarketMail prices under 243.8.0. Except for Customized MarketMail pieces, destination entry discount prices are available under 246.2.0 through 246.6.0. Nonprofit prices may be used only by organizations authorized by the USPS under 703.1.0. Not all processing categories qualify for every price. Pieces are subject to either a single minimum per piece price or a combined piece/pound price, depending on the weight of the individual pieces in the mailing.

4.2 Minimum per Piece Prices

The minimum per piece prices (the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Delete the next to the last sentence of item (c) that references Product Samples:]

4.3 Piece/Pound Prices

[Revise the last sentence of 4.3 to read as follows:]

* * * Flats that exceed 4 ounces are subject to a two-part piece/pound price that includes a fixed charge per piece and a variable pound charge based on weight.

4.4 Extra Services for USPS Marketing Mail

* * * * *

4.4.2 Ineligible Matter

Extra services (other than certificate of mailing service) may not be used for any of the following types of USPS Marketing Mail:

* * * * *

[Delete item (d) and renumber item (e) as item (d):]

* * * * *

5.0 Additional Eligibility Standards for Nonautomation USPS Marketing Mail Letters, Flats, and Presorted USPS Marketing Mail Parcels

* * * * *

5.3 Price Application

[Revise the last sentence of 5.3 to read as follows:]

* * * When parcels are combined under 245.11.0, 705.6.0, or 705.21.0, all pieces are eligible for the applicable prices when the combined total meets the eligibility standards.

* * * * *

5.4.3 AADC USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise text of 5.4.3 to read as follows:]

The SCF pallet discount applies to AADC-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

5.5.3 5-Digit USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 5.5.3 to read as follows:]

The SCF pallet discount applies to 5-digit-eligible pieces that are palletized under 705.8.10.3a to 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

5.5.5 3-Digit USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 5.5.5 to read as follows:]

The SCF pallet discount applies to 3-digit-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

5.5.7 ADC USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise text of 5.5.7 to read as follows:]

The SCF pallet discount applies to ADC-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

5.6 Nonautomation Price Application—Flats

* * * * *

5.6.2 5-Digit USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 5.6.2 to read as follows:]

The SCF pallet discount applies to 5-digit-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

5.6.4 3-Digit USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 5.6.4 to read as follows:]

The SCF pallet discount applies to 3-digit-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

5.6.5 ADC Prices for Flats

ADC prices apply to flat-size pieces:

[Revise item 5.6.5(a) to read as follows:]

a. In a 5-digit/scheme, 3-digit/scheme, or ADC bundle of 10 or more pieces properly placed in an ADC/RPDC flat tray (see 245.1.4).

* * * * *

[Revise item 5.6.5(c) to read as follows:]

c. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in an ADC bundle of 10 or more pieces; properly placed on an ADC/RPDC pallet.

5.6.6 ADC USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 5.6.6 to read as follows:]

The SCF pallet discount applies to ADC-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

5.6.7 Mixed ADC Prices for Flats

[Revise the text of 5.6.7 to read as follows:]

Mixed ADC prices apply to flat-size pieces in bundles that do not qualify for 5-digit, 3-digit, or ADC prices; placed in mixed ADC flat trays or on ASF/NDC/RPDC, or mixed NDC pallets under 705.8.0.

5.7 Prices for Machinable Parcels

5.7.1 5-Digit Price

[Revise the introductory paragraph of 5.7.1 to read as follows:]

The 5-digit price applies to qualifying machinable parcels that are dropshipped to a DNDC/RPDC (or ASF when claiming DNDC prices), DSCF/RPDC, or DDU/S&DC and presented:

* * * * *

[Revise item 5.7.1(c) to read as follows:]

c. As one or more parcels that mailers drop ship to a DDU/S&DC under 246.5.2.3.* * *

* * * * *

5.7.2 NDC Price

The NDC price applies to qualifying machinable parcels as follows under either of the following conditions:

[Revise items (a) and (b) to read as follows:]

a. When dropshipped to an ASF/NDC/RPDC and presented:

a. In an ASF/NDC/RPDC sack containing at least 10 pounds of parcels, or

b. On an ASF/NDC/RPDC pallet, according to standards in 705.8.10, or

c. In an NDC/ASF/RPDC container prepared under 705.21.0.

b. When presented at the origin acceptance office on an ASF/NDC/RPDC pallet containing at least 200 pounds of pieces.

5.7.3 Mixed NDC Price

[Revise the text of 5.7.3 to read as follows:]

The mixed NDC price applies to machinable parcels that are not eligible for 5-digit or NDC prices. Place machinable parcels at mixed NDC prices in origin NDC/RPDC sacks or on origin NDC/RPDC pallets, then in mixed NDC sacks or on mixed NDC pallets. See 245.11.3 and 705.8.10.

5.8 Prices for Irregular Parcels and Marketing Parcels

5.8.1 5-Digit Price

[Revise the introductory paragraph of 5.8.1 to read as follows:]

5-digit prices apply to irregular parcels and to Marketing parcels that are dropshipped to a DNDC/RPDC (or ASF when claiming DNDC prices), DSCF/RPDC, or DDU/S&DC and presented:

* * * * *

[Revise item 5.8.1(c) to read as follows:]

c. As one or more parcels that mailers drop ship to DDU/S&DC under 246.5.2.2.

* * * * *

5.8.2 SCF Price

[Revise the text of 5.8.2 in its entirety to read as follows:]

SCF prices apply to irregular parcels and to Marketing parcels that are

dropshipped and presented to a DSCF, DNDC, or RPDC:

a. In an SCF/RPDC sack containing at least 10 pounds of parcels.

b. On an SCF/RPDC pallet, according to 705.8.10.

c. In SCF/RPDC containers prepared under 705.21.0.

5.8.3 NDC Price

NDC prices apply to irregular parcels and to Marketing parcels as follows under either of the following conditions:

[Revise items (a) and (b) to read as follows:]

a. When dropshipped to an ASF/NDC/RPDC and presented:

1. In an ASF/NDC/RPDC sack containing at least 10 pounds of parcels, or

2. On an ASF/NDC/RPDC pallet, according to standards in 705.8.10, or

3. In a NDC/ASF/RPDC container prepared under 705.21.0.

b. When presented at the origin acceptance office on an ASF/NDC/RPDC pallet containing at least 200 pounds of pieces.

5.8.4 Mixed NDC Price

[Revise the text of 5.8.4 to read as follows:]

Mixed NDC prices apply to irregular parcels and to Marketing parcels in origin NDC/RPDC or mixed NDC containers that are not eligible for 5-digit, SCF, or NDC prices. Place parcels at mixed NDC prices in origin NDC/RPDC or mixed NDC sacks under 245.11.4.3 or on origin NDC/RPDC or mixed NDC pallets under 705.8.10.

6.0 Additional Eligibility Standards for Enhanced Carrier Route USPS Marketing Mail Letters and Flats

6.1 General Enhanced Carrier Route Standards

* * * * *

6.1.2 Basic Eligibility Standards

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route USPS Marketing Mail mailing must:

* * * * *

[Add new item (j) to read as follows:]

j. Meet the standards in 245.6.10 for High Density and High Density Plus automation letter mailings prepared using the optional 5-digit tray preparation.

* * * * *

6.3 Basic Price Enhanced Carrier Route Standards

* * * * *

6.3.3 Basic Carrier Route USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 6.3.3 to read as follows:]

The SCF pallet discount applies to Basic Carrier Route-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3a to 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

6.3.6 Basic Carrier Route USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 6.3.6 to read as follows:]

The SCF pallet discount applies to Basic Carrier Route-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

6.4 High Density and High Density Plus (Enhanced Carrier Route) Standards—Letters

6.4.1 Additional Eligibility Standards for High Density and High Density Plus Prices

[Revise the first sentence of 6.4.1 to read as follows:]

In addition to the general eligibility standards in 6.1, high density and high density plus letter-size mailpieces must be in a full carrier route tray or in a carrier route bundle of 10 or more pieces placed in a 5-digit carrier routes or 3-digit carrier routes tray unless prepared using the standards in 245.6.10.* * *

* * * * *

6.4.3 High Density and High Density Plus USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 6.4.3 to read as follows:]

The SCF pallet discount applies to High Density- and High Density Plus-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3a to 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

6.5.3 High Density Carrier Route Bundles on a 5-Digit/Direct Container (High Density-CR Bundles/Container Discount Eligibility)—Flats

[Revise the text of 6.5.3 to read as follows:]

The High Density-CR Bundles/Container discount applies to 125 or more High Density-eligible pieces that are palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0 on a 5-digit merged, 5-digit (scheme) merged, 5-digit carrier route, 5-digit carrier routes, or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC/RPDC, DSCF/LPC, or DDU/S&DC entry or in a carrier route sack or flat tray under 245.9.7a or 203.5.8 and entered at the DDU/S&DC.

6.5.4 High Density Plus Carrier Route Bundles on a 5-Digit/Direct Container (High Density Plus-CR Bundles/Container Discount Eligibility)—Flats

[Revise the text of 6.5.4 to read as follows:]

The High Density Plus-CR Bundles/Container discount applies to 300 or more High Density Plus-eligible pieces that are palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0 a 5-digit merged, 5-digit (scheme) merged, 5-digit carrier route, 5-digit carrier routes, or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC/RPDC, DSCF/LPC, or DDU/S&DC entry, or in a carrier route sack or tub under 245.9.7a or 203.5.8 and entered at the DDU/S&DC.

6.5.5 High Density USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 6.5.5 to read as follows:]

The SCF pallet discount applies to 125 or more High Density-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

6.5.6 High Density Plus USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 6.5.6 to read as follows:]

The SCF pallet discount applies to 300 or more High Density Plus-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

6.6 Saturation ECR Standards—Letters

* * * * *

6.6.3 Saturation USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 6.6.3 to read as follows:]

The SCF pallet discount applies to at least 90 percent or more of the total number of active residential addresses, or 75 percent or more of the total number of active possible delivery addresses, on each carrier route that are palletized under 705.8.10.3a to 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

6.7 Saturation Enhanced Carrier Route Standards—Flats

* * * * *

6.7.3 Saturation—(including EDDM) Carrier Route Bundles on a 5-Digit/ Direct Container (Saturation-CR Bundles/Container Discount Eligibility)—Flats

[Revise the text of 6.7.3 to read as follows:]

The Saturation-CR Bundles/Container discount applies to at least 90 percent or more of the total number of active residential addresses or 75 percent or more of the total number of active possible delivery addresses on each carrier route that are palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0 on a 5-digit merged, 5-digit (scheme) merged, 5-digit carrier route, 5-digit carrier routes, or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC/RPDC, DSCF/LPC, or DDU/S&DC entry, or in a carrier route sack or tub under 245.9.7a or 203.5.8 and entered at the DDU/S&DC.

6.7.4 Saturation USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 6.7.4 to read as follows:]

The SCF pallet discount applies to at least 90 percent or more of the total number of active residential addresses, or 75 percent or more of the total number of active possible delivery addresses, on each carrier route that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

7.0 Eligibility Standards for Automation USPS Marketing Mail

* * * * *

7.3 Maximum Weight for Automation Letters

* * * * *

7.3.2 5-Digit USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 7.3.2 to read as follows:]

The SCF pallet discount applies to 5-digit-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3a to 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

7.3.3 AADC USPS Marketing Mail Letter-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 7.3.3 to read as follows:]

The SCF pallet discount applies to AADC-eligible USPS Marketing Mail letter-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

7.4 Price Application for Automation Letters

* * * * *

7.4.2 5-Digit USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 7.4.2 to read as follows:]

The SCF pallet discount applies to 5-digit-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3d, 705.8.10.3e, and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

7.4.3 3-Digit USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise the text of 7.4.3 to read as follows:]

The SCF pallet discount applies to 3-digit-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

7.4.4 ADC USPS Marketing Mail Flat-Shaped Pieces SCF Pallet Discount Eligibility

[Revise 7.4.4 to read as follows:]

The SCF pallet discount applies to ADC-eligible USPS Marketing Mail flat-shaped pieces that are palletized under 705.8.10.3e and 705.8.10.3f and entered at Origin (None), DNDC/RPDC, or DSCF/LPC entry.

* * * * *

[Delete section 243.8.0 in its' entirety and renumber 243.9.0 as 8.0, 8.1, 8.2, and 8.3 respectively]

* * * * *

[Newly renumbered section 8.0]

8.0 Customized MarketMail

8.1 Basic Standards

[Revise the last sentence of renumbered 8.1 to read as follows:]

* * * CMM must be entered at a destination delivery unit (DDU)/sorting & delivery center (S&DC).

* * * * *

245 Mail Preparation

Overview

[Delete index listing 12.0 and renumber 13.0 as 12.0]

1.0 General Information for Mail Preparation

* * * * *

1.2 Definition of Mailings

Mailings are defined as:

* * * * *

[Delete items b(5) and b(6) and renumber items b(7) through b(10) as b(5) through b(8) respectively:]

1.3 Terms for Presort Levels

1.3.1 Letters

Terms used for presort levels are defined as follows:

* * * * *

[Revise items (f) through (h) to read as follows:]

f. *Origin/entry 3-digit(s):* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the sectional center facility (SCF)/local processing center (LPC) in whose service area the mail is verified/ entered. Separation is optional for each such 3-digit area. Mail may be prepared for each 3-digit (or 3-digit scheme) area served by the SCF/LPC/plant where mail is entered (if that is different from the SCF/LPC/plant serving the Post Office where the mail is verified—*e.g.,* a PVDS deposit site). In all cases, only one less-than-full tray may be prepared for each 3-digit (or 3-digit scheme) area.

g. *SCF:* the separation includes pieces for two or more 3-digit areas served by the same sectional center facility (SCF)/ local processing center (LPC) (see L005), except that, where required or permitted by standard, mail for a single 3-digit area may be prepared in an SCF separation when no mail for other 3-digit ZIP Code areas is available. For pallets, the SCF sort may include mail for a single 3-digit ZIP Code area.

h. *Origin/optional entry SCF:* the separation includes bundles for one or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC) (see L002, Column C, or L005) in whose service area the mail is verified/entered. Subject to standard, this separation is required regardless of the volume of mail.

* * * * *

[Revise item (j) to read as follows:]

j. *ASF/NDC:* all pieces are addressed for delivery in the service area of the

same auxiliary service facility (ASF) or network distribution center (NDC)/ regional processing distribution center (RPDC) (see L601, L602, or L605).* * *

1.3.2 Flats

Terms used for presort levels are defined as follows:

* * * * *

[Revise items (j) through (o) to read as follows:]

j. *Origin/entry 3-digit(s):* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the sectional center facility (SCF)/local processing center (LPC) in whose service area the mail is verified/ entered. Separation is optional for each such 3-digit area.

k. *SCF:* the separation includes pieces for two or more 3-digit areas served by the same sectional center facility (SCF)/ local processing center (LPC) (see L005), *except that,* where required or permitted by standard, mail for a single 3-digit area may be prepared in an SCF separation when no mail for other 3-digit ZIP Code areas is available. For pallets, the SCF sort may include mail for a single 3-digit ZIP Code area.

l. *Origin/optional entry SCF:* the separation includes bundles for one or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC) (see L002, Column C, or L005) in whose service area the mail is verified/entered. Subject to standard, this separation is required regardless of the volume of mail.

m. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in an ADC bundle of 10 or more pieces; properly placed on an ADC/RPDC pallet.

n. *ASF/NDC:* all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF)/ network distribution center (NDC)/ regional processing distribution center (RPDC) (see L601, L602, or L605).

o. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in an ADC bundle of 10 or more pieces; properly placed on an ADC/RPDC pallet.

* * * * *

1.3.3 Marketing Parcels

Terms used for presort levels are defined as follows:

[Delete item (a) and renumber items (b) through (i) as (a) through (h) respectively:]

[Revise newly renumbered items (d) through (g) to read as follows:]

d. *SCF:* the separation includes pieces for two or more 3-digit areas served by the same sectional center facility (SCF)/ regional processing distribution center (RPDC) (see L005), except that, where required or permitted by standard, mail for a single 3-digit area may be prepared in an SCF separation when no mail for other 3-digit ZIP Code areas is available. For pallets, the SCF sort may include mail for a single 3-digit ZIP Code area.

e. *ASF/NDC:* all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF)/ network distribution center (NDC)/ regional processing distribution center (RPDC) (see L601, L602, or L605).

f. *Origin NDC:* this separation includes all pieces addressed for delivery to ZIP Codes within the same NDC/RPDC (see L601) that serves the acceptance office that verifies the mailing. There is no minimum quantity requirement for this separation.

g. *Mixed [NDC, ADC, etc.]:* the pieces are for delivery in the service area of more than one NDC/ADC/RPDC, etc.* * *

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise items (r) and (s) to read as follows:]

r. An *origin 3-digit (or origin 3-digit scheme)* tray for letters and flats contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF/LPC in whose service area the mail is verified. A separate tray may be prepared for each 3-digit ZIP Code (or 3-digit scheme) area. A tray may be prepared for each 3-digit (or 3-digit scheme) area served by the SCF/LPC/ plant where mail is entered (if that is different from the SCF/LPC/plant serving the Post Office where the mail is verified). In all cases, only one less-than-full tray may be prepared for each 3-digit (or 3-digit scheme) area.

s. An *origin AADC* tray contains all mail (regardless of quantity) for an AADC ZIP Code area processed by the AADC or SCF/LPC in whose service area the mail is verified/entered. Only one less-than-full tray may be prepared for each AADC area.

* * * * *

[Revise item (v) to read as follows:]

v. *Entry [facility]* (or *origin [facility]*) refers to the USPS mail processing facility (*e.g.,* ''entry NDC/RPDC'') that serves the Post Office at which the mail is entered by the mailer. If the Post Office where the mail is entered is not the one serving the mailer's location (*e.g.,* for plant-verified drop shipment), the Post Office of entry determines the *entry* facility. *Entry SCF/LPC* (letter and flats) and *Entry SCF/RPDC* (parcels) includes both single-3-digit and multi-3-digit SCFs. *Entry NDC/RPDC* includes subordinate ASFs unless otherwise specified.

* * * * *

[Revise the last sentence of item (y) to read as follows:]

y. * * * For pallets, 2,800 pounds of mail may be destined to an SCF/LPC (letters and flats) or SCF/RPDC (parcels) destination, and these would form the ''logical'' SCF pallet, but the mail is placed on two physical SCF pallets each weighing 1,400 pounds because of the 2,200 pound maximum pallet weight requirement.* * *

* * * * *

2.0 Bundles

* * * * *

2.2 Marketing Parcels

* * * * *

2.2.1 Bundling

[Revise the text of 2.2.1 to read as follows:]

Bundling is not permitted.

[Delete item 2.2.2 in its entirety]

3.0 Letter Trays, Flat Trays, and Sacks

[Revise the text of 3.0 to read as follows:]

Letter mailings must be prepared in letter trays with sleeves. Flat mailings must be prepared in flat trays or sacks (carrier route, 5-digit scheme carrier route and 5-digit carrier route only) except when permitted to be prepared in letter trays under other applicable standards in this section. Parcel mailings must be prepared in sacks. Containers for Customized MarketMail are specified in 245.13.5. See 203.5.0 and 203.6.0 for tray and sack standards.

* * * * *

5.0 Preparing Nonautomation Letters

* * * * *

5.3 Machinable Preparation

* * * * *

5.3.2 Traying and Labeling

* * * * *

[Revise item (c1) to read as follows:]

c. Mixed AADC (required); no minimum; labeling:

1. Line 1: L011, Column B. Use L010, Column B, if entered at an ASF/NDC/ RDPC or for mail placed on an ASF/ NDC/RPDC, or SCF/LPC pallet under the option in 705.8.10.3.* * *

* * * * *

5.4 Nonmachinable Preparation

* * * * *

5.4.2 Traying and Labeling

* * * * *

[Revise item (d1) to read as follows:]

d. Mixed ADC (required); no minimum; labeling:

1. Line 1: L011, Column B. Use L010, Column B, if entered at an ASF/NDC/RPDC or for mail placed on an ASF/NDC/RPDC, or SCF/LPC pallet under the option in 705.8.10.3.* * *

* * * * *

6.0 Preparing Enhanced Carrier Route Letters

* * * * *

6.7 Traying and Labeling for Automation-Compatible ECR Letters

[Add a new 6th sentence (before Preparation Sequence . . .) to the text of 6.7 to read as follows:]

* * * (See 6.10 for Optional 5-digit Tray Preparation).* * *

* * * * *

[Add a new section 6.10 to read as follows]

6.10 Optional 5-Digit Tray Preparation for High Density and High Density Plus ECR Automation Compatible Letters

6.10.1 Basic Standards

An optional 5-digit tray preparation allows combining multiple mail owners' High Density, High Density Plus, and 5-digit automation compatible letters in a letter tray when meeting the following standards:

a. Each individual mail owner must meet the minimum quantities in 243.6.4.2 for High Density and High Density Plus to claim HD/HD+ prices with a minimum combined 150 pieces of 5-Digit, HD or HD Plus in a 5-Digit tray.

b. The separate requirement of 150 pieces for 5-digit is waived.

c. The minimums must be achieved by a single mail owner defined by their individual MID and/or CRID in the By/For of the eDoc for each carrier route.

d. Walk Sequencing is not required within the letter trays.

e. Bundling and facing slips are not required.

f. Must meet the High Density and High Density Plus marking requirements in 6.2.

g. The Optional Tray Preparation must be used for entire mailing within eDoc.

6.10.2 Traying and Labeling

Mailers must make full 5-digit trays for automation-compatible, delivery-point barcoded letters that weigh up to 3.5 ounces and that meet the standards of 6.10.1. Bundling or facing slips are not required. Preparation sequence, tray size, and labeling:

a. Same Carrier Route to same 5-Digit; full trays only.

1. Line 1: city, state, and 5-digit ZIP Code on mail

2. Line 2: ''STD LTR BC''

b. Multiple Carrier Routes to same 5-Digit; full trays only.

1. Line 1: city, state, and 5-digit ZIP Code on mail

2. STD LTR 5D MXD CR–RTS BC

7.0 Preparing Automation Letters

* * * * *

7.5 Tray Preparation

* * * * *

[Revise item (c) to read as follows:]

c. Mixed AADC: required (no minimum); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays. For Line 1 labeling: use L011, Column B. Use L010, Column B if entered at an ASF/NDC/RPDC or for mail placed on an ASF/NDC/RPDC, or SCF/LPC pallet under the option in 705.8.10.3.

* * * * *

8.0 Preparing Nonautomation Flats

* * * * *

8.6 Traying, Sacking, and Labeling

[Revise the introductory paragraph of 8.6 to read as follows:]

Flat trays are allowed for all sortations. Sack preparation is allowed only for the following: Nonpalletized residual 5-digit flats entered at a DDU/S&DC along with carrier route flats; Nonpalletized carrier route flats entered at the DSCF/LPC (origin); Nonpalletized 5-digit flats entered at the DSCF/LPC (origin); and nonpalletized 3-digit flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. All other sortations require flat tray preparation. Preparation sequence and labeling: * * *

* * * * *

10.0 Preparing Automation Flats

* * * * *

10.4 USPS Marketing Mail Bundle and Flat Tray Preparation

* * * * *

10.4.3 Traying, Sacking, and Labeling

[Revise the introductory paragraph of 10.4.3 to read as follows:]

Sack preparation is allowed only for the following: Nonpalletized residual 5-digit flats entered at a DDU/S&DC along with carrier route flats; Nonpalletized carrier route flats entered at the DSCF/LPC (origin); Nonpalletized 5-digit flats entered at the DSCF/LPC (origin); and nonpalletized 3-digit flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. All other sortations require flat tray preparation. Preparation sequence and labeling:

* * * * *

11.0 Preparing Presorted Parcels

* * * * *

11.3 Preparing Marketing Parcels (6 Ounces or More) and Machinable Parcels

11.3.1 Sacking

[Revise the text of 11.3.1 to read as follows:]

Prepare mailings of Marketing parcels weighing 6 ounces or more and mailings of machinable parcels under 11.3. Prepare 5-digit sacks only for parcels dropshipped to a DNDC/RPDC (or ASF/RPDC when claiming DNDC prices), DSCF/RPDC, or DDU/S&DC. Prepare ASF/NDC/RPDC sacks only for parcels dropshipped to a DNDC/RPDC (or ASF when claiming DNDC prices). There is no minimum for parcels in 5-digit/scheme sacks entered at a DDU/S&DC. Mailers combining irregular parcels with machinable parcels placed in 5-digit/scheme sacks must prepare those sacks under 11.3.2a. Mailers combining Marketing parcels weighing 6 ounces or more with machinable parcels placed in ASF/NDC/RPDC, or mixed NDC sacks must prepare the sacks under 11.3.2.

11.3.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise the introductory text of item (a) to read as follows:]

a. 5-digit/scheme (optional, but required for 5-digit price), see definition in 1.4n.; allowed only for mail deposited at DNDC/RPDC (or ASF when claiming DNDC prices), DSCF/RPDC, or DDU/S&DC. Sacks must contain a 10-pound minimum except at DDU/S&DC entry which has no minimum; labeling:* * *

[Revise the introductory text of item (b) to read as follows:]

b. ASF (optional), allowed only for mail deposited at an ASF/RPDC to claim DNDC price; 10-pound minimum; labeling:* * *

[Revise the introductory text of item (c) to read as follows:]

c. NDC, allowed only for mail deposited at a DNDC/RPDC to claim the NDC price; 10-pound minimum; labeling:* * *

* * * * *

e. Mixed NDC (required); no minimum; labeling:

[Revise item (e1) to read as follows:]

1. Line 1: ''MXD'' followed by L601, Column B information for NDC/RPDC serving 3-digit ZIP Code prefix of entry Post Office.* * *

11.4 Preparing Marketing Parcels (Less Than 6 Ounces) and Irregular Parcels

11.4.1 Bundling

[Revise the text of 11.4.1 to read as follows:]

Bundling is not permitted.

11.4.2 Sacking

[Revise the text of 11.4.2 to read as follows:]

Prepare mailings of Marketing parcels weighing less than 6 ounces and mailings of irregular parcels under 11.4. Prepare 5-digit sacks only for parcels dropshipped to a DNDC/RPDC (or ASF/RPDC when claiming DNDC prices), DSCF/RPDC, or DDU/S&DC. See 11.4.3 for restrictions on SCF/ASF/NDC/RPDC sacks. Mailers must prepare a sack when the mail for a required presort destination reaches 10 pounds of pieces. There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU/S&DC. Mailers combining irregular parcels with machinable parcels and Marketing parcels weighing 6 ounces or more in 5-digit/scheme sacks must prepare those sacks under 11.3.2. Mailers may not prepare sacks containing irregular and machinable parcels to other presort levels. Mailers may combine irregular parcels with Marketing parcels weighing less than 6 ounces in sacks under 11.4.3.

11.4.3 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise the introductory text of item (a) to read as follows:]

a. 5-digit/scheme (optional, but required for 5-digit price), see definition in 1.4n; allowed only for mail deposited at DNDC/RPDC (or ASF/RPDC when claiming DNDC prices), DSCF/RPDC, or DDU/S&DC. Sacks must contain a 10-pound minimum except at DDU/S&DC entry which has no minimum; labeling:* * *

[Revise the introductory text of item (b) to read as follows:]

b. SCF, allowed only for mail deposited at a DSCF/RPDC or a DNDC/RPDC to claim SCF price; 10-pound minimum; labeling:* * *

[Revise the introductory text of item (c) to read as follows:]

c. ASF (optional), allowed only for mail deposited at an ASF/RPDC to claim DNDC price; 10-pound minimum; labeling:* * *

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

d. NDC, allowed only for mail deposited at a DNDC/RPDC to claim the NDC price; 10-pound minimum; labeling:* * *

* * * * *

f. Mixed NDC (required); no minimum; labeling:

[Revise item (f1) to read as follows:]

1. Line 1: ''MXD'' followed by L601, Column B information for NDC/RPDC serving 3-digit ZIP Code prefix of entry Post Office.* * *

* * * * *

[Delete section 12.0 in its' entirety and renumber section 13.0 as 12.0, 12.1, 12.2, 12.3, 12.4,12.5 and 12.6 respectively:]

* * * * *

246 Enter and Deposit

* * * * *

2.0 Destination Entry

* * * * *

2.5 Verification

* * * * *

2.5.3 At NDC

[Revise the text of 2.5.3 to read as follows:]

For a mailing verified at a NDC/RPDC, the Post Office where the mailer's account or license is held must be within the service area of that NDC/RPDC. The Post Office must authorize the NDC/RPDC to act as its agent by sending Form 4410 to the NDC/RPDC.

* * * * *

2.5.5 Volume Standards

Except as permitted for a local mailer under 2.6.13, destination entry mailings are subject to these volume standards:

[Revise item (a) to read as follows:]

a. The pieces for which a destination price is claimed must represent more than 50% of the mail (by weight or pieces, whichever is greater) presented by the same mailer within any 24-hour period. For this standard, *mailer* is the party presenting the mail to the USPS.* * *

* * * * *

2.6 Deposit

* * * * *

2.6.3 Appointments

Appointments must be made for destination entry price mail as follows:* * *

[Revise the first sentence of item (c) to read as follows:]

c. For deposit of DDU/S&DC mailings, an appointment must be made by contacting the DDU/S&DC or through FAST, available at *fast.usps.com,* at least 24 hours in advance.* * *

* * * * *

2.6.4 Advance Scheduling

[Revise the introductory text of 2.6.4 to read as follows:]

Mailers must schedule appointments for deposit of destination entry price mail under 2.6.3 and the conditions below. When making an appointment, or as soon as available, the mailer must provide the DDU/S&DC or FAST with the following information:

* * * * *

[Revise the last sentence of item (b) to read as follows:]

b. * * * For DDU/S&DC entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

* * * * *

2.6.5 Adherence to Schedule

[Revise the last sentence of 2.6.5 to read as follows:]

* * * Destination facilities may refuse acceptance or deposit of unscheduled mailings or shipments that arrive more than 2 hours after the scheduled appointment at ASFs, NDCs/RPDCs, or SCFs/LPCs or more than 20 minutes at delivery units.

2.6.6 Redirection by USPS

[Revise the text of 2.6.6 to read as follows:]

A mailer may be directed to transport destination entry price mailings to a facility other than the designated DDU/S&DC, SCF/LPC (letters/flats), SCF/RPDC (parcels) or NDC/RPDC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

2.6.7 Redirection at Mailer's Request

[Revise the text of 2.6.6 to read as follows:]

A mailer may ask to transport destination SCF/LPC (letters/flats) or SCF/RPDC (parcels) price mail to a facility other than the designated SCF/LPC/RPDC. In very limited circumstances, this exception may be approved only by the manager, Network Integration Support (see 608.8.0 for address). To qualify for the SCF price in this situation, mail deposited at a facility other than the SCF/LPC/RPDC must destinate for processing within that facility and must not require backhauling to the SCF/LPC/RPDC.

* * * * *

2.6.9 Vehicle Unloading

Unloading of destination entry mailings is subject to these conditions:

[Revise the first sentence of item (a) to read as follows:]

a. Properly prepared containerized loads (*e.g.,* pallets) are unloaded by the USPS at NDCs/RPDCs, ASFs, and SCFs/LPCs.* * *

[Revise the first sentence of item (b) to read as follows:]

b. At NDCs/RPDCs, ASFs, and SCFs/LPCs, the driver must unload bedloaded shipments within 8 hours of arrival.* * *

[Revise the introductory text of item (c) to read as follows:

c. At destination delivery units (DDUs)/sorting & delivery centers (S&DCs), drivers must unload all mail within 1 hour of arrival. Unloading procedures are as follows:* * *

Revise item (c4) to reads as follows:]

4. At DDUs/S&DCs that cannot handle pallets, drivers must unload any mail from pallets and place it into containers as delivery unit employees specify.* * *

* * * * *

[Revise the heading of 3.0 to read as follows:]

3.0 Destination Network Distribution Center (DNDC)/Regional Processing Distribution Center (RPDC) Entry

3.1 Definition

[Revise the text of 3.1 to read as follows:]

For this standard, *destination network distribution center (DNDC)/regional processing distribution center (RPDC)* includes network distribution centers (NDCs), regional processing distribution centers (RPDCs), and auxiliary service facilities (ASFs) with terms and exceptions as shown and described in labeling lists L601 and L602.

3.2 Eligibility

[Revise the text of 3.2 to read as follows:]

Pieces in a mailing that meets the standards in 2.0 and 3.0 are eligible for DNDC prices when they are deposited at an NDC/RPDC or ASF and meet all of the following conditions:

a. The pieces are addressed for delivery to one of the 3-digit ZIP Codes served by the NDC/ASF/RPDC where deposited (see labeling lists L601 and L602).

b. The pieces are properly placed in a tray, sack, or pallet that is labeled to the NDC/ASF/RPDC where deposited, or labeled to a postal facility within the service area of that NDC/ASF/RPDC.

c. Mail addressed to ZIP Codes served by an ASF/RPDC must be entered at the appropriate ASF per L602, and not entered at an NDC/RPDC.

d. If bundles of flats are reallocated from an ASF pallet to an NDC/RPDC pallet under 705.8.14, mail for the ASF ZIP Codes that is on the NDC/RPDC pallet is not eligible for DNDC prices.

e. Except for machinable parcels addressed to ZIP Codes served by the Buffalo NY ASF, mail addressed to ZIP Codes served by an ASF/RPDC must be entered at the appropriate ASF per L602, and not entered at an NDC/RPDC.

3.3 Eligibility for ADC Mailpieces—Letters

[Revise the text of 3.3 to read as follows:]

All pieces in an ADC sack or tray are eligible for the DNDC discount if the ADC facility ZIP Code (as shown on Line 1 of the corresponding container label) is within the service area of the NDC/RPDC or ASF at which the tray is deposited, as described in labeling lists L601 and L602. All pieces in a palletized ADC bundle are eligible for DNDC prices if the ADC facility destination (determined by the ''Label To'' ZIP Code in Column B of labeling list L004) is within the service area of the NDC/RPDC or ASF at which deposited according to L601 and L602.

3.4 Eligibility for Mixed ADC Bundles, Trays, or Mixed AADC Trays—Letters

[Revise the introductory text of 3.4 to read as follows:]

Mailpieces in a mixed ADC or a mixed AADC tray can qualify for DNDC prices when entered at a NDC/RPDC/ASF or SCF/LPC facility responsible for the processing of those trays (see 705.8.10.3e.), if the following standards are met:

[Revise item 3.4(a) to read as follows:]

a. All pieces in the bundle or tray must destinate within the ASF or NDC/RPDC service area as described in labeling lists L601 and L602.* * *

* * * * *

3.5 Eligibility for ADC Mailpieces—Flats

[Revise the text of 3.5 to read as follows:]

All pieces in an ADC sack or tray are eligible for the DNDC discount if the ADC facility ZIP Code (as shown on Line 1 of the corresponding container label) is within the service area of the NDC/RPDC or ASF at which the sack or tray is deposited, as described in labeling lists L601 and L602. All pieces in a palletized ADC bundle are eligible for DNDC prices if the ADC facility destination (determined by the ''Label To'' ZIP Code in Column B of labeling list L004) is within the service area of the NDC/RPDC or ASF at which deposited according to L601 and L602.

3.6 Eligibility for Mixed ADC Bundles, Sacks or Trays—Flats

Mailpieces in a mixed ADC bundle, sack, or tray can qualify for DNDC prices if the following standards are met:

[Revise item 3.6(a) to read as follows:]

a. All pieces in the bundle, sack, or tray must destinate within the ASF/NDC/RPDC service area as described in labeling lists L601 and L602.

* * * * *

3.7 Additional Standards for Machinable Parcels

[Revise the first sentence of 3.7 to read as follows:]

For destination NDC/ASF/RPDC containers, except as provided in labeling lists L601 and L602, sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DNDC prices.* * *

3.8 Vehicles

[Revise the text of 3.8 to read as follows:]

Mailings deposited at a DNDC/RPDC must be presented in vehicles compatible with NDC/RPDC dock and yard operations.

3.9 Form 4410

[Revise the text of 3.9 to read as follows:]

Mailings may be deposited at the DNDC/RPDC only if that facility is authorized (by Form 4410) to act as acceptance agent for the entry Post Office (where the meter license, precanceled stamp permit, or permit imprint authorization is held). Form 4410 is not required for plant-verified drop shipments.

[Revise the heading of 4.0 to read as follows:]

4.0 Destination Sectional Center Facility (DSCF)/Local Processing Center (LPC) Entry

4.1 Definition

[Revise the text of 4.1 to read as follows:]

For this standard, *destination sectional center facility (DSCF)/local processing center (LPC)* refers to the facilities listed in L002, Column C.

4.2 Eligibility

4.2.1 Letters

Pieces in a mailing that meet the standards in 2.0 and 4.0 are eligible for DSCF prices under either 4.2.1a. or 4.2.1b. below:

[Revise item 4.2.1(a) to read as follows:]

a. When deposited at a DSCF/LPC or USPS-designated facility, and either:

1. Placed in a tray labeled to a destination within the SCF's/LPC's service area, when all pieces in the tray are addressed for delivery within that SCF's/LPC's service area.

2. Placed in an ADC or AADC tray labeled to a destination within the SCF's/LPC's service area, regardless of whether all pieces in the tray are addressed for delivery within that SCF's/LPC's service area.

[Revise the introductory text of 4.2.1(b) to read as follows:]

b. When entered and deposited at a DDU/S&DC, addressed for delivery within that facility's service area, placed in a tray labeled to that DDU/S&DC, and either:

* * * * *

[Revise item 4.2.1(b2) to read as follows:]

2. The mailer holds a mailing permit at the DDU/S&DC entry office and deposits only one mailing of fewer than 2,500 pieces per day.

4.2.2 Flats

Pieces in a mailing that meets the standards in 2.0 and 4.0 are eligible for the DSCF price, as follows:

[Revise items (a) through (c) to read as follows:]

a. When deposited at a DSCF/LPC or USPS-designated facility, addressed for delivery within the DSCF's/LPC's service area, and placed in a flat tray, sack (when applicable), or on a pallet labeled to the DSCF/LPC or to a destination within its service area. This includes flat trays labeled to an ADC facility with the same service area as the DSCF/LPC.

b. When prepared in 5-digit bundles and placed in or on a merged 5-digit scheme or merged 5-digit flat tray, sack (when applicable), or pallet that is deposited at the destination delivery unit/sorting & delivery center as defined in 5.1.

c. When prepared as nonpalletized carrier route, 5-digit scheme carrier route, 5-digit carrier route, 5-digit, or 3-digit flats in sacks entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container.

4.2.3 Parcels

Pieces in a mailing that meets the standards in 2.0 and 4.0 are eligible for the DSCF price, as follows:

[Revise items (a) and (b) to read as follows:]

a. When deposited at a DSCF/RPDC or USPS-designated facility, addressed for delivery within the DSCF's/RPDC's service area, and placed in a sack or on a pallet that is labeled to the DSCF/RPDC or to a destination within its service area.

b. When prepared in 5-digit bundles and placed on a 5-digit pallet or in a 5-digit scheme or 5-digit sack that is deposited at the destination delivery unit/sorting & delivery center as defined in 5.1.* * *

* * * * *

4.3 Vehicles

[Revise the text of 4.3 to read as follows:]

Mailings deposited at a DSCF/LPC (letters/flats) or DSCF/RPDC (parcels) must be presented in vehicles that are compatible with SCF/LPC/RPDC dock and yard operations.

[Revise the heading of 5.0 to read as follows:]

5.0 Destination Delivery Unit (DDU)/Sorting & Delivery Center (S&DC) Entry

5.1 Definition

[Revise the text of 5.1 to read as follows:]

For this standard, *destination delivery unit (DDU)/sorting & delivery center (S&DC)* refers to the facility designated by the USPS district drop shipment coordinator (for automation price USPS Marketing Mail) or the facility (Post Office, branch, station, etc.) where the carrier cases mail for delivery to the addresses on pieces in the mailing (for other USPS Marketing Mail).

5.2 Eligibility

5.2.1 Letters

[Revise the last sentence of the introductory text of 5.2.1 to read as follows:]

* * * Mailers may deposit letter-size pieces that meet the standards in 2.0 and 5.0 at a DDU/S&DC when:* * *

* * * * *

5.2.2 Flats

[Revise the text of 5.2.2 to read as follows:]

Properly prepared Enhanced Carrier Route (ECR) flat-size pieces entered according to standards in 2.0 and 5.0 are eligible for the DDU price when deposited at a DDU/S&DC and addressed for delivery within that facility's service area. Mailers must unload mail at DDUs/S&DCs according to standards in 2.6.9. Only pieces eligible for and claimed at ECR prices are eligible for the DDU discount. No other prices or discounts are available for pieces receiving the DDU discount. When mailings contain pieces claimed at more than one destination entry price, mailers must separate mail according to standards in 2.5.1. Nonpalletized residual 5-digit flats remaining after a carrier route sortation may be prepared in sacks and deposited at the DDU/S&DC along with a carrier route mailing.

5.2.3 Parcels

[Revise text of 5.2.3 to read as follows:]

Pieces in a mailing that meets the standards in 2.0 and 5.0 are eligible for the DDU price when deposited at a DDU/S&DC, addressed for delivery within that facility's service area, and prepared as one or more parcels in 5-digit containers.

* * * * *

260 Commercial Mail Bound Printed Matter

263 Prices and Eligibility

1.1 Nonpresorted Bound Printed Matter

* * * * *

[Add new item 263.1.1.3 to read as follows:]

1.1.3 Catalog Incentive Discount

Items qualifying as a catalog under 601.10 are eligible for an incentive discount when appropriately identified on the postage statement and/or the eDoc.

1.2 Presorted and Carrier Route Bound Printed Matter

* * * * *

[Add new item 263.1.2.8 to read as follows:]

1.2.8 Catalog Incentive Discount

Items qualifying as a catalog under 601.10 are eligible for an incentive discount when appropriately identified on the postage statement and/or the eDoc.

* * * * *

2.0 Content Standards for Bound Printed Matter

2.1 Basic Content Standards

Bound Printed Matter (BPM) is a subclass of Package Services and must:

* * * * *

[Add new item (g) to read as follows:]

g. Meet the standards in 601.10 if prepared as a catalog.

* * * * *

4.0 Price Eligibility for Bound Printed Matter

* * * * *

4.2 Destination Entry Price Eligibility

[Revise the text of 4.2 to read as follows:]

BPM destination entry prices apply to BPM mailings prepared as specified in 705.8.0, 705.14.0 and 265, and addressed for delivery within the service area of a destination network distribution center/regional processing distribution center, sectional center facility/local processing center, or delivery unit where they are deposited by the mailer. For this standard, the following destination facility definitions apply:

a. A destination network distribution center (DNDC)/regional processing distribution center (RPDC) includes all network distribution centers (NDCs)/regional processing distribution centers (RPDCs) and auxiliary service facilities (ASFs) under L601 and L602. DNDC prices are not available for ZIP Code ranges 006–009, 967–969, and 995–999, as indicated in labeling list L601.

b. A destination sectional center facility (DSCF)/local processing center (LPC) includes all facilities in L005.

c. A destination delivery unit (DDU)/sorting & delivery center (S&DC) is a facility that delivers to the addresses appearing on the deposited pieces in a destination entry Parcel Select mailing. Refer to the Drop Shipment Product maintained by the National Customer Support Center (NCSC) (see 608.8.1 for address) to determine the location of a 5-digit delivery facility.

* * * * *

265 Mail Preparation

* * * * *

1.0 General Information for Mail Preparation

* * * * *

1.4 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise items (h)through (k) to read as follows:]

h. *SCF:* the separation includes pieces for two or more 3-digit areas served by the same sectional center facility (SCF)/local processing center (LPC) [flats]/regional processing distribution center (RPDC) [parcels] (see L005), *except that,* where required or permitted by standard, mail for a single 3-digit area may be prepared in an SCF separation when no mail for other 3-digit ZIP Code areas is available. For pallets, the SCF sort may include mail for a single 3-digit ZIP Code area.

i. *ADC:* all pieces in the bundle, sack, or tray must destinate within the ASF/NDC/RPDC service area as described in labeling lists L601 and L602.

j. *ASF/NDC:* all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF)/network distribution center (NDC)/regional processing distribution center (RPDC) (see L601, L602, or L605).

k. *Mixed [NDC, ADC, etc.]:* the pieces are for delivery in the service area of more than one NDC/RPDC/ADC, etc.

1.5 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item (h) to read as follows:]

h. *An origin 3-digit (or origin 3-digit scheme)* tray/sack for parcels contains all mail (regardless of quantity) for a 3-digit ZIP Code (or 3-digit scheme) area processed by the SCF/LPC (flats)/RPDC (parcels) in whose service area the mail is verified. If more than one 3-digit (or 3-digit scheme) area is served, as indicated in L005, a separate tray/sack must be prepared for each.

* * * * *

[Revise item (k) to read as follows:]

k. *Entry [facility]* (or *origin [facility]*) refers to the USPS mail processing facility (*e.g.,* ''entry NDC/RPDC'') that serves the Post Office at which the mail is entered by the mailer. If the Post Office where the mail is entered is not the one serving the mailer's location (*e.g.,* for plant-verified drop shipment), the Post Office of entry determines the *entry* facility. *Entry SCF/LPC (flats)/RPDC (parcels)* includes both single-3-digit and multi-3-digit SCFs. *Entry NDC/RPDC* includes subordinate ASFs unless otherwise specified.

* * * * *

[Revise the last sentence of item (n) to read as follows:]

n. * * * For pallets, 2,800 pounds of mail may be destined to an SCF/LPC (flats)/RPDC (parcels) destination, and these would form the ''logical'' SCF pallet, but the mail is placed on two physical SCF pallets each weighing 1,400 pounds because of the 2,200 pound maximum pallet weight requirement.

* * * * *

2.0 Bundles

* * * * *

2.4 Bundle Sizes for Irregular Parcels

[Revise the introductory text of 2.4 to read as follows:]

Mailers must prepare unsacked, nonpalletized bundles of irregular parcels for DDU/S&DC entry according to 203.4.10, and as follows:

* * * * *

5.0 Preparing Presorted Flats

* * * * *

5.2 Bundling

5.2.1 Required Bundling

[Revise the fourth sentence of 5.2.1 to read as follows:]

* * * Five-digit bundles placed in 5-digit sacks and unsacked 5-digit bundles prepared for DDU/S&DC entry may weigh a maximum of 40 pounds.* * *

* * * * *

8.0 Preparing Presorted Parcels

* * * * *

8.2 Preparing Irregular Parcels Weighing Less than 10 Pounds

* * * * *

8.2.4 Sacking and Labeling

Preparation sequence and labeling:

* * * * *

e. Mixed ADC (required); labeling:

[Revise item (e1) to read as follows:]

1. Line 1: L009, Column B. If placed on an ASF/NDC/RPDC pallet under option in 705.8.10.3, use L010.* * *

* * * * *

8.3 Preparing Irregular Parcels Weighing 10 Pounds or More

* * * * *

8.3.3 Sacking and Labeling

Preparation sequence and labeling:* * *

e. Mixed ADC (required); labeling:

[Revise item (e1) to read as follows:]

1. Line 1: L009, Column B. If placed on an ASF/NDC/RPDC pallet under option in 705.8.10.3, use L010.* * *

* * * * *

8.4 Preparing Machinable Parcels Not Claiming DNDC Prices

* * * * *

8.4.2 Sacking and Labeling

Preparation sequence and labeling:

* * * * *

c. Mixed NDC (required); labeling:

[Revise item (c1) to read as follows:]

1. Line 1: ''MXD'' followed by the L601, Column B, information for the NDC/RPDC serving the 3-digit ZIP Code prefix of entry Post Office.* * *

8.5 Preparing Machinable Parcels Claiming DNDC Prices

* * * * *

8.5.2 Sacking and Labeling

Preparation sequence and labeling:

* * * * *

d. Mixed NDC (required); labeling:

[Revise item (d1) to read as follows:]

1. Line 1: ''MXD'' followed by the L601, Column B information for the

NDC/RPDC serving the 3-digit ZIP Code prefix of entry Post Office.***

9.0 Preparing Carrier Route Parcels

9.1 Basic Standards

9.1.1 General Standards for Carrier Route Preparation

All mailings of Carrier Route Bound Printed Matter (BPM) are subject to the standards in 9.2 through 9.4 and to these general standards:

* * * * *

[Revise the last sentence of item (b) to read as follows:]

b. * * *Irregular parcels also are pieces that meet the size and weight standards for a machinable parcel but are not individually boxed or packaged to withstand processing on NDC/RPDC parcel sorters under 601.7.0.

* * * * *

266 Enter and Deposit

* * * * *

2.0 Presenting a Mailing

* * * * *

[Revise the heading of 2.3 to read as follows:]

2.3 NDC/RPDC Acceptance

[Revise the text of 2.3 to read as follows:]

A mailer may present Bound Printed Matter at a NDC/RPDC for acceptance if:

a. Permit imprint postage is paid through an advance deposit account at the NDC/RPDC parent Post Office or another Post Office in the NDC/RPDC service area, unless otherwise permitted by standard.

b. The NDC/RPDC is authorized by Form 4410 to act as acceptance agent for the entry Post Office.

* * * * *

3.0 Destination Entry

3.1 General

[Revise the first sentence of 3.1 to read as follows:]

Destination entry prices apply to Presorted and carrier route Bound Printed Matter (BPM) that is deposited at a destination network distribution center (DNDC)/regional processing distribution center (RPDC), destination sectional center facility (DSCF)/local processing center (LPC), or destination delivery unit (DDU)/sorting & delivery center (S&DC) as specified below.* * *

* * * * *

3.3 Postage Payment and Mailing Fees

Postage payment for Bound Printed Matter destination price mailings is subject to the same standards that apply generally to Bound Printed Matter and to the following:

[Revise the second sentence of item (a) to read as follows:]

a. * * *Except for plant-verified drop shipments (see 705.17.0) and eVS shipments (see 705.2.9); mailers must have a permit imprint authorization at the parent Post Office for mailings deposited for entry at a DNDC/RPDC, ASF/RPDC, DSCF/LPC (flats)/RPDC (parcels), or DDU/S&DC.* * *

* * * * *

3.7 Verification

3.7.1 Mail Separation and Presentation

[Revise the second sentence of the introductory paragraph of 3.7.1 to read as follows:]

* * *Mailers may deposit only PVDS and eVS mailings at a destination delivery unit/sorting & delivery center not co-located with a Post Office or other Postal Service facility with a business mail entry unit.* * *

* * * * *

[Revise the heading of 3.7.3 to read as follows:]

3.7.3 At NDC/RPDC

[Revise the text of 3.7.3 to read as follows:]

For a mailing to be verified at a NDC/RPDC, the Post Office where the mailer's account or license is held must be within the service area of that NDC/RPDC. The Post Office must authorize the NDC/RPDC to act as its agent by sending Form 4410 to the NDC/RPDC.

* * * * *

3.8 Deposit

3.8.1 Time and Location of Deposit

[Revise the last sentence of 3.8.1 to read as follows:]

* * *Mailings must be presented in vehicles that are compatible with dock, yard, and DDU/S&DC operations, as applicable.

* * * * *

3.8.3 Appointments

Appointments must be made for destination entry price mail as follows:

[Revise the first sentence of item (a) to read as follows:]

a. Except as provided under 3.8.3b, or for a local mailer and mailings of perishable commodities under 3.8.12, appointments for deposit of destination entry price mail at NDCs/RPDCs, ASFs, and SCFs/LPCs must be scheduled through the appropriate drop-shipment appointment control center at least one business day in advance.* * *

* * * * *

[Revise the first sentence of item (c) to read as follows:]

c. For deposit of DDU/S&DC mailings, an appointment must be made by contacting the DDU/S&DC or through FAST, available at *fast.usps.com,* at least 24 hours in advance.* * *

* * * * *

3.8.4 Advance Scheduling

Mailers must schedule appointments for deposit of destination entry price mail under 3.8.3 and the conditions below. When making an appointment, or as soon as available, the mailer must provide the following information:

* * * * *

[Revise the last sentence of item (b) to read as follows:]

b. * * *For DDU/S&DC entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

* * * * *

3.8.5 Adherence to Schedule

[Revise the last sentence of 3.8.5 to read as follows:]

* * *Destination facilities may refuse acceptance or deposit of unscheduled mailings or shipments that arrive more than 2 hours after the scheduled appointment at ASFs, NDCs/RDPCs, or SCFs/LPCs or more than 20 minutes at delivery units.

3.8.6 Redirection by USPS

[Revise the text of 3.8.6 to read as follows:]

A mailer may be directed to transport destination entry price mailings to a facility other than the designated DDU/S&DC, SCF/LPC, or NDC/RPDC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

3.8.7 Redirection at Mailer's Request

[Revise the text of 3.8.7 to read as follows:]

A mailer may ask to transport destination SCF price mail to a facility other than the designated SCF/LPC (flats)/RPDC (parcels). In very limited circumstances, this exception may be approved only by the manager, Network Integration Support (see 608.8.0 for address). To qualify for the SCF price in this situation, mail deposited at a facility other than the SCF/LPC/RPDC must destinate for processing within that facility and must not require backhauling to the SCF/LPC/RPDC.

* * * * *

4.0 Destination Network Distribution Center (DNDC) Entry

4.1 Eligibility

[Revise the introductory text of 4.1 to read as follows:]

Pieces in a mailing meeting the standards in 3.0 and 4.0 that are

deposited at a NDC/ASF/RPDC are eligible for the DNDC price when they meet all of the following conditions:

* * * * *

[Revise items (b) through (e) to read as follows:]

b. The pieces are addressed for delivery to one of the 3-digit ZIP Codes served by the NDC/ASF/RPDC where deposited that are listed, and according to the terms described, in labeling lists L601 and L602.

c. The pieces are placed in a sack or on a pallet labeled to the NDC/ASF/RPDC where deposited, or labeled to a postal facility within that NDCs/ASFs/RPDCs service area, as described in L601 and L602.

d. Except for machinable parcels addressed to ZIP Codes served by the Buffalo NY ASF, mail addressed to ZIP Codes served by an ASF/RPDC must be entered at the appropriate ASF per L602, and not entered at an NDC/RPDC.

e. Are entered at designated SCFs/RPDCs under 4.3.

* * * * *

[Revise the heading of 4.3 to read as follows:]

4.3 Acceptance at Designated SCF/RPDC—Mailer Benefit

[Revise the introductory text of 4.3 to read as follows:]

Mailers may deposit machinable parcels otherwise eligible for the DNDC prices at an SCF/RPDC designated by the USPS for destination ZIP Codes listed in labeling list L607. The following standards apply:

* * * * *

[Revise item (e) to read as follows:]

e. All DNDC price parcels must be for delivery within the service area of the SCF/RPDC where they are deposited by the mailer.

* * * * *

4.4 Presorted Machinable Parcels

[Revise the introductory text of 4.4 to read as follows:]

Presorted machinable parcels in sacks or on pallets at all sort levels may claim DNDC prices. Machinable parcels sacked under 265.8.0, or palletized under 705.8.0 may be sorted to destination NDCs/RPDCs under L601 or to destination NDCs/ASFs/RPDCs under L601 and L602. Except as provided in L602, sortation of machinable parcels to ASFs/RPDCs is optional but is required for the ASF mail to be eligible for DNDC prices. Mailers may opt to sort some or all machinable parcels for ASF/RPDC service area ZIP Codes to ASFs/RPDCs only when the mail will be deposited at the respective ASFs/RPDCs where the DNDC prices are claimed, under applicable volume standards, using L602. Mailers also may opt to sort machinable parcels only to destination NDCs/RPDCs under L601. When machinable parcels are sorted under L601, mail for 3-digit ZIP Codes served by an ASF/RPDC is not eligible for DNDC prices, nor are 3-digit ZIP Codes that appear in footnote 2 in L601. Machinable parcels prepared in mixed NDC sacks or on mixed NDC pallets that are sorted to the origin NDC/RPDC under 265.8.0 or 705.8.0, are eligible for the DNDC prices if both of the following conditions are met:

[Revise item 4.4 (a) to read as follows:]

a. The mixed NDC sack or pallet is entered at the origin NDC/RPDC facility to which it is labeled.

* * * * *

4.5 Presorted Irregular Parcels

[Revise the second sentence of 4.5 to read as follows:]

* * *All pieces in an ADC/RPDC sack or in a palletized ADC/RPDC bundle are eligible for the DNDC price if the ADC/RPDC facility ZIP Code (as shown in Line 1 of the corresponding sack label or the ADC/RPDC facility that is the destination of the palletized ADC/RPDC bundle as would be shown on an ADC/RPDC sack label for that facility using L004, Column B) is within the service area of the NDC/RPDC at which the sack is deposited.* * *

* * * * *

[Revise the heading of 5.0 to read as follows:]

5.0 Destination Sectional Center Facility (DSCF)/Local Processing Center (LPC) Entry

5.1 Eligibility

Bound Printed Matter pieces in a mailing meeting the standards in 3.0 are eligible for the DSCF price when they meet all of the following additional conditions:

* * * * *

[Revise items (b) and (c) to read as follows:]

b. Are deposited at a DSCF/LPC (flats)/RPDC (parcels) listed in L005 or a USPS-designated facility and are addressed for delivery within the DSCF's/LPC's/RPDC's service area.

c. Are placed in a sack or on a pallet that is labeled to the DSCF/LPC/RPDC or labeled to a destination within its service area. This includes sacks labeled to an ADC/RPDC facility with the exact same service area as the DSCF/LPC/RPDC.

* * * * *

[Revise the heading of 6.0 to read as follows:]

6.0 Destination Delivery Unit (DDU)/Sorting & Delivery Center (S&DC) Entry

6.1 Eligibility

Pieces in a mailing meeting the standards in 3.0, and 6.0 are eligible for the DDU price when they meet all of the following conditions:

* * * * *

c. Are deposited:

[Revise items (c1) and (c2) to read as follows:]

1. For Carrier Route flats, at the DDU/S&DC where the carrier cases the mail, as shown in the Drop Shipment Product.

2. For Presorted flats, the Drop Shipment Product must be used to determine the correct destination entry facility for the 5-digit sorted flats entered at Presorted prices. If the Drop Shipment Product lists multiple facilities for a single 5-digit ZIP Code, then the mailer must inquire about the correct drop site when contacting the DDU/S&DC to schedule an appointment.

[Revise the sixth sentence of item (d) to read as follows:]

d. * * * If a mailer transports mail to a DDU/S&DC facility that cannot handle pallets, the driver must unload the pallets into containers as specified by the delivery unit.

* * * * *

270 Commercial Mail Media Mail and Library Mail

273 Prices and Eligibility

* * * * *

7.0 Price Eligibility for Media Mail and Library Mail

* * * * *

7.3.2 Parcels

The price categories for parcels are as follows:

* * * * *

[Revise the last sentence of item (b) to read as follows:]

b. * * *Nonmachinable parcels may qualify for the basic price if prepared to preserve sortation by NDC/RDPC as prescribed by the postmaster of the mailing office.

* * * * *

275 Mail Preparation

* * * * *

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise items (f) through (h) to read as follows:]

f. ADC: all pieces are addressed for delivery in the service area of the same area distribution center (ADC)/regional processing distribution center (RPDC) (see L004).

g. ASF/NDC for parcels: all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF)/network distribution center (NDC)/regional processing distribution center (RPDC) (see L601, L602, or L605).

h. Mixed [NDC, ADC, etc.]: the pieces are for delivery in the service area of more than one NDC/ADC/RPDC, etc.

* * * * *

6.0 Preparing Media Mail and Library Mail Parcels

* * * * *

6.2 Preparing Machinable Parcels

* * * * *

6.2.2 Sacking and Labeling

Preparation sequence and labeling:

* * * * *

c. Mixed NDC: required (no minimum).

[Revise item (c1) to read as follows:]

1. Line 1: ''MXD'' followed by the L601, Column B information for the NDC/RPDC serving the 3-digit ZIP Code of entry Post Office.* * *

* * * * *

6.3 Preparing Irregular Parcels

* * * * *

6.3.4 Sacking and Labeling

Preparation sequence and labeling:

* * * * *

d. Mixed ADC: required (no minimum).

[Revise item (d1) to read as follows:]

1. Line 1: ''MXD'' followed by city, state, and ZIP Code of ADC/RPDC serving 3-digit ZIP Code prefix of entry Post Office, as shown in L004. If placed on an ASF/NDC/RPDC pallet under option in 705.8.10.5, use L010.* * *

* * * * *

505 Return Services

1.0 Business Reply Mail (BRM)

1.1 BRM Postage and Fees

* * * * *

1.1.3 Basic Qualified BRM (QBRM)

[Add a sentence at the end of 1.1.3 to read as follows:]

* * *Basic QBRM permits that meet the requirements under 1.6.3 are eligible for waived account maintenance fees and a reduced per-piece fee.

1.1.4 High-Volume Qualified BRM

[Add a sentence at the end of 1.1.4 to read as follows:]

* * *High-Volume QBRM permits meeting the requirements under 1.6.3 are eligible for waived annual account maintenance and quarterly fees, and a reduced per-piece fee.

* * * * *

1.6 Additional Standards for Qualified Business Reply Mail (QBRM)

* * * * *

[Add new section 1.6.3 to read as follows:]

1.6.3 Intelligent Mail Barcode Accounting (IMbA)

Intelligent Mail Barcode Accounting (IMbA) is an automated solution for the counting, rating, invoicing and billing processes of QBRM mailpieces. Participation in IMbA requires that QBRM permits be linked to an Enterprise Payment Account (EPA) for automated invoicing. QBRM permits that have completed the onboarding process and consistently meet the requirements of IMbA are eligible for subsequent annual account maintenance and quarterly fee waivers, if applicable. Once enrolled in IMbA, QBRM permits receive a reduced QBRM IMbA per-piece fee. For more information, see PostalPro at *https://postalpro.usps.com/*.

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

Overview

[Add a heading titled ''10.0 Catalogs'']

* * * * *

[Add new section 601.10 to read as follows:]

10.0 Catalogs

A catalog is a bound *(stapled, stitched, glued or fastened together along one edge)* mailpiece with at least 12 pages, providing an organized listing of products or services offered for sale. A catalog mailpiece may be letter-shaped, flat-shaped or parcel-shaped, and is mailed at USPS Marketing Mail or Bound Printed Matter rates.

The product listing must include images, photographs or illustrations of the products or services, descriptive details, fulfillment information and prices or contain an alternate method for the reader to determine prices. Catalogs must contain enough information to allow an order to be placed, *e.g.,* an order form, a phone number, a web address, or the means to access a web address. Catalogs will also enable fulfillment options for the products or services offered for sale.

602 Addressing

* * * * *

3.0 Use of Alternative Addressing

* * * * *

3.2 Simplified Address

3.2.1 Conditions for General Use

The following conditions must be met when using a simplified address on commercial mailpieces:

* * * * *

[Revise the introductory text of item (b) to read as follows:]

b. USPS Marketing Mail, Periodicals, and Bound Printed Matter flat-size mailpieces (including USPS Marketing Mail pieces allowed as flats under 3.2.1c), and Periodicals irregular parcels for distribution to a city route or to Post Office boxes in offices with city carrier service may bear a simplified address, but only when complete distribution is made under the following conditions:* * *

* * * * *

4.0 Detached Address Labels (DALs) and Detached Marketing Labels (DMLs)

* * * * *

4.2 Eligible Mail

* * * * *

[Delete item 4.2.2 in its' entirety and renumber 4.2.3 as 4.2.2:]

[Newly renumbered 4.2.2]

4.2.2 Bound Printed Matter

Unaddressed pieces of Bound Printed Matter may be mailed with DALs or DMLs when:

[Revise the second sentence of item (a) to read as follows:]

a. * * *The destination delivery unit (DDU)/sorting & delivery center (S&DC) is determined using the Drop Shipment Product under the provisions for the DDU price in 266.3.0 through 266.6.0.* * *

* * * * *

4.4 Mail Preparation

* * * * *

4.4.2 Basic Standards for DALs and DMLs

[Revise the text of 4.4.2 to read as follows:]

The DALs or DMLs must be presorted, counted, and prepared by 5-digit ZIP Code delivery area. Only DALs or DMLs for the same 5-digit area may be placed in the same carton, sack, or tray. DAL or DML mailings claimed at carrier route basic or walk-sequence prices

must be further prepared under the corresponding standards. Mailers must prepare DALs or DMLs as bundles in sacks or in cartons, unless prepared in trays under 4.4.6 when mailed with saturation flats. Different size cartons may be used in the same mailing, but each must be filled with dunnage as necessary to ensure that the DALs or DMLs retain their orientation and presort integrity while in transit. Each carton of DALs or DMLs must bear a label showing the information in 4.4.5 unless a mailing identification number is used (see 4.4.1). Multiple containers of DALs or DMLs must be numbered sequentially (''1 of __,'' ''2 of __,'' etc.).

4.4.3 Basic Standards for Items Distributed with DALs and DMLs

[Revise the text of 4.4.3 to read as follows:]

Except for bundles of saturation flats placed directly on pallets under 4.4.7, the items to be distributed with DALs or DMLs must be placed in cartons or prepared in bundles placed in flat trays/sacks, subject to the standards for the price claimed. A label bearing the content description information in 4.4.5 must be affixed to each carton, trayed/sacked bundle, or pallet unless a mailing identification number is used (see 4.4.1). Cartons of items (including those on pallets) may be of different sizes but must be filled with dunnage as necessary to ensure the integrity of the items while in transit. The gross weight of each carton or flat tray/sack must not be more than 40 pounds.

* * * * *

4.4.6 Optional Tray and Bundle Preparation

[Revise the text of 4.4.6 to read as follows:]

Mailers may prepare DALs or DMLs in letter trays according to 245.9.0 when DALs or DMLs are used in mailings of saturation flats. Bundles of saturation flats to be distributed with DALs or DMLs may be prepared on 5-digit pallets under 4.4.7. Do not use pallets when the Drop Shipment Product indicates the delivery unit that serves the 5-digit pallet destination cannot handle pallets. For such delivery units, mail with DALs or DMLs must be prepared in cartons, flat trays, or sacks. The tray(s) of corresponding DALs or DMLs must be placed on top of the accompanying pallet of flats, and the pallet contents must be secured with stretchwrap to avoid separation in transportation and processing. All containers must be labeled according to 4.4.5.

4.4.7 Optional Container Preparation

[Revise the text of 4.4.7 to read as follows:]

Bundles of flats and cartons, flat trays, or sacks of items may be placed on pallets meeting the standards in 705.8.0. Cartons or trays of DALs or DMLs must be placed on pallets with the corresponding items under 4.4 and 705.8.0. The USPS plant manager at whose facility a DAL or DMLS mailing is deposited may authorize other containers for the portion of the mailing to be delivered in that plant's service area.

* * * * *

4.6 Postage

* * * * *

4.6.2 Postage Computation and Payment

Postage is computed based on the combined weight of the item and the accompanying DAL or DML. If the number of DALs/DMLs and items mailed is not identical, the number of pieces used to determine postage is the greater of the two. No postage refund is allowed in these situations. In addition, these methods of postage payment apply:

* * * * *

[Revise the text of item (c) to read as follows:]

c. A surcharge applies to each DAL or DML used in a USPS Marketing Mail flats mailing.

* * * * *

7.0 Carrier Route Accuracy Standard

7.1 Basic Standards

[Revise the introductory text of 7.1 to read as follows:]

The carrier route accuracy standard is a means of ensuring that the carrier route code correctly matches the delivery address information. For the purposes of this standard, address means a specific address associated with a specific carrier route code. Addresses used on pieces claiming any Periodicals carrier route prices, any USPS Marketing Mail Enhanced Carrier Route prices, or any Bound Printed Matter carrier route prices are subject to the carrier route accuracy standard and must meet the following requirements:

* * * * *

700 Special Standards

703 Nonprofit USPS Marketing Mail and Other Unique Eligibility

* * * * *

9.0 Mixed Classes

* * * * *

9.9 Postage Payment for Enclosure in Periodicals Publication

* * * * *

9.9.8 Computing Permit Imprint Postage

[Revise the third sentence of 9.9.8 to read as follows:]

* * *For example, a USPS Marketing Mail enclosure is eligible for the SCF entry discount if the publication is deposited at the destinating SCF/LPC.* * *

* * * * *

11.0 Commercial Plus One Mailpieces

11.1 Definition

The commercial mail Plus One product is a bundled offering, including a host mailpiece and a Plus One card. Both the host mailpiece and the Plus One card must meet the applicable basic standards of a USPS Marketing Mail saturation letter as specified in 245.6.0, be entered at a destination sectional center facility, and meet automation standards with a correct mailing address and Intelligent Mail barcode. The Plus One mailpiece (card) must meet the following additional standards:

* * * * *

[Revise item 11.1(d) to read as follows:]

d. Must not exceed 6 inches long by 11 inches high.

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

5.0 First-Class Mail or USPS Marketing Mail Mailings with Different Payment Methods

* * * * *

5.2 Postage

* * * * *

5.2.6 Single-Piece Price Mail

[Revise the text of 5.2.6 to read as follows:]

With USPS approval, trays of single-piece price mail may be placed on the origin SCF/LPC pallet (First-Class Mail), or the mixed NDC pallet (USPS Marketing Mail), after USPS verification is completed.

* * * * *

8.0 Preparing Pallets

* * * * *

8.10.3 USPS Marketing Mail—Bundles, Sacks, or Trays

[Revise the introductory text of 8.10.3 to read as follows:]

Mailers must prepare pallets under 8.0 in the sequence listed below and complete each required level before preparing the next optional or required level. For USPS Marketing Mail High Density and High Density Plus flats price eligibility, only 5-digit pallets under 8.10.3a through 8.10.3c are allowed, and the pallets must be entered under None, DNDC, DSCF, or DDU standards. (Use ''HD/HD+ DIRECT'' for one route and ''HD/HD+ CR–RTS'' for multiple routes on the line 2 contents description). Unless indicated as optional, all sort levels are required. For parcels, use this preparation only for irregular parcels in sacks. Palletize unbundled or unsacked irregular parcels under 8.10.8. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Mailers also may palletize bundles of USPS Marketing Mail flats under 10.0, 12.0, or 13.0. Preparation sequence and labeling:

* * * * *

[Revise item c(2) to read as follows:]

2. Line 2: For flats only, ''STD FLTS'' or ''STD MKTG,'' as applicable; followed by ''HD/HD+'' for High Density and High Density Plus flats pricing eligibility; followed by ''CARRIER ROUTES'' (or ''CR–RTS''). For letters, ''STD LTRS''; followed by ''CARRIER ROUTES'' (or ''CR–RTS''); followed by ''BC'' if the pallet contains barcoded letters; followed by ''MACH'' if the pallet contains machinable letters; followed by ''MAN'' if the pallet contains nonmachinable letters.

* * * * *

[Revise introductory text of item (e) to read as follows:]

e. *3-digit, optional,* option not available for parcels or for bundles for 3-digit ZIP Code prefixes marked ''N'' in L002. Pallet may contain mail for the same 3-digit ZIP Code or the same 3-digit scheme under L008 (for automation-compatible flats only under 201.3.0. Three-digit scheme bundles are assigned to pallets according to the ''label to'' 3-digit ZIP Code in L008. Labeling:* * *

[Delete the last sentence of item e(2) beginning with ''For Marketing parcels. . .'':]

* * * * *

9.0 Combining Bundles of Automation and Nonautomation Flats in Flat Trays and Sacks

9.1 First-Class Mail

* * * * *

9.1.4 Tray Preparation and Labeling

Presorted price and automation price bundles prepared under 9.1.2 or 9.1.3 must be presorted together into trays (cotrayed) in the sequence listed below. Trays must be labeled using the following information for Lines 1 and 2 and 235.4.0 for other sack label criteria.

* * * * *

[Revise the introductory text of item (c) to read as follows:]

c. *Origin/entry 3-digit,* required for each 3-digit ZIP Code served by the SCF/LPC of the origin (verification) office, optional for each 3-digit ZIP Code served by the SCF/LPC of an entry office other than the origin office, no minimum; labeling:* * *

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

d. ADC, required, full trays only (no overflow trays); use L004 to determine ZIP Codes served by each ADC/RPDC; labeling:* * *

9.2 Periodicals

* * * * *

9.2.3 Bundles With Fewer Than Six Pieces

[Revise the text of 9.2.3 to read as follows:]

5-digit and 3-digit bundles prepared under 207.22.0 and 207.25.0 may contain fewer than six pieces when the publisher determines that such preparation improves service. These low-volume bundles may be placed in 5-digit, 3-digit, and SCF flat trays that contain at least 24 pieces, or on 5-digit, 3-digit, or SCF/LPC pallets. Mailers of pieces in low-volume bundles must claim the applicable mixed ADC price (Outside-County) or basic price (In-County). Bundles prepared under 207.22.0 and 207.25.0 may contain fewer than six pieces when the publisher determines that such preparation improves service. These low-volume bundles may be placed in 5-digit, 3-digit, and SCF sacks/flat trays that contain at least 24 pieces or on 5-digit, 3-digit, or SCF/LPC pallets. Pieces in low-volume bundles must claim the applicable mixed ADC price (Outside-County) or basic price (In-County).

9.2.4 Optional Sack Preparation and Labeling

[Revise the introductory paragraph of 9.2.4 to read as follows:]

Optional sack preparation and labeling are allowed for nonpalletized residual 5-digit flats entered at the DDU/S&DC along with carrier route flats, nonpalletized 5-digit flats entered at the DSCF/LPC (origin) and nonpalletized 3-digit/SCF flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3-digit/SCF sacks must be entered at the BMEU and emptied into a designated container. Machinable barcoded price and machinable nonbarcoded price bundles must be presorted together into sacks (cosacked) in the sequence listed below. Sacks must be labeled using the following information for Lines 1 and 2 and 207.21.0 for other sack-label criteria. If, due to the physical size of the mailpieces, the machinable barcoded price pieces are considered flat-size under 201.6.0 and the machinable nonbarcoded price pieces are considered irregular parcels under 201.7.6, the processing category shown on the sack label must show ''FLTS.'' Preparation sequence and labeling:* * *

9.2.5 Flay Tray Preparation—Flat-Size Machinable Pieces

[Revise the introductory text of 9.2.5 to read as follows:]

See 207.20.0 for use of flat trays. For machinable pieces meeting the criteria in 201.6.0, mailers must bundle or group all pieces as specified in 207.25.0 and 207.22.0 for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, SCF/LPC, and ADC destination. Bundling in flat trays is optional, and any bundles must be trayed and labeled separately from loose flats prepared in flat trays. The trays are subject to a container charge, and any bundles are subject to a bundle charge. Tray preparation, sequence, and labeling:

* * * * *

9.3 USPS Marketing Mail

* * * * *

9.3.5 Flat Tray/Sack Preparation and Labeling

[Revise the introductory text of 9.3.5 to read as follows:]

Presorted price and automation price bundles prepared under 9.3.2 and 9.3.3 must be presorted together into flat trays (cotrayed) or sacks (when applicable) in the sequence listed below. Flat trays/sacks must be labeled using the following information for Lines 1 and 2, and 245.4.0 for other flat-tray label criteria. Sacks are only allowed for nonpalletized residual 5-digit flats entered at the DDU/S&DC along with carrier route flats, nonpalletized 5-digit flats entered at the DSCF/LPC (origin), and nonpalletized 3-digit/SCF flats entered at the DSCF/LPC (origin). DSCF/LPC (origin) 5-digit and 3–digit/SCF sacks must be entered at the BMEU and emptied into a designated container.

* * * * *

[Revise the introductory text of item (c) to read as follows:]

c. *Origin/entry 3-digit,* required for each 3-digit ZIP Code served by the SCF/LPC of the origin (verification) office, optional for each 3-digit ZIP Code

served by the SCF/LPC of an entry office other than the origin office, no minimum; labeling:* * *

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

d. ADC, required, full tray/125-piece/15-pound minimum; use L004 to determine ZIP Codes served by each ADC/RPDC; labeling:* * *

* * * * *

10.0 Merging Bundles of Flats Using the City State Product

10.1 Periodicals

* * * * *

10.1.3 Bundles With Fewer Than Six Pieces

Carrier route, 5-digit scheme, 5-digit, 3-digit scheme, and 3-digit bundles may contain fewer than six pieces when the publisher determines that such preparation improves service. Pieces in these low-volume bundles must be claimed at the applicable mixed ADC price (Outside-County) or basic price (In-County). Low-volume bundles are permitted only when they are sacked (as applicable), trayed, or prepared on pallets as follows:

a. Place low-volume carrier route, 5-digit, 3-digit scheme, and 3-digit bundles in only the following containers:* * *

[Revise items (a3) and (a4) to read as follows:]

3. Origin/entry SCF/LPC flat trays.

4. On merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, merged 5-digit, 5-digit carrier routes, 5-digit, 3-digit, or SCF/LPC pallets, as appropriate.

[Revise item (b) to read as follows:]

b. Place low-volume 5-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF flat trays that contain at least 24 pieces, or in origin/entry SCF/LPC flat trays, or on 3-digit or SCF/LPC pallets, as appropriate.

* * * * *

10.1.5 Pallet Preparation and Labeling

Mailers must prepare pallets of bundles in the manner and sequence listed below and under 8.0. When sortation under this option is performed, after completing required or optional carrier route pallets (if any), mailers must prepare all merged 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and/or the City State Product. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under 8.6.* * *

[Revise item (g) to read as follows:]

g. *SCF/LPC through mixed ADC,* use 8.10.2h through 8.10.2k, as applicable, to prepare and label SCF/LPC, ADC/RPDC, Origin Mixed ADC (OMX) and mixed ADC pallet levels.

* * * * *

10.2 USPS Marketing Mail

* * * * *

10.2.5 Pallet Preparation and Labeling

* * * * *

[Revise the introductory text of item (g) to read as follows:]

g. *SCF/LPC,* required, may contain carrier route price, automation price, and Presorted price bundles. Labeling:* * *

[Revise the introductory text of item (h) to read as follows:]

h. ASF, required, except that an ASF sort may not be required if using bundle reallocation under 8.13.3. May contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC/RPDC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC/RPDC destination of the bundle in L010. All optional mixed ADC bundles on ASF/RPDC pallets must contain only pieces destinating within the ASF/RPDC as shown in 6.3. See 246.3.0 for additional requirements for DNDC price eligibility. Labeling:* * *

[Revise the introductory text of item (i) to read as follows:]

i. *NDC/RPDC,* required, may contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L010. All optional mixed ADC bundles on NDC/RPDC pallets must contain only pieces destinating within the NDC/RPDC as shown in 6.3. See 246.3.0 for additional requirements for DNDC price eligibility. Labeling:* * *

11.0 Combining Automation Price and Nonautomation Price Flats in Bundles

* * * * *

11.2 Periodicals

* * * * *

11.2.3 Bundles With Fewer Than Six Pieces

* * * * *

a. Place low-volume 5-digit and 3-digit bundles in only 5-digit scheme, 5-digit, 3-digit, and SCF flat trays that contain at least 24 pieces; or in origin/entry SCF/LPC flat trays; or on the following pallets, as appropriate:

* * * * *

[Revise item (a6) to read as follows:]

6. SCF/LPC

[Revise item (b) to read as follows:]

b. Place low-volume 5-digit scheme and 3-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF flat trays that contain at least 24 pieces, or in origin/entry SCF/LPC flat trays, or on 3-digit or SCF/LPC pallets, as appropriate.

* * * * *

12.0 Merging Bundles of Flats on Pallets Using a 5 Percent Threshold

12.1 Periodicals

* * * * *

12.1.5 Pallet Preparation and Labeling

* * * * *

[Revise item 12.1.5(h) to read as follows:]

h. *SCF/LPC through mixed ADC,* use 8.10.2h through 8.10.2k, as applicable, to prepare and label SCF/LPC, ADC/RPDC, Origin Mixed ADC (OMX) and mixed ADC pallet levels.

12.2 USPS Marketing Mail

* * * * *

12.2.3 Pallet Preparation and Labeling

* * * * *

[Revise the introductory text of item (g) to read as follows:]

g. *SCF/LPC,* required, may contain carrier route price, automation price, and Presorted price bundles. Labeling:* * *

[Revise the introductory text of item (h) to read as follows:]

h. ASF, required, except that an ASF sort may not be required if using bundle reallocation under 8.13.3. May contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC/RPDC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC/RPDC destination of the bundle in L010. All optional mixed ADC bundles on ASF/RPDC pallets must contain only pieces destinating within the ASF/RPDC as shown in 6.3. See 246.3.0 for additional requirements for DNDC price eligibility. Labeling:* * *

[Revise the introductory text of item (i) to read as follows:]

i. *NDC/RPDC,* required, may contain carrier route price, automation price, and/or Presorted price bundles. Sort

ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC/RPDC destination of the bundle in L010. All optional mixed ADC bundles on NDC/RPDC pallets must contain only pieces destinating within the NDC/RPDC as shown in 6.3. See 246.3.0 for additional requirements for DNDC price eligibility.
Labeling:* * *
* * * * *

13.0 Merging Bundles of Flats on Pallets Using the City State Product and a 5 Percent Threshold

13.1 Periodicals

* * * * *

13.1.5 Pallet Preparation and Labeling

* * * * *

[Revise item (h) to read as follows:]

h. *SCF/LPC through mixed ADC,* use 8.10.2h through 8.10.2k, as applicable, to prepare and label SCF/LPC, ADC/RPDC, Origin Mixed ADC (OMX) and mixed ADC pallet levels.

13.2 USPS Marketing Mail

* * * * *

13.2.4 Pallet Preparation and Labeling

* * * * *

[Revise the introductory text of item (g) to read as follows:]

g. *SCF/LPC,* required, may contain carrier route price, automation price, and Presorted price bundles.
Labeling:* * *

[Revise the introductory text of item (h) to read as follows:]

h. ASF, required, except that an ASF sort may not be required if using bundle reallocation under 8.13.3. May contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to ASF/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L010. All optional mixed ADC bundles on ASF/RPDC pallets must contain only pieces destinating within the ASF/RPDC as shown in 6.3. See 246.3.0 for additional requirements for DNDC price eligibility. Labeling:* * *

[Revise the introductory text of item (i) to read as follows:]

i. *NDC/RPDC,* required, may contain carrier route price, automation price, and/or Presorted price bundles. Sort ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L004. At the mailer's option, sort appropriate mixed ADC bundles to NDC/RPDC pallets based on the ''label to'' ZIP Code for the ADC destination of the bundle in L010. All optional mixed ADC bundles on NDC/RPDC pallets must contain only pieces destinating within the NDC/RPDC as shown in 6.3. See 263.2.0 for additional requirements for DNDC price eligibility. Labeling:* * *
* * * * *

15.0 Combining USPS Marketing Mail Flats, Bound Printed Matter Flats, and Periodicals Flats

15.1 Basic Standards

15.1.1 General

Authorized mailers may combine USPS Marketing Mail flats, Bound Printed Matter flats, and Periodicals flats in a single mailing as follows:
* * * * *

h. Each comailing containing Bound Printed Matter flats must meet the following requirements:

[Revise items (h1) and (h2) to read as follows:]

1. Except under 15.1.1h2, BPM flat-sized pieces must not weigh more than 20 ounces when combined in applicable bundles, and must be entered at a destination sectional center facility (DSCF)/local processing center (LPC) on 5-digit or 3-digit/sectional center facility (SCF) level pallets, or at a destination delivery unit (DDU)/sorting & delivery center (S&DC).

2. BPM flat-sized pieces may weigh up to 24 ounces when combined in carrier-route (CR) level bundles on a pallet included in no less than SCF/3D sortation entered at an SCF/LPC. BPM flat-sized pieces must not exceed 20 ounces if prepared in the CR level bundle with certain Periodicals pieces that may weigh more than 20 ounces. The maximum number of BPM pieces weighing more than 20 ounces up to the maximum of 24 ounces must not exceed 50 percent of each mailing.
* * * * *

15.1.10 Other Periodicals Pricing

Other prices for Periodicals flats in a combined mailing of USPS Marketing Mail and Periodicals flats on pallets will be assessed as follows:* * *

[Revise items (a) and (b) to read as follows:]

a. The bundle prices applicable to the ADC/RPDC container level will be applied to the ASF/NDC/RPDC container levels.

b. The container prices applicable to the ADC/RPDC pallet level will apply to the ASF/NDC/RPDC pallet levels.* * *

c. The bundle price applicable to the ADC bundle placed on the ADC/RPDC container level will apply to mixed ADC bundles placed on mixed NDC pallets.* * *

[Revise the heading of 15.1.11 to read as follows:]

15.1.11 Bundle Reallocation to Protect the SCF/LPC or NDC/RPDC Pallet

[Revise 15.1.11 to read as follows:]

Mailers may reallocate bundles under 8.11 or 8.13 to protect the SCF/LPC or NDC/RPDC pallet.
* * * * *

15.2 Combining USPS Marketing Mail Flats, Bound Printed Matter Flats, and Periodicals Flats in the Same Bundle

* * * * *

15.2.3 Pallet Presort and Labeling

[Revise the first sentence of 15.2.3 to read as follows:]

Mailers must prepare pallets according to the standards in 8.0 and in the sequence listed below. Merged 5-digit scheme through NDC/RPDC pallets must contain at least 250 pounds of combined USPS Marketing Mail and Periodicals mailpieces, except as allowed under 8.5.3.* * *
* * * * *

15.3 Combining Bundles of USPS Marketing Mail Flats, Bound Printed Matter Flats, and Periodicals Flats on the Same Pallet

* * * * *

15.3.3 Pallet Presort and Labeling

[Revise the first sentence of 15.3.3 to read as follows:]

Mailers must prepare pallets according to the standards in 8.0 and in the sequence listed below. Merged 5-digit scheme through NDC/RPDC pallets must contain at least 250 pounds of combined USPS Marketing Mail and Periodicals, except as allowed under 8.5.3.* * *
* * * * *

15.4 Pallet Preparation

15.4.1 Pallet Preparation, Sequence and Labeling

* * * * *

[Revise the introductory text of item (g) to read as follows:]

g. *SCF/LPC, required* Pallet may contain carrier route, automation or Presorted mail for the 3-digit ZIP Code groups in L005. Labeling:* * *

[Revise the introductory text of item (i) to read as follows:]

i. *NDC/RPDC, required.* Pallet may contain carrier route, automation or presorted mail for the 3-digit ZIP Code

groups in L601. ADC bundles are assigned to pallets according to the ''label to'' ZIP Code in L004 as appropriate. Labeling:* * *

[Revise the introductory text of item (j) to read as follows:]

j. *Mixed NDC, required, 100-pound minimum* Pallet may contain carrier route, automation or presorted mail. Pallet includes MXD ADC bundles, prepared according to the ''label to'' ZIP in L009, as appropriate. Unless authorized by the processing and distribution manager, pallet must be entered at the NDC/RPDC serving the 3-digit ZIP Code of the entry Post Office. Labeling:

[Revise item (j1) to read as follows:]

1. Line 1: ''MXD'' followed by the information in L601, for the NDC/RPDC serving the 3-digit ZIP Code prefix of the entry Post Office.* * *

* * * * *

23.0 Full-Service Automation Option

* * * * *

23.2 General Eligibility Standards

* * * * *

[Revise the first sentence of item 23.2 (e) to read as follows:]

a. Be scheduled for an appointment using the Facility Access and Shipment Tracking (FAST) system for dropship mailings (except for mailings entered at a DDU/S&DC) or as required in a customer/supplier agreement.* * *

* * * * *

Notice 123 (Price List)

[Revise prices as applicable.]

* * * * *

Christopher Doyle,

Attorney, Ethics & Legal Compliance.

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