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Title 3—

The President

Proclamation 10241 of August 27, 2021

Overdose Awareness Week, 2021

By the President of the United States of America

A Proclamation

The overdose epidemic has taken a toll on far too many Americans and their loved ones. Addiction is a disease that touches families in every community, including my own. The epidemic is national, but the impact is personal. It is personal to the millions who confront substance use disorder every day, and to the families who have lost loved ones to an overdose.

During Overdose Awareness Week, we recommit to taking bold actions to prevent overdoses and related deaths, and enhance our support for individuals with substance use disorders.

In recent years, we have seen synthetic opioids, such as illicitly manufactured fentanyl, drive many overdose deaths with cocaine- and methamphetamine-related deaths also increasing at alarming rates. The COVID–19 pandemic has exacerbated the overdose epidemic, as necessary pandemic restrictions made it harder for individuals with addiction to receive the treatment and support services they need. These factors contributed to the more than 93,000 drug overdose deaths in 2020. As a Nation, we need a strong response to America's overdose epidemic and an investment in prevention, harm reduction, treatment and recovery services, as well as strategies to reduce the supply of illicit drugs.

While drug overdose and addiction affect many different communities across the United States, we also recognize the longstanding inequities experienced by people of color, people who identify as LGBTQ+, formerly incarcerated individuals, people experiencing homelessness, and others. For too many years, these communities have faced disparate access to health care, differential treatment in the criminal justice system, and poorer health outcomes.

My Administration is committed to addressing addiction and the overdose epidemic with evidence-based strategies. In April, to ensure that the Federal Government is promoting evidence-based public health and safety interventions, the Office of National Drug Control Policy released my Administration's first year drug policy priorities. These include expanding access to prevention, treatment and harm reduction efforts, reducing youth substance use, reducing the supply of illicit substances, advancing recovery-ready workplaces, and expanding the addiction workforce and access to recovery support services for all Americans. My Administration is also committed to eliminating racial disparities in responding to the overdose epidemic as well as reviewing the overall approach to drug policy.

This effort requires significant investments in our health care infrastructure. In my American Rescue Plan, we provided crucial funding for substance use disorder treatment and harm reduction, including a nearly $4 billion investment in our Nation's behavioral health infrastructure. This includes $30 million for a new Substance Abuse and Mental Health Services Administration grant program to support community-based efforts aimed at preventing overdoses and reducing harm associated with substance use.

We also recognize that many of our brave veterans recovering from service injuries may be vulnerable to opioid addiction. I signed the Dispose Unused Medications and Prescription Opioids Act to ensure that Veterans Affairs

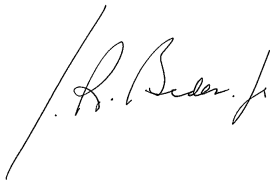
facilities provide locations to dispose controlled substances in a safe, secure and supportive environment.

Agencies across the Federal Government are also making significant strides in supporting individuals with substance use disorders. The Department of Health and Human Services continues to work on expanding access to evidence-based treatment, including a new policy to expand access to buprenorphine, a medication for the treatment of opioid use disorder. The Drug Enforcement Administration also issued a new rule that allows more opioid use disorder treatment programs to operate mobile components to better serve rural and underserved communities. These actions are only the beginning. My Administration will be taking additional actions to reduce barriers to life-saving treatment and expand access to prevention, harm reduction, and recovery support services.

Overdose Awareness Week provides us an opportunity to recommit ourselves to addressing this epidemic. By enhancing our support for individuals facing substance use disorder we can save lives.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 29 through September 4, 2021, as Overdose Awareness Week. I call upon citizens, government agencies, organizations, healthcare providers, and research institutions to raise awareness of substance use disorders to combat stigma, to promote treatment and celebrate recovery, and to strengthen our collective efforts to prevent overdose deaths. August 31st also marks Overdose Awareness Day, on which our Nation mourns the lives lost to the drug overdose epidemic.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of August, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1146 and 1147

[Doc. No. AMS–DA–21–0013]

RIN 0581–AE00

Establishment of a Dairy Donation Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule establishes the Dairy Donation Program as required by the Consolidated Appropriations Act of 2021. Under the program, eligible dairy organizations that account to a Federal milk marketing order and incur a qualified expense related to certain dairy product donations may apply for and receive reimbursements for those donations. The program is intended to facilitate donation of eligible dairy products and prevent and minimize food waste.

DATES:

Effective Date: This interim final rule is effective September 2, 2021 and expires September 1, 2023, unless extended by notification in the **Federal Register**.

Public Comment Date: Public comments on this interim final rule must be submitted on or before November 1, 2021.

Information Collection Comment Date: Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by November 1, 2021.

ADDRESSES: Comments can be submitted online at *www.regulations.gov.* Comments received will be posted without change, including any personally identifying information provided. Comments will be made available via the internet at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Taylor, Director, Order Formulation and Enforcement, AMS Dairy Program, USDA; 1400 Independence Avenue SW, Room 2973–S, Washington, DC 20250; telephone: (202) 720–4392; email: *DDP@usda.gov*; web address: *www.ams.usda.gov/ddp.*

SUPPLEMENTARY INFORMATION: Section 762 of the Consolidated Appropriations Act of 2021 (CAA) (Pub. L. 116–260) authorizes the Secretary of Agriculture (Secretary) to establish a program to reimburse dairy organizations for donated dairy products to non-profit organizations for distribution to recipient individuals and families. The Secretary delegated authority to establish and administer this program to the Agricultural Marketing Service (AMS). This rule outlines the provisions of the new Dairy Donation Program (DDP) codified at 7 CFR part 1147. Program provisions are intended to encourage the donation of dairy products and to prevent and minimize food waste. The DDP is an additional dairy donation program that overlays on existing USDA dairy milk donation activities such as the Milk Donation Reimbursement Program (MDRP). The MDRP was established as part of the 2018 Farm Bill to facilitate the donation of fluid milk products and avoid food waste. The program was funded for $9 million in fiscal year 2019, and $5 million per fiscal year thereafter. DDP and MDRP are separate from USDA purchase programs. The donation program provides for reimbursement of certain costs for donations made between two private entities. USDA's TEFAP and Section 32 are done through a bid process where USDA purchases the product and arranges for delivery to the distribution point.

This rule also amends provisions of the MDRP (codified at 7 CFR part 1146), where appropriate, to gain administrative efficiencies and lessen the burden for entities participating in the two programs. DDP and MDRP are separate and distinct from the USDA safety net program (Dairy Margin Coverage), indemnity and disaster assistance programs, risk management tools through the public-private partnership of the Federal Crop Insurance Program, or USDA purchases of commodities, which may include dairy products depending on the market conditions and demand from school lunch or nutrition programs.

Background

In 2020, the COVID–19 pandemic disrupted dairy supply chains and displaced significant volumes of milk normally used in food service channels. This led to milk being dumped or fed to animals across the United States; AMS estimates that the volume of milk dumped due to pandemic-related supply chain issues was almost triple what is typically observed during normal market conditions.[1] At the same time, amidst surging unemployment and economic hardship nationwide, an increasing number of individuals have been in need of nutrient-dense foods such as dairy products. Throughout 2020 and 2021, milk and dairy products have been in food donations authorized under the Coronavirus Aid, Relief, and Economic Security Act (CARES) and through the Commodity Credit Corporation (CCC). In December 2020, Congress also authorized an additional $400 million until expended to establish the DDP, designed to encourage the timely and efficient distribution of dairy products to families and individuals while reducing food waste.

While the DDP is intended to assist in balancing the supply chain during the pandemic recovery, it also will provide the benefit of creating an incentive to donate dairy products during the normal spring flush of milk production. During normal marketing years (pre-pandemic), daily milk production in the spring averaged 6 to 7 percent more than in the lower production months of the fall.[2] Economic Research Service (ERS) 2019 food security data estimates that 10.5 percent of U.S. households were food insecure at some time during 2019.[3] ERS 2020 data has not been released, but it is reasonable to assume food insecurity was higher in 2020 because of high unemployment and nationwide economic hardship. The United States remains in the midst of the recovery, and even when

[1] USDA Federal Milk Marketing Order Statistics, Other Use Volumes, March and April, 2015 through 2021.

[2] USDA, National Agricultural Statistics Service, Monthly Milk Production data, 2012 through 2020.

[3] Trends in U.S. Food Security, 2019; Update for September 9, 2020. *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/interactive-charts-and-highlights/#childtrends*, accessed August 23, 2021.

employment returns to more normal levels there will continue to be food insecurity. The persistent need for nutrient-dense foods such as dairy products can be met, in part, through donations encouraged by the DDP.

As detailed later in this rule, the normal rulemaking process would be impracticable, unnecessary, and contrary to the public interest in light of the importance of distributing donated dairy products as quickly as possible to individuals and families. Therefore, AMS finds that there is good cause to forgo the notice and comment requirements in the Administrative Procedure Act (APA) for this rulemaking.

The following paragraphs give a general overview of how the DDP will operate. Detailed explanations of program provisions can be found later in the *Program Provisions* section.

Who is eligible to participate?

Program eligibility is open to eligible dairy organizations (EDOs), defined as dairy farmers (either individually or as part of a cooperative) or dairy processors that meet the following conditions: (1) Account to a Federal milk marketing order (FMMO) marketwide pool; and (2) incur a qualified expense. Although the definition of EDO includes individual dairy farmers, many such farmers might not meet the other specified conditions to qualify as EDOs. For example, many such farmers would not incur qualified expenses because they do not donate eligible dairy products, since they do not have the infrastructure to process raw milk into such products. Those individual farmers who do meet the required conditions, however, would qualify as EDOs under statutes and this rule for both the DDP and MDRP.

As explained below, the DDP and MDRP refer to the same statutory EDO definition; therefore, this rule amends the MDRP to reflect the statutory interpretation explained below.

(1) Account to a FMMO Marketwide Pool

The DDP authorizing statute [4] adopts the EDO definition contained in the statute establishing the MDRP.[5] When AMS issued the final rule for the MDRP, it interpreted the statutory language, ''account to a FMMO marketwide pool'', to apply to entities that are regulated by, and therefore file reports with, a FMMO. Participation in the MDRP has been limited, partly due to the requirement to be regulated.

The COVID–19 pandemic and its impacts affected the entire United States. Supply chain disruptions described earlier were not limited to only those participating in a FMMO. Consequently, Congress authorized the DPP through a broad relief package. In reviewing Congress's intent to encourage dairy product donation across the country, AMS has determined the interpretation of ''account to'' requiring regulation by a FMMO is too narrow; instead, an EDO could ''account to'' a FMMO marketwide pool by filing a report with a FMMO office. Consequently, this rule revises the definition of ''eligible dairy organization'' for MDRP by removing the requirement that the EDO be regulated under a FMMO. It also adopts the same definition for the DDP.

The report the EDO files to ''account to'' a FMMO marketwide pool will list the fresh fluid products and/or bulk dairy commodity products purchased and how they were utilized to produce donated eligible dairy products. EDOs can contact their local FMMO office or access the DDP website to determine the applicable FMMO office where the report should be filed. Since EDOs may not know they will be donating product during the production month, reports may be filed retroactively. Filing of this report for the purpose of participating in the DDP will not cause the EDO to become regulated by the FMMO.

(2) Incur a Qualified Expense

The statute further specifies that an EDO must incur a qualified expense. Since only Class I fluid products are donated through the MDRP and most Class I processors are regulated by a FMMO, incurring a qualified expense in the MDRP is currently interpreted as paying minimum classified values into a FMMO pool because that is the requirement for processors regulated by a FMMO. As explained above, an EDO no longer needs to be regulated under a FMMO. This rule adds a definition of ''qualified expense'' to MDRP regulations to specify that a qualified expense is not tied to the FMMO regulatory requirement of paying minimum classified values. The same definition also applies to the DDP.

EDOs incur a qualified expense by either purchasing fresh fluid milk product (raw milk, skim milk, cream, or concentrated fluid milk products) for processing into an eligible dairy product or purchasing bulk dairy commodity product for further processing into an eligible dairy product.

Dairy processors are often associated with buying fresh fluid milk products for processing into dairy products. The structure of the dairy industry is such that processors are also purchasing bulk dairy commodity products for further processing into retail packaging. For example, a processor buys 40-pound cheese blocks to further process and package into 8-ounce blocks or bags of shredded cheese typically preferred by consumers and eligible distributors alike. The DDP is intended to facilitate these types of product donations. Therefore, in addition to processors who buy fresh fluid milk for processing, the DDP will allow processors who purchase and further process bulk commodities for donation to qualify as an EDO. To be considered an EDO, a secondary processor will also need to account to a FMMO marketwide pool as described earlier.

Once these two above conditions—accounting to a FMMO and incurring a qualified expense—are met, EDOs participate in the program by forming partnerships with eligible distributors and then submitting a Dairy Donation and Distribution Plan (Plan) to AMS for approval. If an EDO or eligible distributor is looking for a partner, they may contact DDP Office for assistance.

Because regulations now include a definition of ''qualified expense'', the definition of ''eligible dairy organization'' is further revised to cite that definition when referring to the requirement that an EDO must incur a qualified expense.

What will be reimbursed?

Upon Plan approval, EDOs can submit a Reimbursement Claim Form (Claim Form) to receive reimbursement for donations made. DDP will reimburse EDOs for the all or part of the following: (1) Input costs—fresh fluid milk or bulk dairy commodity product milk equivalent used in the eligible dairy product; (2) manufacturing costs; and (3) transportation costs.

(3) Input Costs—Fresh Fluid Milk or Bulk Dairy Commodity Product Milk Equivalent

In the FMMO system, milk is priced based on its end use. FMMO classifications are generally: Class I—traditionally the highest class price—for beverage fluid milk products such as whole, skim, nonfat, and flavored milks; Class II for soft products such as yogurt, ice cream, and packaged fluid cream; Class III for spreadable and hard cheeses; and Class IV for butter and milk products in dried form. Announced monthly, FMMO-minimum classified prices reflect surveyed end-

[4] Sec. 762(a)(1) of the Consolidated Appropriations Act of 2021.

[5] Sec. 1431 of the Agricultural Act of 2014 (7 U.S.C. 9071(a)). Implementing regulations are codified at 7 CFR part 1147.

product wholesale market prices. Under a FMMO, regulated processors are required to pay at least minimum classified values for how they use their milk.

For processors purchasing and processing fresh fluid milk products (raw milk, skim milk, cream, or concentrated fluid products), the DDP will reimburse for the FMMO-minimum classified value applicable on the date of production for fresh fluid milk products used to make the donated eligible dairy product. FMMO prices are a good approximation of what the processor paid for the fresh fluid milk products because they represent observed market values paid for product at the time of purchase. The DDP will not reimburse for powders and other dry dairy products used as an ingredient in eligible dairy products (for example, powder used to fortify cheeses or ice cream).

Reimbursement is not extended to these ingredients because the DDP is designed to encourage the use of excess fresh fluid milk for donation, rather than being dumped. Dry milk powders in retail packaging, such as 10-ounce containers of nonfat dry milk, which are made directly from fresh fluid milk, are considered eligible dairy products under this program as it is likely surplus fresh fluid milk was manufactured into dry milk powder as opposed to being dumped.

Since FMMO-minimum classified prices are on a hundredweight basis, the EDO will report its donation in the quantity and size of the donated product, which will be converted to hundredweights with a yield factor (how much product can be made from 100 pounds of milk). Applicable announced minimum class skim and butterfat prices will be used in determining the input cost of the donated dairy product. The EDO will have the ability to provide its actual product yield factor or the EDO can use a standard yield factor. Standard yield factors will be posted on the Dairy Donation Program website.

Processors buying bulk dairy commodity products for further processing and donation, as described earlier, will be reimbursed at the classified use value applicable for the month the eligible dairy product was processed in the consumer-type package. The reimbursed value will represent the milk-equivalent market price of the bulk dairy product at the time of conversion into an eligible dairy product.

(4) Manufacturing Costs

Processors incur expenses beyond input costs to make dairy products. To encourage dairy product donations, the DDP will reimburse for some of the costs to convert fresh fluid milk product into an eligible dairy product.

Manufacturing costs will be reimbursed at the make (manufacturing) allowance levels in the FMMO system, which are generally accepted by the industry as representative costs of manufacturing dairy products from raw milk. For Class I and II, the Class IV make allowance contained in the Class IV price formula will be applied. AMS lacks data on manufacturing costs for Class I and II products and therefore selects the lower of the two FMMO make allowances to ensure processors are not reimbursed for more than their actual manufacturing costs. As Class I and II products require different processing, the actual manufacturing costs could be higher than the Class IV manufacturing allowance. This rule seeks public comment and supporting data related to actual manufacturing costs for Class I and II products. For Class III and IV products, the manufacturing allowances in the respective class price formulas will be applied.

Currently, the Class III and Class IV FMMO makes allowances are $3.17 and $2.16 per hundredweight, respectively, for milk containing 3.5 percent butterfat. If the FMMO make allowances are updated in the future, the DDP will be automatically adjusted to reflect these changes.

(5) Transportation Costs

Transportation costs from the processor to distribution outlet are often cost prohibitive. Absent reimbursement, processors may not be willing to incur additional transportation costs and feeding organizations may lack the funding to cover these costs to facilitate the donation. DDP aims to facilitate timely donations and reduce food waste. Therefore, this program will cover part of the transportation costs from the EDO to the eligible distributor. This may be especially beneficial to rural communities whose donation sites are often far from plants serving them and who may not receive assistance from other government feeding programs with distribution points closer to urban centers.

As the reimbursement value will be paid to the EDO, the DDP will only reimburse for transportation if the EDO incurred the expense. If donated eligible dairy products are picked up from the plant by the eligible distributor, no transportation reimbursement will be paid. The transportation cost reimbursement rate is defined later in this rule.

(6) Total Reimbursement Value

Section 762(d)(2)(A) of the CAA specifies the total reimbursement—the sum of input, manufacturing, and transportation costs—must be set neither too high (such that it would ''interfere with the commercial marketing of milk or dairy products'') nor too low (such that it would fail to ''be sufficient to avoid food waste''). The statute further requires total reimbursement to be between the highest and lowest of the classified milk values. To ensure costs can be sufficiently covered for most donations, total reimbursement payment, on a per hundredweight basis, will be capped at the Class I value for the highest FMMO differential zone (Dade County, Florida). Capping at the higher FMMO zone will allow for Class I handlers to obtain some reimbursement for manufacturing and transportation costs.

Section 762(d)(2)(B)(iv) of the CAA further allows the Secretary to maintain traditional price relationships—Class I being the highest, followed in sequence by II, III and IV—in setting the reimbursement rate. In 2020, dairy markets experienced pronounced class price inversions, where the Class III price was significantly higher than the Class I price in many areas of the country. However, the Class III price has been above the Class I price in Dade County, Florida only three times since the current pricing system was adopted on January 1, 2000.[6] Such extreme inversions are not anticipated in the foreseeable future, as both short-term COVID–19-related disruptions and long-term production capacity issues are beginning to ease. While the DDP does not directly determine classified prices and price relationships, the program rules should not exacerbate price inversions if they occur. Therefore, in times of price inversion, where the Class I price is not the highest class price, total reimbursements will continue to be capped at the Class I price for Dade County, Florida.

When do plans and reimbursement claims need to be submitted?

Entities must submit Plan and Eligible Distributor Certification Forms (Certification Forms) to AMS for approval before they can submit Claim Forms for reimbursement. AMS will approve or disapprove Certification

[6] USDA, Federal Milk Marketing Order Statistics, Final Class and Component Prices by Order.

Forms within 15 business days of receipt. Reimbursements claims, along with supporting documentation, can be filed any time after the Plan is approved and the donation is made. AMS will use the supporting documentation to verify program requirements were met. Plans only need to be submitted once for approval. The DDP does not require annual Plan renewal.

How will AMS handle both the DDP and MDRP?

Although program funds for the DDP and MDRP are statutorily prohibited from being consolidated, the two programs will operate as one from a stakeholder standpoint. EDOs making Class I fluid milk product donations—which are covered by both programs—will be reimbursed through MDRP funds at the difference between the Class I and lowest classified price and receive a supplemental reimbursement of the lowest classified price plus the manufacturing and transportation cost reimbursement through DDP funds. Total combined reimbursement will be capped at the Class I price in Dade County, Florida.

EDOs already enrolled in MDRP will automatically be enrolled in the DDP and qualify to receive supplementary payments for fluid milk products donated under their currently approved MDRP Plans. To lessen the burden on applicants and gain administrative efficiencies, new Plan and Claim Forms will be used for both the DDP and MDRP. AMS will ensure program funds are paid according to the provisions of both programs. Finally, this interim final rule simultaneously amends the MDRP regulations, where applicable, reflecting the new Plan, Certification Form, Report of Receipts and Utilization, and Claim Forms that will be used to administer the program.

Will there be a retroactive period for reimbursement?

Section 762(h) of the CAA requires supplementary payments be made to EDOs participating in the MDRP for donations made on or after January 1, 2020. Since the statute allows for retroactive reimbursement to those participating in DDP, a retroactive date of January 1, 2020, also applies to the DDP to better streamline administration of the two programs. To ensure adequate availability of funds for donations made before enactment of the CAA, total program expenditures for eligible dairy product donations made from January 1, 2020 to December 27, 2020, will be limited to no more than $50 million.[7] An EDO seeking retroactive reimbursement must include in its Plan information on the volume of these donations from January 1, 2020, through December 27, 2020. A deadline for requesting retroactive reimbursement will be posted on the AMS web page for DDP. If total reimbursement requests exceed $50 million, reimbursements will be prorated.

Program Provisions

The following details the DDP provisions and amendments to the MDRP, where applicable.

Definitions

The statute includes definitions for terms used. Section 1147.1 provides definitions of those terms as they are used in the new program. Key terms are ''eligible dairy organization,'' ''eligible dairy product,'' ''eligible distributor,'' ''eligible partnership,'' and ''qualified expense.''

Eligible dairy organization. As explained in the *Background* section, section 762(a)(1) of the CAA adopts the same EDO definition contained in the statute establishing the MDRP. *See* Sec. 1431(a) and (b) of the Agricultural Act of 2014 (7 U.S.C. 9071(a)). The regulatory definition matches the statutory definition, which specifies that a dairy organization eligible to participate in the program is a dairy farmer, either individually or as part of a cooperative, or a dairy processor that: (1) Accounts to a FMMO marketwide pool; and (2) incurs qualified expenses. *See id.*

Eligible dairy product. Section 762(a)(2) of the CAA specifies that only dairy products primarily made from cow's milk, including fluid milk, that are produced and processed in the United States are eligible for donation and reimbursement under the DDP. Accordingly, § 1147.1 defines ''eligible dairy product'' as a dairy product meeting the commodity specifications referenced in § 1147.3. Currently, other than cow's milk, there is not a surplus of milk or any other form of milk being dumped at the farm. Given that the program is designed to prevent surplus milk from being dumped at the farm, it is the Secretary's discretion to limit to cow's milk.

Eligible distributor. Section 762(a)(3) of the CAA defines ''eligible distributor'' as ''a public or private nonprofit organization that distributes donated eligible dairy products to recipient individuals and families.'' Section 1147.1 likewise defines ''eligible distributor'' as a public or private non-profit feeding organization that distributes, or coordinates the distribution of, donated eligible dairy products to recipient individuals and families. Eligible distributors such as food banks, shelters, kitchens, and other food distribution organizations would be eligible so long as they are a nonprofit entity. Under this new program, participating eligible distributors will fill out an Eligible Distributor Certification Form to verify their non-profit status and affirm they have appropriate facilities and processes for distributing donated dairy products to recipient individuals and families.

Eligible partnership. Section 762(c) of the CAA requires that an EDO and eligible distributor form a partnership to participate in the DDP. Each partnership is required to submit a Plan and a Certification Form, to AMS containing information about their respective roles. Requiring the parties to apply as a partnership ensures that all program provisions will be met and an agreed-upon structure will be in place when eligible dairy products are available for donation and distribution. Section 762(a)(4) of the CAA defines ''eligible partnership'' as ''a partnership between an eligible dairy organization and an eligible distributor'' and this rule adopts the same definition.

AMS recognizes some EDOs may have processing plants in multiple locations that may report to different FMMOs. Similarly, eligible distributors may have multiple distribution sites; for example, several food pantries are operated by one umbrella organization. Thus, under § 1147.102(a), the eligible partnership can submit one Plan to cover multiple plants and/or distribution points as long as only one EDO and one eligible distributor are represented. Individual EDOs and eligible distributors can also form other partnerships, but they are required to submit separate Plans for each partnership.

Qualified expense. The statute does not define ''qualified expense,'' but does specify that one needs to be incurred to be eligible for program participation. Section 1147.1 defines ''qualified expense'' as the cost incurred to purchase fresh fluid milk for processing into eligible dairy products or the cost incurred to purchase bulk dairy commodity products for further processing into eligible dairy products. Qualified expense is different than the

[7] As indicated in the Economic Analysis, USDA expects the DDP to expend $68 million annually. In determining funds available for this retroactive period, USDA is limiting expenditures to approximately 80 percent ($50 million), consistent with other USDA COVID–19 recovery programs (7 CFR part 9—Coronavirus Food Assistance Program).

reimbursement rate, which is defined later in this rule.

Because defining ''qualified expense'' is fundamental to determining program eligibility and the MDRP and DDP reference the same ''eligible dairy organization'' statutory definition, the ''qualified expense'' definition is also added to the MDRP regulation.

Additional terms necessary for administration of the program are defined in § 1147.1. ''Program'' is defined as the Dairy Donation Program and ''Secretary'' is defined as the Secretary of the United States Department of Agriculture or a representative authorized to act in the Secretary's stead.

Commodity Specifications

The DDP is intended to reimburse eligible dairy organizations for timely donations of eligible dairy products and minimize food waste. It is therefore reasonable for AMS to ensure that eligible dairy products donated under the DDP meet minimum food safety and quality standards and in package sizes desired by eligible distributors, consistent with the intent of the program to minimize food waste that might otherwise result. Section 1147.3 defines the commodity specifications that must be met. Eligible dairy organizations must comply with all applicable Federal, State, and local laws, executive orders, and rules and regulations related to its performance under this program. In addition, to qualify under the program eligible dairy products must:

1. Be made primarily from cow's (bovine) milk produced in the United States;
2. Be packaged in consumer-sized packaging;
3. Meet the applicable provisions for dairy products in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), as amended. Grade 'A' dairy products shall meet the applicable provisions of the current edition of the Pasteurized Milk ordinance; and
4. Have a sell-by, best-by, or use-by date no sooner than 12 days from the date the eligible dairy product is delivered to the eligible distributor.

Program provisions specify donated dairy products mut be in consumer-sized packaging. This provision should be interpreted by the eligible partnership as to whatever consumer-sized package format is agreeable to both entities. Examples of consumer-sized packaging include, but are not limited to, gallons of milk, 8-ounce blocks of cheese, single serve containers of yogurt, 1-pound packages of butter, or large bags of milk if the eligible distributor has the ability to dispense (*i.e.,* a soup kitchen). When submitting Plans for approval, the EDO is required to list what types of products it will be donating. AMS will check that information against distributor process provided by the eligible distributor to ensure it has the ability to distribute that types of products to be donated.

Program Eligibility and Participation

Section 1147.100 provides that an eligible dairy organization must be a member of a partnership whose Plan has been approved by AMS to be eligible for reimbursements under the DDP.

Section 1147.102 outlines requirements for Plan submission in order to be considered for the program. Plans submitted to AMS for program approval must include a signed affirmation regarding the type of product to be donated and the EDO's ability to process and transport eligible dairy products consistent with the requirements in the commodity specifications under § 1147.3. Along with the Plan submission, eligible distributors are required to submit a signed Certification Form, which includes a description of the eligible distributor's distribution process, contact information, and a tax identification number to ensure compliance with program provisions. As specified in § 1147.208, AMS will only collect information deemed necessary to determine whether an eligible partnership's Plan should be approved. All proprietary business information submitted will be used only for the purposes of the program and will be kept confidential by AMS.

Section 1147.104 specifies the process AMS will use to review program applications and determine whether to approve Plans submitted by eligible partnerships. Within 15 business days of application submission, AMS will review the Plan and Certification Form, determine whether to approve or disapprove, and notify the eligible partnership of the determination. Under § 1147.104(a)(1), AMS will review the information submitted by the partnership, including the signed confirmation that the partnership can meet the requirements related to proper processing, transport, storage, and distribution of eligible dairy products until they are distributed. Under § 1147.104(a)(2), AMS will consider the extent to which the Plan would advance the statutory purposes of the DDP, namely, whether the Plan would facilitate the timely donation of eligible dairy products and prevent and minimize food waste. *See* Sec. 762(b) of the CAA.

Finally, section 762(c)(2)(B)(i) of the CAA specifies that priority review will be given to submitted Plans where an emergency or disaster was a substantial factor, including a declared or renewed public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247(d)) or a disaster designated by the Secretary. In reviewing a Plan, AMS will determine if an emergency or disaster was a substantial factor in the Plan's submission. In this case, ''substantial factor'' means that a supply and/or demand disruption caused by the emergency or disaster event is a main reason for the partnership submitting the Plan. For example, the COVID–19 public health emergency—which caused a significant decrease in school and restaurant dairy demand, leading to large volumes of displaced milk and many people in need of food assistance—could be considered a justification for priority review. If an emergency or disaster is deemed a substantial factor, AMS will prioritize review of that Plan to facilitate donations and meet an immediate need. Section 1147.104(a)(3) incorporates those factors for Plan prioritization.

Once approved, Plans do not need to be resubmitted in subsequent fiscal years, unless changes are made. Eligible partnerships that received reimbursement from the MDRP will be automatically enrolled in the DDP to receive the supplemental reimbursement as defined in § 1147.109.

Reimbursement and Reimbursement Price

Section 762(d) of the statute requires the Secretary to reimburse EDOs with approved Plans. Section 1147.106(a) provides the process and describes the necessary information and documentation AMS will require to verify the EDO's donation and calculate its reimbursement. To receive reimbursement, the EDO must complete and submit a Reimbursement Claim Form (Claim Form) that includes: The type, volume, and manufactured date of the eligible dairy products donated; the entity type (processor or eligible distributor); the location(s) of the plant(s) that processed the eligible dairy product(s) and where donated dairy products were distributed; the universal product code(s) (UPCs) for donated product(s); the sell-by, best-by, or use-by date(s) for donated product(s) and the dates the donated dairy products were processed and shipped to the eligible distributor.

There is no requirement dictating the frequency of Claim Form submissions; therefore, any time after its Plan is approved, the EDO can submit Claim

Forms for donations made. However, there is limited funding for this program so prompt submission may be beneficial to EDOs. The EDO also must provide adequate documentation, which should be available through its normal business records, to verify the eligible distributor received the donated eligible dairy products. Such documentation could include, but is not limited to, processing and shipping records, bills of lading, storage records, or receiving records from the eligible distributor. As specified in § 1147.208, AMS will only collect the information and documentation needed to verify the EDO's reimbursement claim.

Section 762(d)(4) of the CAA allows the Secretary to make retroactive reimbursements to EDOs that donated eligible dairy products before their Plans are approved. Eligible dairy products donated through the MDRP are eligible for supplemental reimbursement through DDP for donations made on or after January 1, 2020. The statute also provides for retroactive reimbursement for donations made through DDP prior to Plan approval, though a specific retroactive date is not provided. To gain administrative efficiencies and streamline the two programs, donations of eligible dairy products through DDP beginning on the same date also will be eligible for reimbursement. Partnerships will need to submit Plan and Certification Forms for approval prior to submitting a Reimbursement Form for donations made prior to Plan approval. Accordingly, § 1147.106(a)(3) provides for donations of eligible dairy products beginning on January 1, 2020, to be eligible for reimbursement under this program. As described above, total reimbursement for donations made from January 1, 2020 through December 27, 2020, is capped at $50 million.

As authorized by section 762(d)(3)(B) of the CAA, AMS may verify the accuracy of supporting documentation with spot checks and audits under § 1147.206.

Under section 762(d)(2)(A) of the CAA, the Secretary shall set a reimbursement price that reflects the cost of the milk required to make the donated eligible dairy product, is between the FMMO Class I and Class IV minimum prices for the month of production, is sufficient to avoid food waste, and does not interfere with the commercial marketing of milk or dairy products. Section 1147.108 provides for reimbursement of three separate cost factors: (1) Input cost—fresh fluid milk or bulk dairy commodity product milk-equivalent cost; (2) manufacturing cost of converting fluid milk into a product; and (3) transportation cost from the processing plant to the eligible distributor. Section 1147.108(a) provides that reimbursements will be the sum of the three cost factors.

For the first of these factors, input cost, processors purchasing and processing fresh fluid milk products (raw milk, skim milk, cream, or concentrated fluid products), will be reimbursed at the applicable FMMO minimum classified skim and butterfat values. Processors purchasing bulk dairy commodity products for further processing into eligible dairy products will be reimbursed at the applicable FMMO minimum classified skim and butterfat values for the fluid milk equivalent contained in the bulk product.

That value will be determined by the milk's end use (Class I for fluid milk products, Class II for soft products such as yogurt, Class III for cheese products, and Class IV for butter and powder products) pursuant to 7 CFR 1000.40 and the applicable classified price in effect for the month of production pursuant to 7 CFR 1000.50.

The manufacturing cost for processing fluid milk is represented by the applicable FMMO make allowances contained in 7 CFR 1000.50. The DDP will use the FMMO make allowances in the Class III and IV price formulas to reflect manufacturing costs for Class III and IV products, as they are based on surveyed cost data of wholesale Class III and IV products and are generally accepted by industry stakeholders as appropriate cost estimates. For Class I and II products, however, the Department lacks data on manufacturing costs. As such, the lowest make allowance, Class IV, will be the representative manufacturing cost for Class I and II products. It is reasonable to expect that Class I and II products have different manufacturing costs than Class IV products due to different processing requirements. USDA is seeking comments on manufacturing costs for these classes of products. If submitted data demonstrates that actual Class I and II manufacturing costs differ significantly from the Class IV make allowance, then the Class I and II manufacturing costs could be amended in the final rule. If the public comment period results in updated make allowances for Class I and Class II products, the amended make allowances will not be retroactive to the effective date of this rule.

As explained in the *Background* section, the program will not reimburse additional processing costs for bulk products purchased and further processed. Processors purchasing bulk dairy commodity products for further processing will receive the same manufacturing cost reimbursement as described above. When these processors buy bulk product, it is on a per-pound basis. It is reasonable to assume the price they paid for the bulk product represented both the fluid milk value (which they are being reimbursed for as described earlier) and the cost to convert the fluid milk into the bulk commodity. Therefore, eligible dairy products made from bulk dairy commodity products also will be eligible for manufacturing cost reimbursement.

The transportation cost reimbursement will be based on the U.S. monthly average diesel fuel price [8] for the month the donation was made, a fuel economy factor of 6.1 miles per gallon,[9] and the shortest hard-surface distance from the plant that processed the donated eligible dairy product to the eligible distributor's physical distribution location. These factors are based on relevant government transportation statistics which are similar to those used in FMMOs with transportation credits, the Appalachian [10] and Southeast [11] Orders Transportation reimbursement will only be paid if the EDO incurred the transportation cost, which will be verified on audit.

Section 762(h) of the CAA requires the Secretary to make supplemental reimbursements to EDOs receiving reimbursements under the MDRP from January 1, 2020, to the date when DDP program funds are no longer available. AMS recognizes an EDO under MDRP will also be eligible under DDP. Further, eligible dairy products under MDRP also qualify as eligible dairy products under DDP (notably, fluid milk products). Since DDP reimburses at a higher rate than MDRP, a supplemental reimbursement is needed to properly use funds for and fulfill the purposes of both programs. Section 1147.109 provides the process AMS will follow to make a supplemental reimbursement to EDOs receiving reimbursement under MDRP. An EDO with an already approved Plan under MDRP does not need to apply to DDP. AMS will automatically reimburse the eligible

[8] U.S. Energy Information Administration (EIA), 2021; Gasoline and Diesel Fuel Update for August 16, 2021. *https://www.eia.gov/petroleum/gasdiesel/*, accessed August 23, 2021.

[9] United States Department of Transportation, 2021; Combination Truck Fuel Consumption Data. *https://www.bts.gov/browse-statistical-products-and-data/freight-facts-and-figures/combination-truck-fuel-consumption*, accessed August 23, 2021.

[10] 7 CFR 1005.82 and 1005.83.

[11] 7 CFR 1007.82 and 1007.83.

dairy organization the difference between the reimbursement it received under MDRP and the reimbursement it is eligible to receive for the same product under DDP, calculated in § 1147.108. New applicants to the DDP that donate fluid milk products will be automatically enrolled in MDRP. Upon approval, AMS will make reimbursements under the MDRP provisions and then supplemental reimbursements under the DDP provisions.

Administrative Provisions

Section 762(g) of the CAA requires AMS to publish donation activity for the program. Accordingly, § 1147.200 provides that AMS will periodically report on its publicly accessible website the aggregated donation activity under this program. Such information will include types and volume of product donated, as well as remaining available funds. AMS also will post on its publicly accessible website the Plan and Claim Form templates to be submitted for program participation.

Section 762(e) of the CAA prohibits the sale of eligible dairy products donated under the DDP back into commercial markets and specifies that eligible distributors who violate that prohibition will not be eligible for future participation in the DDP. Section 1147.204 implements the statutory prohibition and penalty for violation. In addition, the program prohibits reimbursement for donated eligible dairy products made in conjunction with marketing or promotional events.

Section 762(f) of the CAA directs the Secretary to conduct appropriate reviews or audits to ensure the integrity of the DDP. Under section 762(d)(3)(B) of the CAA, the Secretary is further authorized to verify the accuracy of submitted documentation through spot checks and audits. Section 1147.206 provides that AMS will verify the proper delivery of and payment for donated eligible dairy products. Specifically, AMS will ensure the donated eligible dairy products were delivered to the eligible distributor and the accuracy of the reimbursed value paid to the EDO. The section further provides for the review, audit, and spot checks of information submitted.

As mentioned in the above discussions, § 1147.208 requires AMS to maintain confidentiality regarding information collected to administer the program and to use the information only for program purposes.

A books and records provision is included in § 1147.209 to ensure the EDO maintains necessary records to be made available to AMS upon request in conjunction with an audit.

Section 1147.210 specifies that dairy products sold or donated under any other USDA commodity purchase or donation program, other than the MDRP, are not eligible for reimbursement under the DDP. From time to time, USDA may purchase dairy products for use in nutrition assistance programs or other uses, but vendors are compensated for those purchases through funding under those program provisions. One of the main purposes of the DDP is to reduce food waste by encouraging the donation of additional dairy products through eligible distributors. Thus, eligible dairy organizations who have received compensation for dairy product purchases under other USDA programs may not receive reimbursements for the same dairy products under the DDP.

Exemption From Notice and Comment

Rules ''relating to public property, loans, grants, benefits, or contracts'' are not subject to the rulemaking requirement of the Administrative Procedure Act at 5 U.S.C. 553. *See* 5 U.S.C. 553(a)(2). Thus, AMS is publishing this interim final rule without previously publishing a proposed rule because this rule relates to a benefit. Additionally, AMS finds it has good cause to do so because providing prior notice and an opportunity for comment are impracticable, unnecessary, or contrary to the public interest under 5 U.S.C. 553(b)(B).

In determining whether a program is a ''benefits'' program, courts consider whether ''benefits'' are clearly and directly involved in the agency action. *Humana of South Carolina, Inc.* v. *Califano,* 590 F.2d 1070 at 1083–84 (D.C. Cir. 1978). The purpose of the DDP is to facilitate timely donation of eligible dairy products and to prevent and minimize food waste by enabling dairy organizations to partner with public or private non-profit organizations. The overall purpose of the DDP is similar to other federal programs that provide food and nutrition assistance to individuals and families in need. Furthermore, the DDP fulfills two needs: (1) The donated dairy products can provide food and nutrition to eligible recipients, as determined by eligible distributors (public or private non-profit organizations); and (2) the eligible dairy organizations are able to participate in a program where they can receive reimbursement for donating dairy products to those determined to be in need. In addition, under the DDP, the public or private non-profit organization determines whether the recipients qualify for the donated dairy products based on their established criteria. As such, individuals and families in need of dairy products are able to receive these dairy products through donation. AMS is issuing regulations to establish and administer the DDP, a program that is clearly and directly involved in the disbursement of benefits, and thus is exempt under section 553(a)(2) from the notice and comment requirements of the APA.

Furthermore, the APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency, for good cause, finds that notice and comment is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). As part of the government's pandemic response, USDA began the Farmers to Families Food Box Program as an emergency relief effort to respond to severe market disruptions and increased food insecurity caused by the pandemic. The program lasted from May 15, 2020, through May 31, 2021, during which time it distributed dairy products equivalent to more than 2.5 billion pounds of milk to those in need. The end of the Food Box program means there is an unmet demand for dairy products in feeding organizations previously met by government purchases through the Food Box Program. The DDP is designed to encourage the donation of dairy products to meet that demand through private partnerships between EDOs and Eligible Distributors. Due to the recent end of the Food Box program, there is an immediate need to implement the DDP so that donations can begin and meet that demand.

In addition, Section 762 of the statute provides for emergencies or disaster declarations to be considered as a substantial factor in donation Plan submissions. As the 2021 hurricane and wildfire season has already begun, the DDP could facilitate donations in the possible event of upcoming emergencies or natural disasters that could create an immediate need to provide food assistance to impacted individuals and families.

Additionally, Congress mandated that the Secretary establish and administer the DDP no later than 60 days after enactment of the CAA. In light of this mandated time frame and the importance of distributing donated dairy products as quickly as possible to individuals and families, the normal rulemaking process would be impracticable unnecessary, and contrary to the public interest. Therefore, AMS finds there is good cause to forgo the

notice-and-comment requirements in the APA for this rulemaking.

As a rule relating to a benefit, the APA requirement that regulations be published at least 30 days before the effective date does not apply. Additionally, this requirement also does not apply when an agency finds good cause not to delay the effective date. *See* 5 U.S.C. 553(d)(3). The same reasons why there is good cause to dispense with notice and comment are applicable to AMS's decision to make this rule effective one day after publication.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. Chapter 35), AMS has requested approval of new information collection and recordkeeping requirements for the DDP and comments are invited on this new information collection. All comments received on this information collection will be summarized and included in the final request for Office of Management and Budget (OMB) approval.

Title: Establishment of a Dairy Donation Program.

OMB Number: 0581–NEW.

Expiration Date of Approval: This is a NEW collection.

Type of Request: Approval of New Information Collection.

Abstract: The Consolidated Appropriations Act of 2021 mandated establishment of a Dairy Donation Program to reimburse EDOs for milk used to make eligible dairy products donated to non-profit groups for distribution to recipient individuals and families. Under the program, EDOs account to a Federal milk marketing order (FMMO) by filling a report reflecting the eligible dairy products manufactured. Entities not already filing FMMO report will be required to submit a Report of Receipts and Utilization. All partnerships must submit a Dairy Donation and Distribution Plan and Eligible Distributor Certification Form describing the process the partnership would use to process, transport, store, and distribute eligible product to an eligible distributor. Once approved, the EDO can file a Reimbursement Claim Form to receive reimbursement for the donated eligible dairy products.

Dairy Donation and Distribution Plan

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Eligible dairy organizations.

Estimated Number of Respondents: 150.

Estimated Number of Responses: 300.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 300 hours.

Eligible Distributor Certification Form

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Eligible distributors.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 75 minutes.

Reimbursement Claim Form

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Eligible dairy organizations.

Estimated Number of Respondents: 150.

Estimated Number of Responses: 1,200.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 2,400 hours.

Report of Receipts and Utilization

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Eligible dairy organizations.

Estimated Number of Respondents: 15.

Estimated Number of Responses: 90.

Estimated Number of Responses per Respondent: 6.

Estimated Total Annual Burden on Respondents: 90 hours.

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 150 respondents will form a total of 300 partnerships. Each participating partnership will be required to submit a Dairy Donation and Reimbursement Plan and Eligible Distributor Certification Form once, there will not be an annual renewal requirement. AMS estimates 1 hour to complete a Dairy Donation and Distribution Plan. Accompanying the Plan, the eligible distributor will be required to submit and sign an Eligible Distributor Certification Form, which AMS anticipates will take 15 minutes.

AMS estimates ten percent of the 150 EDO participants do not already account to a FMMO by filing a report. Therefore, approximately 15 respondents will need to account to a FMMO by filing a Report of Receipts and Utilization Form. All other EDOs will have already accounted to a Federal Order through their normal report filing through its existing association with a Federal milk marketing order. AMS estimates 1 hour to complete the form. Filing of this form will not cause an EDO to become regulated by a Federal milk marketing order.

Reimbursement Claim Forms can be submitted any time after Plan approval and will be processed on a quarterly basis. AMS estimated that to capture efficiencies respondents will submit Reimbursement Claim Forms no more than once per quarter and it will take 2 hours to complete the form per quarter. Assuming the reporting burden will be completed by an administrative assistant employee, at an hourly salary rate of $21, AMS estimates the following annual reporting costs per participating partnership: For the first year of participation, the annualized cost is $196.10 (the Plan, Certification Form, and four Claim Forms); for the subsequent years of participation, the annualized cost is $169.60 (four Claim Forms). Entities needing to account to a Federal Order by filing a Report of Receipts and Utilization Form will experience an additional annual burden of $127.20 (6 responses per year). EDOs also are required to maintain books and records, for a period of 3 years, to be made available to AMS upon request in conjunction with an audit to verify the donations for which the EDO received reimbursement were in fact made. These records are part of normal business records and do not require additional records to be created. Such records include production records to verify yield computations and product code dates for donated manufactured products, or delivery documentation to verify EDO incurred a transportation expense.

E-Government Act

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601, *et seq.*) 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. Forms can be found at *http://www.ams.usda.gov/ddp* and filed through email at *ddp@usda.gov.*

Statutory and Regulatory Authority

Section 762 of the Consolidated Appropriations Act of 2021 mandates that AMS establish and administer a Dairy Donation Program (7 CFR part 1147). The program is intended to facilitate the timely donation of eligible dairy products and prevent and minimize food waste.

Executive Orders 12866 and 13563

USDA is issuing this rule in conformance with Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximizes net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. AMS has determined this action, mandated by Congress, meets the requirements set forth in the Consolidated Appropriations Act of 2021 to facilitate donation of eligible dairy products and prevent and minimize food waste.

AMS is seeking comments on the economic impacts of this action on the industry, including availability of information or data that may demonstrate if and how DDP reimbursements affect the market.

AMS considered alternative methods for allocating available funds under the program, including whether to allocate reimbursements equally across all the geographic areas of the United States or to target specific regions in need of milk donations. Ultimately, AMS determined that because the program's primary purpose is to reduce waste associated with the disposition of surplus milk, the industry would be best served by allowing those with the capacity to process surplus milk and who are in a position to make donations to apply for the program without consideration of geographic location.

This rule is not expected to have any quantified cost or benefits, rather the rule is expected to result in transfers consistent with the following table:

TABLE 1—ACCOUNTING STATEMENT

	Primary estimate	Year dollar	Discount rate %	Period covered
Benefits:				
Annualized Monetized ($millions/year)	0	2021	7	FY 2021–2026.
	0	2021	3	
Costs:				
Annualized Monetized ($millions/year)	0	2021	7	FY 2021–2026.
	0	2021	3	
Transfers—From the Federal Government to an eligible partnership:				
Annualized Monetized ($millions/year)	$71.91	2021	7	FY 2021–2026.
	68.92	2021	3	

As the program is voluntary, eligible partnerships are expected to only participate if they deem it beneficial depending on their individual circumstances. The transfers will be reimbursements in the form of Federal payments to program participants to help offset costs associated with eligible dairy product donations.

In the normal course of transporting, delivering, and processing milk, a small volume of milk is ''lost'' each month. In the FMMO system, ''normal losses'' are estimated to be 0.25 percent of the total participating milk annually. Under certain conditions, an additional volume of milk cannot make it to market due to extraordinary circumstances, such as extreme weather, plant capacity issues, and market disruptions. This volume above ''normal losses'' is identified as ''excess losses'' in this analysis. According to FMMO statistics, ''excess losses'' averaged 0.12 percent of the annual volume of milk participating in the FMMO program from 2016 through 2020. In 2020, the COVID–19 pandemic resulted in higher levels of milk that could not make it to market, amounting to 0.32 percent of the milk that participated in the FMMO program. In conducting an economic analysis, AMS assumed that milk classified as ''excess losses'' could be made into eligible dairy products and donated under the DDP.

To estimate the volume of excess milk that may be donated under the program, the 5-year average rate of 0.12 percent was applied to the projected 2021 U.S. milk production volume. Thus, it is assumed that approximately 273.2 million pounds of milk would be available for dairy processors to make into eligible dairy products for donation to eligible distributors. No data exits from which AMS could estimate how much bulk commodity product could be available for secondary processors to purchase and further process into eligible dairy products for donation to eligible distributors, so that scenario was not considered in the economic analysis. AMS is seeking public comment on data from which to estimate how much bulk commodity product could be available for secondary processors to purchase and further process for donation.

AMS estimated the amounts of butterfat and skim solids in the forecasted product volumes available for donation. The product mix included fluid milk, soft products, cheese, butter, and nonfat dry milk powder volumes, based on the volume of available dairy farmer milk. The set of products utilizes approximately all the butterfat and skim solids present in the milk available for donation. In the case of butter and nonfat dry milk powder, both products can be made from a given amount of milk. Butter requires a large amount of butterfat, while powder utilizes very little butterfat but a large amount of the nonfat solids.

The DDP will reimburse EDOs for eligible dairy product donations for the input cost paid for the fluid milk or bulk dairy commodity product, manufacturing cost, and transportation cost. Total reimbursement must be between the highest FMMO Class I value (Dade county, Florida) and the

Class IV value (assumed the lowest classified value). This analysis projected 2021 class prices based on USDA's March 2021 *World Supply and Demand Estimates* (WASDE), using the FMMO price formulas. Under those assumptions, AMS estimates the program could expend between $52.1 million and $68.7 million annually.

Furthermore, eligible dairy product donations made under the MDRP are eligible to receive a supplemental reimbursement for donations made starting on January 1, 2020, onward. Supplemental reimbursement is calculated at the difference between the DDP and MDRP reimbursement values. The net value of these retroactive reimbursements is estimated at $0.5 million, assuming the highest FMMO minimum Class I value at the time the milk for the donation was purchased.

Total 2021 U.S. milk production was estimated to be 227.3 billion pounds (WASDE, March 2021). As described above, AMS estimates that 273.2 million pounds (0.12 percent) of excess milk (additional supply) would be available to be processed and donated through the DDP. Consequently, AMS does not anticipate this small additional processing volume will impact milk prices. It is likely there will be instances where dairy processors already donating dairy products to non-profit feeding organizations become eligible for reimbursement through DDP. However, those donations are not new production volume to be priced. That is, they would represent dairy products already processed and priced accordingly somewhere in the dairy supply chain. Furthermore, the DDP does not intend to reimburse for the full cost of processing and delivering donated dairy products but rather encourages excess milk to be used and not wasted.

This program is expected to have a negligible impact on retail dairy product sales. Typically, populations that receive dairy products from non-profit feeding organizations do so when they cannot buy dairy products at retail outlets. Additionally, the DDP reimbursement rate does not cover all processing and transportation costs; therefore, it would not be a financially prudent decision to divert milk from retail outlets to donations. The following table provides examples of costs included and excluded from reimbursement under the DDP. This is not an all-inclusive listing but is intended to demonstrate how dairy product donations through this program are not expected to be a substitute for retail dairy product sales.

TABLE 2—EXAMPLES OF COSTS INCLUDED AND EXCLUDED

Cost factor	Includes	Does NOT Include
Input	• Minimum classified price of milk used in the donated eligible dairy product.	• Any contractually obligated monies, over the minimum classified value, due to producers. • Assessments for promotion and research programs, if applicable.
Manufacturing	• Applicable FMMO manufacturing make allowance, representative of the following costs: ○ Processing Labor ○ Utilities ○ Non-Labor ○ General and Administrative. ○ Packaging into a commodity volume.	• Additional ingredient costs (*i.e.,* fruit for fruit-flavored yogurt). • Storage and inventory costs. • Costs of participating in the mandatory Dairy Product Mandatory Reporting Program.
Transportation	• Fuel: Shortest hard surface mileage * monthly diesel price * 6.1 miles per gallon.	• Vehicle maintenance. • Vehicle depreciation. • Licensing and other administrative fees.

In addition, DDP is a voluntary program and reimbursements occur after donations are made. Donations made through this program will be done privately without donation volumes being announced in advance. Therefore, AMS has determined the impact on dairy markets will not be as significant on the markets when compared to making advanced announcements on expected donation volume.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), AMS has considered the economic impact of the action on small entities. Accordingly, AMS has prepared this Regulatory Flexibility Analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small dairy farms are defined by the Small Business Administration (SBA) (13 CFR 121.601) as those businesses having annual gross receipts of less than $750,000. The SBA's definition of small agricultural service firms, which includes dairy processors, varies based on the type of dairy product manufactured. Small dairy processors are defined as having between 750 and 1,250 or fewer employees, depending on the product made.

According to the 2017 USDA National Agricultural Statistics Service (NASS) Census Report, there were 39,303 farms with milk sales. AMS estimates that 36,158 farms, or 92 percent, would be considered small businesses. Dairy farmers of all sizes may benefit from the program as it will encourage donations of dairy products, which contain milk purchased from them. DDP is designed to reduce food waste by providing alternative outlets for milk to be utilized in donated products instead of being dumped due to oversupply. Often, milk is dumped from smaller dairy farms that are more costly to service because their pickups may be less than a full tanker load and/or they may be located farther from major trucking routes. By providing cost reimbursement for donated products, the DDP incentivizes processors to pick up and process the milk into products for donation rather than having it dumped.

AMS estimates that approximately 3,000 plants manufacture dairy products in the United States, owned by approximately 1,500 entities. According to AMS calculations, about 10 percent are operated by dairy farmer cooperatives, while the remaining are independently owned. AMS believes 1,500 to be the universe of EDOs that could participate in the DDP. Of this universe of potential EDOs, 90 percent would be considered small businesses, based on total employee numbers.

Participating in the DDP will not unduly or disproportionately burden small dairy processing entities. All entities, regardless of size, can apply for

the program if they file a report with a Federal milk marketing order and incur a qualified expense as defined by program provisions. Program provisions are administered without regard for business size. The paperwork required to participate asks for information that is part of normal business records.

The definition of an eligible distributor is a public or private non-profit feeding organization that distributes or coordinates distribution of donated eligible dairy products to recipient individuals and families. Eligible distributors, regardless of size, can voluntarily participate in the DDP if they form a partnership with an eligible dairy organization. The information collection burden for eligible distributors is minimal as they must only compete the Plan form with the partnering EDO. The voluntary nature of the program allows any eligible distributor to stop participating if they find the program causes an undue or disproportionate burden.

AMS has determined establishment of this program will not have a significant economic impact on small entities. Program provisions will be applied uniformly to both large and small businesses and are not expected to burden small entities unduly or disproportionately.

Executive Order 13175

This interim final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) Policies that have tribal implication, including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Tribal governments operating non-profit organizations feeding recipient individuals and families could qualify as eligible distributors and thus benefit from participation in the DDP. The regulatory burden from participating would be minimal, estimated at 15 minutes for completing an Eligible Distributor Certification Form.

AMS has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the DDP will be shared during an upcoming quarterly call, and tribal leaders will be informed about the interim final rule and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the DDP.

Executive Order 12988

This rule has been reviewed under Executive Order 12988—Civil Justice Reform. This final rule may have retroactive effect. Dairy donations made starting January 1, 2020, prior to the effective date of the rule may be eligible for reimbursement if the eligible partnership's Donation and Distribution Plan is approved and if the partnership meets all other program requirements. Dairy donations made prior to 2020 are not eligible for reimbursement under the program. There are no administrative procedures that must be exhausted prior to judicial challenges to the provisions of this rule. The DDP will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, and persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities who are subject to these regulations. This interim final rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule does not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

AMS found no evidence this voluntary program and the associated interim final rule will cause adverse or disproportionate impacts on minorities, women, and persons with disabilities. AMS's analysis found no evidence that a potential impact will affect dairy farmers or processors in any protected groups, or that these impacts will be different than any participating general population of dairy farmers and processors.

Executive Order 13132

AMS has examined the effects of provisions in this interim final rule on the relationship between the Federal Government and the States, as required by Executive Order 13132 on ''Federalism.'' The DDP will reimburse EDOs for eligible dairy products donated to eligible distributors. The DDP will not preempt any State or local laws, regulations, or policies pertaining to the sale, manufacturing or distribution of milk or dairy products within States.

List of Subjects

7 CFR Part 1146

Milk, Donations, Reporting and recordkeeping requirements.

7 CFR Part 1147

Dairy, Donations, Food waste, Emergency, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, AMS is amending 7 CFR Chapter X as follows:

PART 1146—MILK DONATION REIMBURSEMENT PROGRAM

■ 1. The authority for part 1146 continues to read as follows:

Authority: Sec. 1431, Pub. L. 113–79, 128 Stat. 695, as amended.

■ 2. In part 1146, revise all references to ''Milk Donation and Distribution Plan'' to read ''Dairy Donation and Distribution Plan''.

■ 3. Amend § 1146.1 by revising the term ''eligible dairy organization'' and adding the term ''qualified expense'' in alphabetical order to read as follows:

§ 1146.1 Definitions.

* * * * *

Eligible dairy organization means a dairy farmer, either individually or as part of a cooperative, or a dairy processor that:

(1) Accounts to a Federal Milk Marketing Order; and

(2) Incurs a qualified expense described in § 1146.1.

* * * * *

Qualified expense means the cost incurred to purchase fresh fluid milk product or bulk dairy commodity product for processing into eligible dairy products.

* * * * *

■ 4. Revise § 1146.102 to read as follows:

§ 1146.102 Dairy donation and distribution plans.

Eligible partnerships must submit a completed Dairy Donation and

Distribution Plan to AMS in the form and manner established by AMS to be eligible for program consideration. The completed Dairy Donation and Distribution Plan must include: (a) The physical location(s) of the eligible dairy organization's processing plant(s) and the eligible distributor's distribution site(s);

(b) The entity type and contact information for the eligible dairy organization;

(c) Banking information and tax identification number for the eligible dairy organization;

(d) An affirmation signed by the eligible dairy organization regarding the type(s) of products to be donated and its ability to process and transport eligible dairy products consistent with the commodity specifications under § 1146.3; and

(e) An Eligible Distributor Certification Form signed by the eligible distributor regarding its ability to store and distribute donated eligible dairy products to recipient individuals and families.

■ 5. Revise § 1146.106 to read as follows:

§ 1146.106 Reimbursement Claims.

(a) In order for the eligible dairy organization to receive reimbursement pursuant to § 1146.108, the eligible partnership must submit a Reimbursement Claim Form and appropriate supporting documentation to AMS.

(1) *Required information.* Each Reimbursement Claim Form associated with an approved Dairy Donation and Distribution Plan must include:

(i) The type and amount of eligible dairy products donated to the eligible distributor;

(ii) The physical location(s) of the plant(s) that processed the donated dairy products;

(iii) The date the eligible dairy products were processed;

(iv) The date the eligible dairy products were shipped to the eligible distributor;

(v) The respective sell-by, best-by, or use-by date(s) for the donated dairy products; and

(vi) Other information as needed on the Reimbursement Claim Form to calculate reimbursement.

(2) *Appropriate verifying documentation.* Each Reimbursement Claim Form must be accompanied by documents verifying that the donation(s) reported in the form were made. Such documentation may include, but is not limited to, copies of processing records, shipping records, bills of lading, warehouse receipts, distribution records, or other documents demonstrating the reported amount of eligible dairy products were processed, donated, and distributed in accordance with the approved Dairy Donation and Distribution Plan and Eligible Distributor Certification Form and as reported on the Reimbursement Claim Form.

(3) *Deadline for funding.* To be considered for reimbursement, eligible dairy products must be donated from January 1, 2020, until program funds are expended.

(b) Incomplete reimbursement requests will be returned to the submitter for revision or completion and resubmission as necessary.

■ 6. Add part 1147 to read as follows:

PART 1147—DAIRY DONATION PROGRAM

Subpart A—General Provisions

Sec.
1147.1 Definitions
1147.3 Commodity specifications

Subpart B—Program Participation

Sec.
1147.100 Program eligibility
1147.102 Dairy donation and distribution plans
1147.104 Review and approval
1147.106 Reimbursement claims
1147.108 Reimbursement calculation
1147.109 Supplemental reimbursements

Subpart C—Administrative Provisions

Sec.
1147.200 Program announcement
1147.204 Prohibitions
1147.206 Enforcement
1147.208 Confidentiality
1147.209 Books and records
1147.210 Milk for other programs
1147.212 Expiration of this part

Authority: Sec. 762, Pub. L. 116–260, 134 Stat. 1182.

Subpart A—General Provisions

§ 1147.1 Definitions.

AMS means the Agricultural Marketing Service of the United States Department of Agriculture.

Eligible dairy organization means a dairy farmer, either individually or as part of a cooperative, or a dairy processor that:

(1) Accounts to a Federal Milk Marketing Order; and

(2) Incurs a qualified expense described in § 1147.1.

Eligible dairy product means a dairy product primarily made from milk, including fluid milk, produced and processed in the United States and meeting the specifications referenced in § 1147.3.

Eligible distributor means a public or private non-profit feeding organization distributing or coordinating distribution of donated eligible dairy products to recipient individuals and families.

Eligible partnership means a partnership between an eligible dairy organization and an eligible distributor.

Program means the Dairy Donation Program established in this part.

Qualified expense means the cost incurred to purchase fresh fluid milk product or bulk dairy commodity product for processing into eligible dairy products.

Secretary means the Secretary of the United States Department of Agriculture or a representative authorized to act in the Secretary's stead.

§ 1147.3 Commodity specifications.

Eligible dairy organizations must comply with all applicable Federal, State, and local laws, executive orders, and rules and regulations related to its performance under this program. To qualify under the program eligible dairy products must meet the following requirements:

(a) Made primarily from cow's (bovine) milk produced in the United States;

(b) Packaged in consumer-sized packaging;

(c) Meet the applicable provisions for dairy products in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), as amended. Grade 'A' dairy products shall meet the applicable provisions of the current edition of the Pasteurized Milk ordinance; and

(d) Have a sell-by, best-by, or use-by date no sooner than 12 days from the date the eligible dairy product is delivered to the eligible distributor.

Subpart B—Program Participation

§ 1147.100 Program eligibility.

An eligible dairy organization must be a member of an approved eligible partnership pursuant to § 1147.1 to be eligible to receive reimbursement related to eligible dairy product donations, subject to the requirements and limitations specified in §§ 1147.102 and 1147.104.

§ 1147.102 Dairy donation and distribution plans.

Eligible partnerships must submit a completed Dairy Donation and Distribution Plan to AMS in the form and manner established by AMS to be eligible for program consideration. The completed Dairy Donation and Distribution Plan must include: (a) The physical location(s) of the eligible dairy organization's processing plant(s) and the eligible distributor's distribution site(s);

(b) The entity type and contact information for the eligible dairy organization;

(c) Banking information and tax identification number for the eligible dairy organization;

(d) An affirmation signed by the eligible dairy organization regarding the type(s) of product to be donated and its ability to process and transport eligible dairy products consistent with the commodity specifications under § 1147.3; and

(e) An Eligible Distributor Certification Form signed by the eligible distributor regarding its ability to store and distribute donated eligible dairy products to recipient individuals and families.

§ 1147.104 Review and approval.

(a) *Program application and review.* Within 15 business days of the submitted Dairy Donation and Distribution Plan and Eligible Distributor Certification Form, AMS will review the submitted application and notify the applicant regarding approval or disapproval for program participation.

(1) The review will include the following considerations:

(i) The process the eligible partnership will use for donation, processing, transportation, temporary storage, and distribution of eligible dairy products;

(ii) The extent to which the Dairy Donation and Distribution Plan promotes the donation of eligible dairy products and prevents and minimizes food waste.

(2) AMS will prioritize approval or disapproval of a Plan for which AMS determines a public health emergency or disaster to be a substantial factor in its submission.

(b) *Plan approval.* Subject to the provisions in paragraph (a) of this section, AMS will determine whether to approve or disapprove Dairy Donation and Distribution Plans for eligible dairy products donated from January 1, 2020, until program funds are expended.

§ 1147.106 Reimbursement claims.

(a) In order for the eligible dairy organization to receive reimbursement pursuant to § 1147.108, the eligible partnership must submit a Reimbursement Claim Form and appropriate supporting documentation to AMS.

(1) *Required information.* Each Reimbursement Claim Form associated with an approved Dairy Donation and Distribution Plan must include:

(i) The type and amount of eligible dairy products donated to the eligible distributor;

(ii) The physical location(s) of the plant(s) that processed the donated dairy products;

(iii) The date the eligible dairy products were processed;

(iv) The date the eligible dairy products were shipped to the eligible distributor;

(v) The respective sell-by, best-by, or use-by date(s) for the donated dairy products; and

(vi) Other information as needed on the Reimbursement Claim Form to calculate reimbursement.

(2) *Appropriate verifying documentation.* Each Reimbursement Claim Form must be accompanied by documents verifying that the donation(s) reported in the form were made. Such documentation may include, but is not limited to, copies of processing records, shipping records, bills of lading, warehouse receipts, distribution records, or other documents demonstrating the reported amount of eligible dairy products were processed, donated, and distributed in accordance with the approved Dairy Donation and Distribution Plan and Eligible Distributor Certification Form and as reported on the Reimbursement Claim Form.

(3) *Eligibility period.* To be considered for reimbursement, eligible dairy products must have been donated on or after January 1, 2020, until program funds are expended.

(b) Incomplete reimbursement requests will be returned to the submitter for revision or completion and resubmission as necessary.

§ 1147.108 Reimbursement calculation.

(a) For each eligible dairy product donated by an eligible dairy organization with an approved Dairy Donation and Distribution Plan, the amount of reimbursement under § 1147.106 for the donated eligible dairy product shall be the sum of the values of the input cost, the manufacturing cost, and the transportation cost.

(1) The input cost shall be the monthly Federal Milk Marketing Order minimum classified value pursuant to 7 CFR 1000.50 of the fresh fluid milk product (raw milk, skim milk, cream, or concentrate fluid product) or fluid milk equivalent of the bulk dairy commodity product used to make the donated eligible dairy product pursuant to 7 CFR 1000.40 for the month of processing.

(2) The manufacturing cost shall be the manufacturing allowance, on a hundredweight basis, pursuant to 7 CFR 1000.50 for the milk used to produce the donated eligible dairy product pursuant to 7 CFR 1000.40 —

(i) If a Class I product, the Class IV manufacturing allowance applies;

(ii) If a Class II product, the Class IV manufacturing allowance applies;

(iii) If a Class III product, the Class III manufacturing allowances applies; or

(iv) If a Class IV product, the Class IV manufacturing allowances applies.

(3) The transportation cost shall be determined by the following:

(i) The published average U.S. Energy Information Administration average U.S. diesel fuel price for the month the donation was made;

(ii) The shortest hard-surface distance, in miles, from the plant processing the donated eligible dairy product to the eligible distributor; and

(iii) The fuel economy rate of 5.5 miles per gallon.

(b) Reimbursement, on a per hundredweight basis, made pursuant to paragraph (a) of this section may not exceed the Class I price pursuant to 7 CFR 1000.50, 1000.52, and 1006.51 for Dade County, Florida.

§ 1147.109 Supplemental reimbursements.

(a) The Secretary shall make a supplemental reimbursement to an eligible dairy organization reimbursed under the Milk Donation Reimbursement Program (7 CFR 1146.108) during the period beginning on January 1, 2020, and ending on the date on which funds under § 1147.202 are no longer available.

(b) A supplemental reimbursement described in paragraph (a) shall be the difference between:

(1) The reimbursement for eligible dairy products calculated under § 1147.108, and

(2) The reimbursement for eligible milk under the Milk Donation Reimbursement Program (7 CFR 1146.108).

Subpart C—Administrative Provisions

§ 1147.200 Program announcement.

(a) AMS will announce the opportunity to participate in the Dairy Donation Program on the AMS website. The announcement will specify the manner and form in which program applications should be submitted. AMS will periodically announce on its website a report describing the donation activity under this program.

(b) There is no deadline for eligible parties to submit a Dairy Donation and Distribution Plan. AMS will accept and consider Plans on a continuing basis.

§ 1147.204 Prohibitions.

(a) *Prohibition in general.* An eligible distributor receiving eligible dairy products donated under the Dairy

Donation Program may not sell the donated dairy products back into commercial markets.

(b) *Prohibition on marketing or promotional event.* Dairy products donated in conjunction with a marketing or promotional event are prohibited from reimbursement.

(c) *Prohibition on profit-making.* An eligible dairy organization cannot make a profit from reimbursements received from the Dairy Donation Program.

(d) *Prohibition on future participation.* An eligible partnership that AMS determines has violated the prohibition in paragraph (a), (b), or (c) shall not be eligible for any future participation in the Dairy Donation Program.

§ 1147.206 Enforcement.

Where applicable, AMS will verify an eligible dairy organization's payment of the input cost. AMS will also conduct spot checks, reviews, and audits of the reports and documentation submitted pursuant to § 1147.106(a) to verify accuracy and to ensure the integrity of the Dairy Donation Program.

§ 1147.208 Confidentiality.

AMS will only collect information deemed necessary to administer the Dairy Donation Program and will use the information only for that purpose. AMS will keep all proprietary business information collected under the program confidential.

§ 1147.209 Books and records.

Each eligible dairy organization shall maintain and retain records of its operations and make such records and its facilities available to AMS as necessary to ensure the integrity of the Dairy Donation Program.

(a) *Records to be maintained and made available.* Each eligible dairy organization must maintain and make available records of its operations (including, but not limited to, records of donations, processing, packaging, and disposition of donated eligible dairy products) that are necessary to verify whether it met program requirements.

(b) *Retention of records.* All records required under the paragraph (a) shall be retained by the eligible dairy organization for a period of 3 years to begin at the end of the month to which such records pertain.

§ 1147.210 Milk for other programs.

Eligible dairy products sold or donated under other commodity or food assistance programs administered by the United States Department of Agriculture, except as pursuant to 7 CFR 1146, is not eligible for reimbursement under the Dairy Donation Program in this part.

§ 1147.212 Expiration of this part.

This part expires September 1, 2023, unless extended by notification in the **Federal Register**.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–18606 Filed 8–31–21; 8:45 am]

BILLING CODE P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1070

Privacy Act Implementation Rules

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) makes limited revisions to its regulations that establish the procedures used by the public to obtain records from the Bureau under the Privacy Act of 1974 (Privacy Act). The revisions will change the definition of ''Chief Privacy Officer'' in order to align the Chief Privacy Officer's authorities and responsibilities identified in the regulation to those of the Bureau's designated Senior Agency Official for Privacy. The revisions will also facilitate electronic or remote identity proofing and authentication by creating an additional method for a requester to verify their identity when submitting a Privacy Act request to the Bureau.

DATES: This rule is effective September 1, 2021.

FOR FURTHER INFORMATION CONTACT: David Snyder, Senior Counsel, Legal Division, 202–435–7758. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau first published its Privacy Act implementation rules, located in subpart E of part 1070, in an interim final rule in July 2011. *See* 76 FR 45371 (July 28, 2011). This was followed by a final rule in February 2013. *See* 78 FR 11483 (Feb. 15, 2013). The Bureau subsequently proposed revisions to its rules in a notice of proposed rulemaking in August 2016, followed by a final rule that adopted these revisions in September 2018. *See* 81 FR 58310 (Aug. 24, 2016); 83 FR 46075 (Sept. 12, 2018). The Bureau now makes limited revisions to its Privacy Act implementation rules in order to (1) align the authorities and responsibilities of the ''Chief Privacy Officer'' identified in the rules with the authorities and responsibilities of the Bureau's Senior Agency Official for Privacy; and (2) facilitate electronic or remote identity proofing and authentication in accordance with the Creating Advanced Streamlined Electronic Services for Constituents (CASES) Act of 2019, Public Law 116–50, 133 Stat. 1073 (2019), and the Office of Management and Budget's implementing guidance, M–21–04, ''Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act'' (Nov. 12, 2020).

II. Summary of the Rule

The Bureau makes two revisions to subpart E of part 1070, which establishes the Bureau's rule implementing the Privacy Act. First, the Bureau revises the definition of ''Chief Privacy Officer'' to align the authorities and responsibilities in the regulation to those of its designated Senior Agency Official for Privacy. Second, to facilitate electronic or remote identity proofing and authentication, the Bureau adds an additional method for a requester to verify their identity when submitting a Privacy Act request to the Bureau.

III. Legal Authority

The Bureau is issuing this rule pursuant to its authority under title X of the Dodd-Frank Act, 12 U.S.C. 5481 *et seq.,* and the Privacy Act of 1974, 5 U.S.C. 552a.

IV. Section-by-Section Analysis of the Proposed Rule

Part 1070—Disclosure of Records and Information

Subpart E—The Privacy Act

Section 1070.50 Purpose and Scope; Definitions

Subparagraph 1070.50(b)(1) defines the term ''Chief Privacy Officer,'' whose authorities and responsibilities are established in subpart E. The Bureau revises the definition to mean ''the Senior Agency Official for Privacy of the CFPB or any CFPB employee to whom the Senior Agency Official for Privacy has delegated authority to act under this part.''

The Bureau originally defined the term to mean ''the Chief Information Officer of the CFPB'' or their delegee in order to reflect the agency's earlier organizational structure, in which the Bureau's Chief Information Officer oversaw its Privacy Program. The

Bureau has since reorganized its Operations Division and located its Privacy Program under the oversight of its Chief Data Officer. The Chief Data Officer has been designated the Bureau's Senior Agency Official for Privacy in accordance with Office of Management and Budget, M–16–24, ''Role and Designation of Senior Agency Officials for Privacy'' (Sept. 15, 2016).

The Bureau revises the definition to reflect its reorganization and align the privacy-related authorities and responsibilities assigned to the Chief Privacy Officer in subpart E with the authorities and responsibilities of its Senior Agency Official for Privacy. The Bureau defines the term to mean ''Senior Agency Official for Privacy'' instead of ''Chief Data Officer'' (currently the same Bureau official) to ensure that subpart E remains aligned with the Bureau Privacy Program's structure in the event of any future reorganizations or re-designations of the Senior Agency Official for Privacy.

Section 1070.53 Request for Access to Records

Section 1070.53(c) Verification of Identity

Section 1070.53(c) requires that members of the public provide proof of their identity in order to obtain access to Bureau records pursuant to the Privacy Act. Paragraph 1070.53(c)(1), in turn, provides three methods that will be considered adequate proof of a requester's identity. The Bureau adds an additional method of identity verification, permitting verification via successful completion of a third-party's identity verification process, designated by the Bureau, where that process meets the requirements of Identity Assurance Level 2 (IAL2) as described by the National Institute of Standards and Technology.

The Bureau makes this revision in order to facilitate electronic or remote identity proofing and authentication in accordance with the CASES Act of 2019, Public Law 116–50, 133 Stat. 1073 (2019), and the Office of Management and Budget's implementing guidance, M–21–04, ''Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act'' (Nov. 12, 2020). The Bureau intends to use a third-party identify verification process, available via *login.gov,* to facilitate electronic identity verification; successful completion of that process will be sufficient for verifying a requester's identity pursuant to paragraph 1070.53(c)(1). The Bureau proposes to use generic language in the regulation's description of this process in order to retain flexibility to use other identity-verification products in the future as needed. Only a third-party identity verification process that is designated by the Bureau will be deemed a sufficient method of identity verification for purposes of paragraph 1070.53(c)(1).

V. Procedural Requirements

No notice of proposed rulemaking is required under the Administrative Procedure Act (APA) because this rule relates solely to agency procedure and practice. 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603, 604.

Finally, the Bureau has determined that this rule does not impose any new recordkeeping, reporting, or third-party disclosure requirements on members of the public that would be collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

VI. Signing Authority

The Acting Director of the Bureau, David Uejio, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1070

Confidential business information; Consumer protection; Freedom of information; Privacy.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends 12 CFR part 1070 to read as follows:

PART 1070—DISCLOSURE OF RECORDS AND INFORMATION

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

Authority: 12 U.S.C. 5481 *et seq.*; 5 U.S.C. 552; 5 U.S.C. 552a; 18 U.S.C. 1905; 18 U.S.C. 641; 44 U.S.C. ch. 31; 44 U.S.C. ch. 35; 12 U.S.C. 3401 *et seq.*

Subpart E—Privacy Act

■ 2. Revise § 1070.50(b)(1) to read as follows:

§ 1070.50 Purpose and scope; definitions.

* * * * *

(b) * * *

(1) The term *Chief Privacy Officer* means the Senior Agency Official for Privacy of the CFPB or any CFPB employee to whom the Senior Agency Official for Privacy has delegated authority to act under this part;

* * * * *

■ 3. Revise § 1070.53(c) to read as follows:

§ 1070.53 Request for access to records.

* * * * *

(c) *Verification of identity.* To obtain access to the CFPB's records pertaining to a requester, the requester shall provide proof to the CFPB of the requester's identity as provided in paragraphs (c)(1) and (2) of this section.

(1) In general, the following will be considered adequate proof of a requester's identity:

(i) A photocopy of two forms of identification, including one form of identification that bears the requester's photograph, and one form of identification that bears the requester's signature;

(ii) A photocopy of a single form of identification that bears both the requester's photograph and signature;

(iii) A statement swearing or affirming the requester's identity and to the fact that the requester understands the penalties provided in 5 U.S.C. 552a(i)(3); or

(iv) Successful completion of a third-party's identity verification process, designated by the Bureau, where that process meets the requirements of Identity Assurance Level 2 (IAL2) as described by the National Institute of Standards and Technology.

(2) Notwithstanding paragraph (c)(1) of this section, a designated official may require additional proof of the requester's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, if a requester seeks records pertaining to an individual in the requester's capacity as that individual's guardian, the requester shall be required to provide adequate proof of the requester's legal relationship before action will be taken on any request.

* * * * *

Dated: August 25, 2021.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2021–18589 Filed 8–31–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0369; Project Identifier 2019–SW–033–AD; Amendment 39–21673; AD 2021–16–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. This AD was prompted by a report of reduced yaw control, during an approach for landing, that resulted from rupture of the tail rotor gearbox (TGB) actuating rod and uncoupling of the steel sleeve from inside the external aluminum tube. This AD requires dye penetrant inspecting certain TGB actuating rods for a crack, and depending on the inspection results, replacing the TGB actuating rod, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 6, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 6, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0369.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0369; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Program Manager, Large Aircraft Section, International Validation Branch, Compliance & Airworthiness Division, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax (206) 231–3218; email *kathleen.arrigotti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0060, dated March 20, 2019 (EASA AD 2019–0060) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus Helicopters Model AS350 B, AS350 BA, AS350 BB, AS350 B1, AS350 B2, AS350 B3, AS350 D, AS355 E, AS355 F, AS355 F1, AS355 F2, AS355 N and AS355 NP helicopters. Model AS350 BB helicopters are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those helicopters in the applicability. Although EASA AD 2019–0060 applies to all helicopters identified in EASA AD 2019–0060, this AD applies to helicopters with an affected part installed instead.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. The NPRM published in the **Federal Register** on May 18, 2021 (86 FR 26857). The NPRM was prompted by a report of reduced yaw control, during an approach for landing, that resulted from rupture of the TGB actuating rod and uncoupling of the steel sleeve from inside the external aluminum tube. The NPRM proposed to require dye penetrant inspecting certain TGB actuating rods for a crack, and depending on the inspection results, replacing the TGB actuating rod, as specified in an EASA AD.

The FAA is issuing this AD to address failure of a TGB actuating rod, which could result in loss of yaw control of the helicopter. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request To Not Refer to Other Sources for Approved Data

A commenter requested that the proposed AD not reference a European AD or service bulletin as approved data. The commenter stated the proposed AD should contain all the data required to perform the inspection in its entirety so that an inspector does not have to research data from other sources.

The FAA does not agree with the commenter because the approved data is available to inspectors. EASA AD 2019–0060 is incorporated by reference. Incorporation by reference (IBR) allows Federal agencies to comply with the requirement to publish rules in the **Federal Register** by referring to materials already published elsewhere. The legal effect of IBR is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued rule, has the force and effect of law. Congress authorized IBR in the Freedom of Information Act (5 U.S.C. 552), in part, to reduce the volume of material published in the **Federal Register** and the Code of Federal Regulations (CFR).

After an FAA final rule is published, the required service information is then posted to *https://www.regulations.gov.* EASA AD 2019–0060 and the service information specified in EASA AD 2019–0060 that is required for compliance with EASA AD 2019–0060 can be found on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA 2021–0369. The FAA has not changed this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2019–0060 describes procedures for dye penetrant inspecting certain TGB actuating rods for a crack, and depending on the inspection results, replacing the TGB actuating rod. EASA AD 2019–0060 also describes procedures for marking each TGB actuating rod, reporting information, and for certain helicopters, ensuring the correct interface between certain TGB actuating rods and bearings.

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

Differences Between This AD and the MCAI

EASA AD 2019–0060 specifies ''AS350 SB [service bulletin] No. 67.10 Revision 1'' and ''AS355 SB No. 67.09 Revision 2'' as Airbus Helicopters (AH) service bulletins; however this AD identifies those service bulletins as Aerospatiale service bulletins.

EASA AD 2019–0060 specifies the date for ''AS355 SB No. 67.09 Revision 2,'' as ''March 28, 1989;'' however, this AD identifies the date as ''October 1989.''

Part Marking Clarification

Where paragraph (2) of EASA AD 2019–0060 specifies ''mark each affected part (all rods, regardless of the status with respect to the dye penetrant inspection),'' this AD requires marking TGB actuating rods identified in paragraphs (c)(1) through (9) of this AD regardless of their manufacturing date. The manufacturing dates in Table 1 of EASA AD 2019–0060 are used only to indicate the parts on which the dye penetrant inspection specified in paragraph (1) of EASA AD 2019–0060 is done; the manufacturing dates do not impact the parts on which the marking specified in paragraph (2) of EASA AD 2019–006 must be done.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD affects 950 helicopters of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × $85 per hour = $510	$0	$510	$484,500

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $80,750, or $85 per product.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of helicopters that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 16 work-hours × $85 per hour = $1,360	$2,590	Up to $3,950

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Pkwy., Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–16–11 Airbus Helicopters: Amendment 39–21673; Docket No. FAA–2021–0369; Project Identifier 2019–SW–033–AD.

(a) Effective Date

This airworthiness directive (AD) is effective October 6, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category, with a tail rotor gearbox (TGB) actuating rod identified in paragraphs (c)(1) through (9) of this AD installed.

(1) Part number (P/N) 350A27191000;

(2) P/N 350A27191001;

(3) P/N 350A27191002;

(4) P/N 350A27191003;

(5) P/N 350A27191004;

(6) P/N 350A2719100401;

(7) P/N 350A2719100402;

(8) P/N 350A27192000; or

(9) A TGB actuating rod with an unknown part number and serial number.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6720, Tail Rotor Control System.

(e) Reason

This AD was prompted by a report of reduced yaw control, during an approach for landing, that resulted from rupture of the TGB actuating rod and uncoupling of the steel sleeve from inside the external aluminum tube. The FAA is issuing this AD to address failure of a TGB actuating rod, which could result in loss of yaw control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0060, dated March 20, 2019 (EASA AD 2019–0060).

(h) Exceptions to EASA AD 2019–0060

(1) Where EASA AD 2019–0060 refers to January 3, 2019 (the effective date of EASA AD 2018–0287, dated December 20, 2018), or its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2019–0060 refers to flight hours (FH), this AD requires using hours time-in-service.

(3) Where paragraph (2) of EASA AD 2019–0060 specifies to mark TGB actuating rods, replace the language in paragraph (2) of EASA AD 2019–0060 that states ''the instructions of section 3 of the applicable ASB [alert service bulletin],'' with the applicable language specified in paragraphs (h)(3)(i) and (ii) of this AD.

(i) For P/N 350A2719100402 and parts not included in table 1 of EASA AD 2019–0060: ''the instructions for 'If only paragraph 3.B.2.a. was complied with' of paragraph 3.C. of the Accomplishment Instructions of the applicable ASB.''

(ii) For parts included in table 1 of EASA AD 2019–0060: ''the instructions for 'If paragraph 3.B.2.b. or paragraph 3.B.5. was complied with' of paragraph 3.C. of the Accomplishment Instructions of the applicable ASB.''

(4) Where paragraph (2) of EASA AD 2019–0060 specifies ''mark each affected part (all rods, regardless of the status with respect to the dye penetrant inspection), and each TGB rod having P/N 350A2719100402,'' for this AD, mark the parts identified in paragraphs (c)(1) through (9) of this AD.

(5) Where EASA AD 2019–0060 specifies ''AH [Airbus Helicopters] AS350 SB [service bulletin] No. 67.10 Revision 1'' and ''AH AS355 SB No. 67.09 Revision 2,'' replace the text ''AH'' with ''Aerospatiale.''

(6) Where the ''Ref. Publications'' section of EASA AD 2019–0060 specifies the date for ''AS355 SB No. 67.09 Revision 2,'' replace the text ''28 March 1989'' with ''October 1989.''

(7) Although service information referenced in EASA AD 2019–0060 specifies to keep parts, this AD does not include that requirement.

(8) Paragraph (7) of EASA AD 2019–0060 specifies to report inspection results to Airbus Helicopters within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(8)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(9) For the purposes of this AD, ''CW,'' which is stated in Table 1 of EASA AD 2019–0060, is defined as calendar week.

(10) The ''Remarks'' section of EASA AD 2019–0060 does not apply to this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to: Manager, International Validation Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Kathleen Arrigotti, Program Manager, Large Aircraft Section, International Validation Branch, Compliance & Airworthiness Division, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax (206) 231–3218; email *kathleen.arrigotti@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0060, dated March 20, 2019.

(ii) [Reserved]

(3) For EASA AD 2019–0060, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0369.

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

Issued on August 25, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–18753 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0235; Airspace Docket No. 21–AGL–18]

RIN 2120–AA66

Revocation of Class E Airspace; Port Huron, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E surface airspace at St. Clair County International Airport, Port Huron, MI. This action is the result of an airspace review caused by the decommissioning of the Remote Communications Outlet (RCO) frequency at St. Clair County International Airport.

DATES: Effective 0901 UTC, October 7, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 24797; May 10, 2021) for Docket No. FAA–2021–0235 to revoke the Class E Surface Airspace at the St. Clair County International Airport, Port Huron, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 revokes the Class E surface airspace at St. Clair County International Airport, Port Huron, MI, as it is no longer needed.

This action is the result of an airspace review caused by the decommissioning of the RCO, which provides navigation information for the instrument procedures this airport.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6002 Class E Surface Airspace.

* * * * *

AGL MI E2 Port Huron, MI [Revoked]

St. Clair County International Airport, MI (Lat. 42°54′40″ N, long. 82°31′44″ W)

Issued in Fort Worth, Texas, on August 25, 2021.

Martin A. Skinner,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–18759 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0655]

RIN 1625–AA00

Safety Zone; Camden Labor Day Fireworks, Camden Harbor; Camden, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of Camden Harbor in Camden, Maine. The temporary safety zone is necessary to protect spectators and vessels from hazards associated with a fireworks display. When enforced, this rule will prohibit persons and vessels from entering into the safety zone unless authorized by the Captain of the Port (COTP) Northern New England or a Designated Representative.

DATES: This rule is effective from 8 p.m. through 10 p.m. on September 4, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0655 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Shaun Doyle, Sector Northern New England Waterways Management Division, U.S. Coast Guard; telephone 207–347–5015, email *Shaun.T.Doyle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. The event sponsor was late in submitting the marine event application. This late submission did not give the Coast Guard enough time to publish an NPRM, take public comments, consider those comments, and issue a final rule by September 4, 2021. Further, the expeditious implementation of this rule is in the public interest because it will help ensure the safety of those involved in displaying the fireworks, the spectators, and users of the waterway during the fireworks event.

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 and contrary to the public interest because the temporary safety zone regulation must be established on September 4, 2021 to ensure the safety of spectators and vessels during the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Northern New England (COTP) has determined that potential hazards associated with the fireworks display occurring in Camden Harbor on September 4, 2021, will be a safety concern for anyone within a 200-yard radius of the fireworks launch site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 p.m. through 10 p.m. on September 4, 2021. The safety zone will cover all navigable waters of Camden Harbor within a 200-yard radius of the fireworks launch site. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a Designated Representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around the safety zone which would impact a small designated area of Camden Harbor. Further, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM Marine Channel 16 about the zone and persons or vessels desiring to enter the safety zone may do so with permission from the COTP or a Designated Representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions

with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 2 hours that will prohibit entry within a 200-yard radius of the fireworks launch site. 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 will be 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.T01–0655 to read as follows:

§ 165.T01–0655 Safety Zone; Camden Labor Day Fireworks, Camden, ME.

(a) *Location.* The following area is a safety zone: All navigable waters of Camden Harbor, from surface to bottom, within a 200-yard radius around the fireworks launch site.

(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 Northern 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 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 Designated Representative via VHF–FM Marine Channel 16 or by contacting the Coast Guard Sector Northern New England Command Center at (207) 741–5465. 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 8 p.m. through 10 p.m. on September 4, 2021.

Dated: August 20, 2021.

A.E. Florentino,

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

[FR Doc. 2021–18875 Filed 8–31–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0597; FRL–8873–02–R3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Determinations for Case-by-Case Sources Under the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving multiple state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for nine major sources of volatile organic compounds (VOC) and/or nitrogen oxides (NO_X) pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this rulemaking action, EPA is only approving source-specific (also referred to as ''case-by-case'') RACT determinations or alternative NO_X emissions limits for sources at eight major NO_X and VOC emitting facilities within the Commonwealth submitted by PADEP. These RACT evaluations were submitted to meet RACT requirements for the 1997 and 2008 8-hour ozone national ambient air quality standards (NAAQS). EPA is approving these revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA) and EPA's implementing regulations.

DATES: This final rule is effective on October 1, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0597. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ms. Emily Bertram, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5273. Ms. Bertram can also be reached via electronic mail at *bertram.emily@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 11, 2021, EPA published a notice of proposed rulemaking (NPRM). 86 FR 9031. In the NPRM, EPA proposed approval of case-by-case RACT determinations or alternative NO_X emissions limits for eight sources included in the subject SIP submission for the 1997 and 2008 8-hour ozone NAAQS. The case-by-case RACT determinations and alternative NO_X emissions limits for these sources were included in a SIP revision submitted by PADEP on March 9, 2020.

Under certain circumstances, states are required to submit SIP revisions to address RACT requirements for major sources of NO_X and VOC, and any source covered by control technique guidelines (CTG), for each ozone NAAQS. Which NO_X and VOC sources in Pennsylvania are considered ''major,'' and therefore to be addressed for RACT revisions, is dependent on the location of each source within the Commonwealth. Sources located in nonattainment areas would be subject to the ''major source'' definitions established under the CAA based on the area's current classification(s). In Pennsylvania, sources located outside of moderate or above ozone nonattainment areas are subject to the major source threshold of 50 tons per year (tpy) because of the Ozone Transport Region (OTR) requirements in CAA section 184(b)(2).

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding VOC CTG RACT and major source VOC and NO_X RACT requirements for both standards. The SIP revision requested approval of Pennsylvania's 25 Pa. Code 129.96–100, Additional RACT Requirements for Major Sources of NO_X and VOCs (the ''presumptive'' RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_X and VOC control measures in 25 Pa. Code 129.92–95, Stationary Sources of NO_X and VOCs, (the RACT I rule) to meet RACT for major sources of VOC and NO_X. The requirements of the RACT I rule remain approved into Pennsylvania's SIP and continue to be implemented.[1] On September 26, 2017, PADEP submitted a supplemental SIP revision, dated September 22, 2017, which committed to address various deficiencies identified by EPA in PADEP's May 16, 2016 ''presumptive'' RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on the commitments PADEP made in its September 22, 2017 supplemental SIP revision.[2] 84 FR 20274. In EPA's final conditional approval, EPA noted that PADEP would be required to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide NO_X emissions averaging plans approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval, specifically May 9, 2020. Through multiple submissions between 2017 and 2020, PADEP has submitted to EPA for approval various SIP submissions to implement its RACT II case-by-case determinations and alternative NO_X emissions limits. This rulemaking is based on EPA's review of one of these SIP revisions.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

To satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP submitted to EPA SIP revisions addressing alternative NO_X emissions limits and/or case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.98 or 129.99. In the Pennsylvania RACT SIP revisions, PADEP included a case-by-case RACT determination for the existing emissions units at each of the major sources of NO_X and/or VOC

[1] The RACT I Rule was approved by EPA into the Pennsylvania SIP on March 23, 1998. 63 FR 13789. Through this rulemaking, certain source-specific RACT I requirements will be superseded by more stringent requirements. See Section II of the preamble to this Final Rule.

[2] On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA's approval of three provisions of Pennsylvania's presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club* v. *EPA,* 972 F.3d 290 (3d Cir. 2020). None of the sources in this rulemaking are subject to the three presumptive RACT II provisions at issue in that *Sierra Club* decision.

that required a source-specific RACT determination or alternative NO_X emissions limits for major sources seeking such limits.

In PADEP's case-by-case RACT determinations, an evaluation was completed to determine if previously SIP-approved, case-by-case RACT emission limits or operational controls (herein referred to as RACT I and contained in RACT I permits) were more stringent than the new RACT II presumptive or case-by-case requirements. If more stringent, the RACT I requirements will continue to apply to the applicable source. If the new case-by-case RACT II requirements are more stringent than the RACT I requirements, then the RACT II requirements will supersede the prior RACT I requirements.[3]

In PADEP's RACT determinations involving NO_X averaging, an evaluation was completed to determine that the aggregate NO_X emissions emitted by the air contamination sources included in the facility-wide or system-wide NO_X emissions averaging plan using a 30-day rolling average are not greater than the NO_X emissions that would be emitted by the group of included sources if each source complied with the applicable presumptive limitation in 25 Pa. Code 129.97 on a source-specific basis.

Here, EPA is taking action on SIP revisions pertaining to case-by-case RACT requirements and alternative NO_X emissions limits for eight major sources of NO_X and/or VOC in Pennsylvania, as summarized in Table 1 in this document.[4]

TABLE 1—EIGHT MAJOR NO_X AND/OR VOC SOURCES IN PENNSYLVANIA SUBJECT TO CASE-BY-CASE RACT II DETERMINATIONS UNDER THE 1997 AND 2008 8-HOUR OZONE NAAQS

Major source (county)	1-hour ozone RACT source? (RACT I)	Major source pollutant (NO_X and/or VOC)	RACT II permit (effective date)
Volvo Construction Equipment North America (Franklin)	No	VOC	28–05012 (6/1/2019)
National Fuel Gas Supply Corporation—Roystone Compressor Station (Warren).	Yes	NO_X and VOC	62–141H (1/16/2018)
E.I DuPont de Nemours and Co. (Bradford)	Yes	NO_X and VOC	08–00002 (9/28/2018)
Carmeuse Lime Inc. (Lebanon)	Yes	NO_X	38–05003 (3/6/2019)
Kovatch Mobile Equipment Corp. (Carbon)	No	VOC	13–00008 (10/27/2017)
Merck, Sharpe & Dohme Corp. (formerly Merck and Co., Inc.—West Point Facility) (Montgomery).	Yes	NO_X and VOC	46–00005 (1/5/2017)
Letterkenny Army Depot (formerly Department of the Army) (Franklin).	Yes	VOC	28–05002 (6/1/2018)
Fairless Energy, LLC (Bucks)	No	NO_X and VOC	09–00124 (12/6/2016)

The case-by-case RACT determinations submitted by PADEP consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a PADEP determination of what specific emission limit or control measures satisfy RACT for that particular unit. The adoption of new, additional, or revised emission limits or control measures to existing SIP-approved RACT I requirements were specified as requirements in new or revised Federally enforceable permits (hereafter RACT II permits) issued by PADEP to the source. Similarly, PADEP's determinations of alternative NO_X emissions limits are included in RACT II permits. These RACT II permits have been submitted as part of the Pennsylvania RACT SIP revisions for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permits submitted by PADEP are listed in the last column of Table 1, along with the permit effective date, and are part of the docket for this rule, which is available online at *https://www.regulations.gov,* Docket No. EPA–R03–OAR–2020–0597.[5] EPA is incorporating by reference in the Pennsylvania SIP, via the RACT II permits, source-specific RACT emission limits and control measures and alternative NO_X emissions limits under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of NO_X and VOC emissions.

B. EPA's Final Action

PADEP's SIP revisions incorporate its determinations of source-specific RACT II controls for individual emission units at major sources of NO_X and/or VOC in Pennsylvania, where those units are not covered by or cannot meet Pennsylvania's presumptive RACT regulation or where included in a NO_X emissions averaging plan. After thorough review and evaluation of the information provided by PADEP in its SIP revision submittals for sources at eight major NO_X and/or VOC emitting facilities in Pennsylvania, EPA found that: (1) PADEP's case-by-case RACT determinations and conclusions establish limits and/or controls on individual sources that are reasonable and appropriately considered technically and economically feasible controls (2) PADEP's determinations on alternative NO_X emission limits demonstrate that emissions under the averaging plan are equivalent to emissions if the individual sources were operating in accordance with the applicable presumptive limit, and (3) PADEP's determinations are consistent with the CAA, EPA regulations, and applicable EPA guidance.

PADEP, in its RACT II determinations, considered the prior source-specific RACT I requirements and, where more stringent, retained those RACT I requirements as part of its new RACT determinations. In the NPRM, EPA proposed to find that all the proposed revisions to previously SIP-approved RACT I requirements would result in equivalent or additional reductions of NO_X and/or VOC emissions. The proposed revisions should not interfere with any applicable requirements concerning attainment of

[3] While the prior SIP-approved RACT I permit will remain part of the SIP, this RACT II rule will incorporate by reference the RACT II requirements through the RACT II permit and clarify the ongoing applicability of specific conditions in the RACT I permit.

[4] PADEP's March 9, 2020 package of SIP revisions included source-specific RACT II determinations for sources at nine facilities. As indicated in the proposed rulemaking, EPA is only acting on eight of these facilities at this time. EPA will be acting on sources located at the Montour, LLC facility in a separate future rulemaking.

[5] The RACT II permits included in the docket for this rulemaking are redacted versions of the facilities' Federally enforceable permits. They reflect the specific RACT requirements being approved into the Pennsylvania SIP via this final action.

the NAAQS, reasonable further progress, or other applicable requirements under section 110(l) of the CAA.

Other specific requirements of Pennsylvania's 1997 and 2008 8-hour ozone NAAQS case-by-case RACT determinations and alternative NO_X emissions limits and the rationale for EPA's proposed action were explained in the NPRM, and its associated technical support document (TSD), and will not be restated here.

III. Public Comments and EPA Responses

EPA received comments from four commenters on the February 11, 2021 NPRM. 86 FR 9031. A summary of the comments and EPA's response are discussed in this section. A copy of the comments can be found in the docket for this rule action.

Comment 1: The commenter claims that EPA cannot approve the proposed Pennsylvania RACT II case-by-case (CbC) determinations under the 1997 and 2008 8-hour ozone NAAQS because the CAA section 110(l) analysis is inadequate. In particular, the commenter focuses on the proposed NO_X limitations and whether they will cause or contribute to violations of the 2010 1-hour NO_X NAAQS. (The 2010 1-hour NAAQS is for oxides of nitrogen, as measured by nitrogen dioxide (NO_2).) The commenter argues that under CAA section 110(k)(1)(a) and 40 CFR part 51, Appendix V, 2.2(d), a state must demonstrate that the NAAQSs are protected if a SIP is to be approved and that Pennsylvania has not made an adequate demonstration under section 110(l) related to the potential impact of these RACT determinations on the 2010 1-hour NO_X NAAQS. The commenter then suggests that EPA is unable to approve Pennsylvania's CbC RACT II determinations unless such a demonstration has been made, even though the rules reduce NO_X emissions. The commenter highlights their concern by including results from air dispersion modeling of NO_X emissions from the Bighorn well pad in Colorado that they claim shows the potential impact of NO_X emissions on 1-hour NO_X NAAQS violations. The commenter states that EPA must undertake a modeling analysis to determine if the proposed CbC RACT II determinations will cause or contribute to 2010 1-hour NO_X NAAQS violations. The commenter indicates that EPA must repropose this action including any such modeling information or other information utilized in the demonstration that the NAAQS will be protected.

Response 1: As described in the proposed rulemaking, Pennsylvania was required through implementation of the 1997 and 2008 8-hour ozone NAAQS to determine RACT II requirements for major NO_X and VOC emitting sources within the Commonwealth. PADEP had previously established CbC RACT requirements under the 1979 1-hour ozone NAAQS.[6] PADEP finalized its overall RACT II program, which included presumptive RACT for certain sources, and it was conditionally approved by EPA.[7] As part of the EPA's conditional approval, PADEP was required to complete source-specific CbC RACT II determinations for subject NO_X or VOC sources that could not meet the presumptive requirements or for which a presumptive limit did not exist. As required by its regulations, PADEP then conducted a RACT II CbC analysis examining what air pollution controls are available for those individual sources to determine the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technologically and economic feasibility.[8]

Through its RACT II CbC determinations, PADEP has established NO_X and VOC limits and requirements for various sources that either reaffirm existing emission limits or makes the limits more stringent. PADEP submitted those determinations to EPA as bundled packages of individual SIP revisions. EPA is now approving the RACT II CbC SIP revisions for individual NO_X and VOC sources at eight facilities. For the reasons explained below, EPA concludes that the arguments presented by the commenter do not prohibit approval of these SIP revisions.

CAA section 110(l) prohibits EPA from approving a SIP revision if the revision would ''interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of this chapter.'' 42 U.S.C. 7410(l). While EPA interprets section 110(l) as applying to all NAAQS that are in effect, including those for which a relevant SIP submission may not have been made, the level of rigor needed for any CAA section 110(l) demonstration will vary depending on the nature and circumstances of the revision. For example, an in-depth section 110(l) analysis is more appropriate where there is a reasonable expectation that an existing SIP standard is being weakened or that there will be a net emissions increase because of approval of the SIP revision under consideration. However, here, the Pennsylvania CbC RACT II SIP revisions are either retaining an existing standard or establishing a more stringent one. EPA, for these reasons, did not include a detailed section 110(l) analysis at the proposal stage. Since the commenter raised the issue, EPA is responding in this final action by explaining why its approval is consistent with section 110(l).

In circumstances where an existing SIP standard is being weakened or a net emissions increase is expected, there are two generally recognized paths for satisfying CAA section 110(l). First, a state may demonstrate through an air quality modeling analysis that the revision will not interfere with the attainment of the NAAQS, reasonable further progress, or any other applicable requirement. This is the approach the commenter claims is required for the Pennsylvania CbC SIP revisions. Second, a state may substitute equivalent or greater emissions reductions to compensate for any change to a plan to ensure actual emissions to the air are not increased and thus preserve status quo air quality. A showing that the substitute measures preserve status quo air quality is generally sufficient to demonstrate noninterference through this alternative approach. Courts have upheld EPA's approval of a SIP revision based on a state's use of substitute measures. *Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006) and *Indiana* v. *EPA,* 796 F. 3d 803 (7th Cir. 2015).

Both the *Kentucky Resources* and *Indiana* cases involved circumstances where a state sought to revise provisions within its SIP related to its vehicle emissions testing program. In both situations, the petitioners were concerned with increased emissions that might occur due to the changes to the testing program. The state in each case justified its SIP revision, in part, by demonstrating that it had substitute emission reductions that would fully compensate for the expected emissions increase caused by the modifications to the testing program. The court in each case upheld EPA's interpretation of section 110(l), which allows states to substitute equivalent emissions reductions to compensate for any change to a plan to ensure actual emissions to the air are not increased and thus preserve status quo air quality.

[6] 40 CFR 52.2020(d)(1).

[7] 84 FR 20274 (May 9, 2019).

[8] See December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas,'' and 44 FR 53762 (September 17, 1979).

However, again, these two cases are most relevant in circumstances where an existing SIP standard is being weakened or a net emissions increase is expected, which are not the circumstances presented by the SIP revisions that EPA is approving here.

In a more analogous case to the situation presented here, EPA's interpretation of section 110(l) was upheld in *WildEarth Guardians* v. *EPA,* 759 F.3d 1064 (9th Cir. 2014). There, the court rejected a challenge to an EPA action approving a regional haze plan and concluded that WildEarth had identified ''nothing in [the] SIP that weakens or removes any pollution controls. And even if the SIP merely maintained the status quo, that would not interfere with the attainment or maintenance of the NAAQS.'' [9] For that reason, the court concluded that WildEarth had failed to show that EPA's approval of the SIP contravened section 110(l). The court's holding demonstrates that a SIP approval that does not weaken or remove pollution controls would not violate section 110(l).

The *WildEarth* decision informs the approach to section 110(l) EPA is taking to approve the Pennsylvania CbC RACT SIP revisions. Here, contrary to the commenter's characterization, Pennsylvania is not relaxing standards or eliminating a program, but rather, is only re-evaluating the technical and economic feasibility of air pollution controls for subject air pollution sources as required by implementation of the 1997 and 2008 8-hour NAAQS. Based on that review, the state, as explained in more detail below, has made determinations that either retain or make more stringent existing NO_X emission limits. Emissions are not expected to increase, and will likely decrease, as a result of PADEP's RACT II NO_X CbC determinations and EPA's approval hereof. Additionally, the supporting documents submitted by PADEP identify numerous NO_X sources that were subject to RACT I but that are no longer operating and have been permanently closed. Under these circumstances, Pennsylvania's demonstration to meet the requirements of section 110(l) for its CbC RACT II determinations is not one of modeling or identifying equivalent emissions reductions to compensate for or offset an emissions increase because the revisions are not resulting in emissions increases, but rather to establish that its new CbC NO_X RACT determinations are preserving the status quo air quality or achieving additional reductions beyond the status quo.

[9] Id. at 1074.

With this rulemaking action, EPA is only approving revisions that add specific NO_X and VOC CbC RACT II determinations to the Pennsylvania SIP. In the subject RACT II CbC determinations, PADEP has made an adequate showing that its CbC determinations for individual sources at the eight facilities at issue not only preserve the status quo air quality, but likely reduce the cumulative NO_X emissions from the subject sources. As described in its technical review memorandums and related documents, which are included in the docket for this rulemaking, PADEP evaluated both the technical and economic feasibility of various control equipment for these sources and used that evaluation to determine the RACT II requirements. PADEP also considered the prior RACT I requirements to determine whether the RACT II requirements were as stringent as the previously established standards. In circumstances where the RACT I requirements were more stringent, they were retained and remain effective. Contrary to the commenter's assertion, this demonstration included in the documents in the docket satisfies the requirements of Part 51, Appendix V. The record supporting EPA's approval of Pennsylvania's CbC RACT II SIP revisions is sufficient, so there is no need to supplement the record. As such, commenter's reference to EPA's inability to supplement the record, and to *Ober* v. *U.S. EPA,* 84 F.3d 304,312 (9th Cir. 1996), is not applicable to EPA's current action.

The facilities addressed in this final rule breakdown into the categories listed below.[10] As explained in the proposed rulemaking notice, EPA views each facility as a separable SIP revision, and that should it receive comment on one facility but not others, EPA may take separate, final action on the remaining facilities.

Facilities with only VOC sources—The following facilities are major source VOC emitting facilities that are minor sources of NO_X. As such, individual VOC sources at these facilities must comply with RACT II requirements. EPA's approval in this rulemaking for these facilities only relates to specific CbC VOC RACT II determinations. EPA's approval of the Pennsylvania CbC VOC RACT II SIP revisions for sources at these facilities does not involve NO_X emissions, maintains the status quo, and does not result in an increase in VOC or NO_X emissions. Therefore, as explained previously, EPA has determined these SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA, pursuant to section 110(l).

- Kovatch Mobile Equipment Corp
- Letterkenny Army Depot
- Volvo Construction Equipment North America

Facilities with VOC and NO_X Sources (Only VOC CbC)—The following facilities are major NO_X and VOC emitting facilities, and individual NO_X and VOC sources at these facilities must comply with RACT II requirements. However, EPA's approval in this rulemaking for these facilities only relates to specific CbC VOC RACT II determinations. EPA's approval of the Pennsylvania CbC VOC RACT II SIP revisions for sources at these facilities does not involve any NO_X emissions, maintains the status quo, and does not result in an increase in VOC or NO_X emissions. Therefore, as explained previously, EPA has determined these SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA, pursuant to section 110(l).

- E.I DuPont de Nemours and Co.
- National Fuel Gas Supply Corporation—Roystone Compressor Station

Facilities with CbC NO_X Sources—The following are major NO_X emitting sources and contain individual sources subject to CbC NO_X requirements that EPA is taking final action on here. More specific information on those individual facilities follows:

Carmeuse Lime Inc.—EPA proposed to approve PADEP's RACT II CbC NO_X determination for one source at this facility. The other NO_X sources that were subject to RACT I are now shut down. In its RACT II determination for Source 107 (No. 5 Kiln), PADEP concluded that the use of a low NO_X burner with good combustion and burner optimization were technically and economically feasible as RACT and were incorporated as part of the burner management plan.[11] Based on an analysis of historical performance testing data from 2000 to 2017, the existing short-term emissions limit of 6.0 lbs NO_X/ton of lime produced was reduced to 4.6 lbs NO_X/ton of lime

[10] While the commenter also references a ninth facility, Montour, LLC, EPA is not acting on PADEP's CbC RACT II determination for this facility at this time. As indicated in the proposed rulemaking, EPA will be acting on sources located at this facility in a separate future rulemaking.

[11] See PADEP's Technical Review Memo, dated November 19, 2018, which is part of the docket for this rulemaking.

produced as a RACT II case-by-case requirement. A burner management plan, testing once every five years, and daily monitoring and recordkeeping of fuel used hourly were also required. Through imposition of this more stringent emission limit along with related monitoring, testing, and recordkeeping requirements, Pennsylvania has demonstrated that the status quo in NO_X emissions has been maintained, if not improved. As such EPA's approval of Pennsylvania's SIP revision is adequately justified under section 110(l).

Merck, Sharpe & Dohme Corp.—EPA proposed to approve PADEP's RACT II CbC NO_X determination for two sources at this facility. Numerous NO_X sources that were subject to RACT I have been shut down. In its determinations for the remaining two sources, PADEP has determined that the RACT II CbC NO_X is continued use of low NO_X burners and good operating practices and continued compliance with the existing NO_X emission limits.[12] Through retention of the existing emission limits and continued use of the low NO_X burners, Pennsylvania has demonstrated that the status quo in NO_X emissions has been maintained. As such, EPA's approval of Pennsylvania's SIP revision is adequately justified under section 110(l).

Fairless Energy, LLC—EPA proposed to approve PADEP's RACT II determination related to a NO_X averaging plan for four sources at this facility pursuant to 25 Pa. Code § 129.98(a). The averaging plan provision authorized in section 129.98 allows a facility to establish an alternative facility-wide or system-wide RACT NO_X emissions limit as long as it demonstrates that the resulting NO_X emissions using a 30-day rolling average would not be greater than NO_X emissions from the group of included sources if they each complied with the applicable presumptive NO_X RACT emissions limit as individual sources. Fairless will be averaging the NO_X emissions for four sources to meet the RACT II requirements, an alternative emission limit, that will be at least as stringent as the presumptive emission limit, which was conditionally approved by EPA in a prior rulemaking.[13] PADEP's approval of the NO_X averaging plan ensures that total NO_X emissions from these sources will be no greater than the total individual emissions from each source if each were to comply with the existing presumptive emission limit. The NO_X averaging plan also does not eliminate any other existing non-RACT emission restrictions applicable to these sources. Through these measures, Pennsylvania has demonstrated that the status quo in NO_X emissions has been maintained. As such, EPA's approval of PADEP's SIP revision is adequately justified under section 110(l).

As described above, EPA determined that Pennsylvania had adequately justified its RACT II CbC NO_X determinations. EPA also concluded, under section 110(l), that the status quo in NO_X emissions had been maintained, if not improved and that there is no need to conduct the modeling suggested by the commenter. As noted previously, the commenter included an air dispersion modeling analysis of NO_X emissions from a well pad at the Bighorn Pad Facility in Colorado to highlight an alleged potential of NO_X emissions to cause or contribute to violations of the 2010 1-hour NO_X NAAQS. The NAAQS for nitrogen oxides is a 1-hour standard at a level of 100 ppb based on the 3-year average of 98th percentile of the yearly distribution of 1-hour daily maximum NO_2 concentrations. In 2012, EPA designated areas within Pennsylvania as attainment/unclassifiable for the 2010 standard.[14] The modeling analysis provided by the commenter indicated that NO_X emissions from the well pad area in Colorado could have NO_2 impacts within 50 kilometers of the source.

This modeling analysis from Colorado does not trigger a need for EPA or Pennsylvania to conduct modeling on the impact of NO_X emissions from each individual PA CbC RACT source at issue in this rulemaking in order for EPA to approve these SIP revisions. First, as discussed previously, modeling is not the sole method available to satisfy section 110(l) requirements. Second, the differences in the meteorology, terrain, and facility configurations between the Bighorn well pad and the Pennsylvania CbC RACT II sources are too significant to rely on the Bighorn facility modeling results to serve as surrogate modeling indicating that the Pennsylvania RACT II sources have the potential to cause exceedances of the 2010 1-hour NO_X NAAQS in Pennsylvania. The commenter has not provided any comparison or information to show why the Bighorn Pad Facility modeling results should apply to these specific RACT II sources in Pennsylvania. Further, the commenter has not presented any specific information suggesting the RACT II CbC NO_X determinations for these specific sources could somehow lead to violations of the 2010 1-hour NO_X NAAQS. Without a more specific allegation from the commenter about the sources in question, the commenter's allegations are too speculative in nature to prevent EPA from approving PADEP's RACT II CbC NO_X determinations for sources at the eight subject facilities.

Comment 2: The commenter is supportive of EPA's proposed rulemaking, stating that it will positively affect citizens in the Commonwealth of Pennsylvania for multiple reasons and has suggested some editorial improvements for future rulemakings that could aid citizen comprehension.

Response 2: EPA recognizes the commenter's support and suggestions. EPA will consider such suggestions for future rulemakings.

Comment 3: The commenter states that the RACT limit for Carmeuse Lime, Inc of 4.6 lb/NO_X per ton of lime is too lenient. Additionally, the commenter asserts the testing requirement to verify the emissions limit by stack test once every five years is insufficient and should have required a Continuous Emission Monitoring System (CEMS) unit to monitor instantaneous emissions from the kiln or established an emissions profile dependent on a number of factors that might impact NO_X emissions.

Response 3: As detailed in the facility files for Carmeuse Lime contained in the docket for this action, the existing short-term NO_X limit for the No. 5 Kiln established under RACT I was 6.0 lbs NO_X/ton of lime produced. The RACT II NO_X limit of 4.6 lb/ton approved here represents a reduction of emissions from RACT I and was established through a statistical analysis using 17 years of historical performance testing data. PADEP also reviewed the RACT/BACT/LAER Clearinghouse to determine emission limits for similar kilns and found that such limits ranged from 3.59 to 9.98 lb/ton. Based on this information included in the docket, EPA determined that the NO_X limit of 4.6 lb/ton comports with the CAA requirements for RACT.

The requirement for stack testing every five years is consistent with Pennsylvania's RACT II compliance demonstration requirements in 25 Pa. Code 129.100, which is a part of Pennsylvania's SIP-approved RACT regulations. Under those regulations, a

[12] See PADEP Revised Technical Review Memo, dated October 9, 2019, which is part of the docket for this rulemaking action.

[13] See 84 FR 20274 (May 9, 2019) as to EPA's conditional approval of the presumptive limit and PADEP's Technical Review Memo, dated November 29, 2016, as to PADEP's analysis of the NO_X averaging plan.

[14] 77 FR 9532 (February 17, 2012).

five-year stack testing period for sources without a CEMS is authorized. In addition to the stack testing, PADEP's RACT II determination includes requirements for a burner management plan to ensure good combustion and burner optimization. It also requires daily recordkeeping on limestone used, lime produced, and fuel consumed to provide a current picture of source operations.[15] The sufficiency of the stack testing requirement is further justified in light of a long history of stack testing on this kiln, which produced the data that enabled the lowering of the NO_X limit. The RACT II requirements for Kiln No. 5 are also consistent with the current National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants, 40 CFR 63, Subpart AAAAA, of which the source is also subject. Given the basis of the emissions limit and the stack testing requirement, plus the establishment of other burner and daily recordkeeping requirements, EPA continues to find PADEP's analysis reasonable and is finalizing the RACT determination for Carmeuse Lime.

Comment 4: The comment requests that EPA clarify which company is subject to Permit No. 46–0005, included as part of EPA's proposed rulemaking docket EPA–R03–OAR–2020–0597.

Response 4: Permit No. 46–0005 is the title V operating permit number for Merck, Sharp, & Dohme Corp.'s facility located in West Point, Upper Gwynedd Township, Montgomery County, Pennsylvania. The cover page (page 1) of Permit No. 46–0005 contains additional owner, plant, owner, and responsible official contact information for this facility. Merck, Sharpe, and Dohme is the company name referred to in the provisions to be incorporated into the SIP.

IV. Final Action

EPA is approving case-by-case RACT determinations and/or alternative NO_X emissions limits for eight sources in Pennsylvania, as required to meet obligations pursuant to the 1997 and 2008 8-hour ozone NAAQS, as revisions to the Pennsylvania SIP.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of source-specific RACT determinations and alternative NO_X emissions limits under the 1997 and 2008 8-hour ozone NAAQS for certain major sources of VOC and NO_X in Pennsylvania. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[16]

VI. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania's NO_X and VOC RACT requirements for eight facilities for the 1997 and 2008 8-hour ozone NAAQS may not be challenged later in

[15] See PADEP Technical Review Memo, dated November 19, 2018, which is part of the docket for this rulemaking action.

[16] 62 FR 27968 (May 22, 1997).

proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 17, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by:

■ a. Revising the entries ''Merck and Co., Inc.—West Point Facility;'' ''National Fuel Gas Supply Corp.—Roystone Compressor Station;'' and ''Department of the Army;'' and

■ b. Adding the following entries at the end of the table: ''Volvo Construction Equipment North America;'' ''National Fuel Gas Supply Corporation—Roystone Compressor Station;'' ''E.I. DuPont de Nemours and Co.;'' ''Carmeuse Lime Inc.;'' ''Kovatch Mobile Equipment Corp.;'' ''Merck, Sharpe & Dohme Corp. (formerly referenced as Merck and Co., Inc.—West Point Facility);'' ''Letterkenny Army Depot (formerly referenced as Department of the Army);'' ''Fairless Energy, LLC.''

The revisions and additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/§§ 52.2063 and 52.2064 citations [1]
*	*	*	*	*	*
Merck and Co., Inc.—West Point Facility	OP–46–0005	Montgomery	1/13/97 6/23/00	4/18/01, 66 FR 19858	See also 52.2064(d)(6).
*	*	*	*	*	*
National Fuel Gas Supply Corp.—Roystone Compressor Station.	OP–62–141F	Warren	4/1/03	10/27/04, 69 FR 62583	See also 52.2064(d)(2).
*	*	*	*	*	*
Department of the Army	28–02002	Franklin	2/3/00	3/31/05, 70 FR 16416	See also 52.2064(d)(7).
*	*	*	*	*	*
Volvo Construction Equipment North America.	28–05012	Franklin	6/1/19	9/1/21, [insert **Federal Register** citation].	52.2064(d)(1).
National Fuel Gas Supply Corporation—Roystone Compressor Station.	62–141H	Warren	1/16/18	9/1/21, [insert **Federal Register** citation].	52.2064(d)(2).
E.I. DuPont de Nemours and Co	08–00002	Bradford	9/28/18	9/1/21, [insert **Federal Register** citation].	52.2064(d)(3).
Carmeuse Lime Inc	38–05003	Lebanon	3/6/19	9/1/21, [insert **Federal Register** citation].	52.2064(d)(4).
Kovatch Mobile Equipment Corp	13–00008	Carbon	10/27/17	9/1/21, [insert **Federal Register** citation].	52.2064(d)(5).
Merck, Sharpe & Dohme Corp. (formerly referenced as Merck and Co., Inc.—West Point Facility).	46–00005	Montgomery	1/5/17	9/1/21, [insert **Federal Register** citation].	52.2064(d)(6).
Letterkenny Army Depot (formerly referenced as Department of the Army).	28–05002	Franklin	6/1/18	9/1/21, [insert **Federal Register** citation].	52.2064(d)(7).
Fairless Energy, LLC	09–00124	Bucks	12/6/16	9/1/21, [insert **Federal Register** citation].	52.2064(d)(8).

* * * * *

■ 3. Amend § 52.2064 by adding paragraph (d) to read as follows:

§ 52.2064 EPA-Approved Source Specific Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X).

* * * * *

(d) Approval of source-specific RACT requirements for 1997 and 2008 8-hour ozone national ambient air quality standards for the facilities listed below are incorporated as specified below. (Rulemaking Docket No. EPA–OAR–2020–0597).

(1) Volvo Construction Equipment North America, LLC.—Incorporating by reference Permit No. 28–05012, effective June 1, 2019, as redacted by Pennsylvania.

(2) National Fuel Gas Supply Corporation Roystone Compressor Station—Incorporating by reference Permit No. 62–141H, effective January 16, 2018, as redacted by Pennsylvania. All permit conditions in the prior RACT Permit No. OP–62–141F, effective April 1, 2003, remain as RACT requirements except for the Penneco boiler (1.5 MMBtu/hr) and Struthers boiler (2.5 MMBtu/hr), which are no longer in operation. See also § 52.2063(c)(213)(i)(B)(1) for prior RACT approval.

(3) E.I. DuPont de Nemours and Company—Incorporating by reference Permit No. 08–00002, effective September 28, 2018, as redacted by Pennsylvania.

(4) Carmeuse Lime, Inc—Incorporating by reference Permit No. 38–05003, effective March 6, 2019, as redacted by Pennsylvania.

(5) Kovatch Mobile Equipment Corporation—Incorporating by reference Permit No. 13–00008, effective October 27, 2017, as redacted by Pennsylvania.

(6) Merck, Sharp & Dohme Corporation—Incorporating by reference Permit No. 46–00005, issued January 5, 2017, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. OP–46–0005, issued January 13, 1997 and revised June 23, 2000, except for the following conditions, which remain as a RACT requirements applicable to the following sources:

Conditions #4A, #9C, and #13D for boiler 3 (Source ID 033); conditions #4A, #9C, and #13D for boiler 5 (Source ID 035); conditions #4B and #9 for the gas turbine (Source ID 039); conditions #6A, #6B, and #6D for any remaining shell freezers (Source ID 105); conditions #6A and #6D for air emissions (disinfection; Source IDs 105, 107, 108, and 111); conditions #4C and #9 for any remaining generators (various Source IDs); condition #8 for research and development (Section C); and condition #11 for any remaining deminimus sources (Section C). See also § 52.2063(c)(154)(i)(D) for prior RACT approval.

(7) Letterkenny Army Depot—Incorporating by reference Permit No. 28–05002, effective June 1, 2018, as redacted by Pennsylvania, which supersedes the prior RACT Permit No. 28–02002, effective February 3, 2000 except for conditions 5, 6, 7, 8, 9, 10, 11, 12, and 14 which also remain as RACT requirements. See also § 52.2063(d)(1)(g) for prior RACT approval.

(8) Fairless Energy, LLC—Incorporating by reference Permit No. 09–00124, effective December 6, 2016 as redacted by Pennsylvania.

[FR Doc. 2021–18752 Filed 8–31–21; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 570

[GSAR Case 2021–G524; Docket No. GSA–GSAR 2021–0019; Sequence No. 1]

RIN 3090–AK49

General Services Administration Acquisition Regulation (GSAR); Updates to Certain Online References in the GSAM

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

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to update an outdated reference to a legacy website.

DATES: Effective October 1, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Tyler Piper or Mr. Stephen Carroll at 817–253–7858 or *gsarpolicy@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSAR Case 2021–G524.

SUPPLEMENTARY INFORMATION:

I. Background

GSA's Integrated Award Environment integrated the legacy *SAM.gov* into the *beta.SAM.gov* environment on May 24, 2021, migrating the functionality of *SAM.gov* into *beta.SAM.gov*. The term ''beta'' is retired, and there is now only one *SAM.gov*.

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

The System for Award Management (SAM) has officially gone live, and as such the URL to reach it has changed from *https://beta.sam.gov* to *https://www.sam.gov.* This rule simply updates an outdated URL reference to the new website.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been reviewed and determined by OMB not to be a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a ''major rule'' may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule has been reviewed and determined by OMB not to be a ''major rule'' under 5 U.S.C. 804(2).

VI. Notice for Public Comment

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This rule is not required to be published for public comment, because it does not have a significant effect or impose any new requirements on contractors or offerors. The rule simply replaces website references.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section VI. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 570

Government procurement.

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR part 570 as set forth below:

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

■ 1. The authority citation for part 570 continues to read as follows:

Authority: 40 U.S.C. 121(c).

570.106 [Amended]

■ 2. Amend section 570.106 in paragraph (a) by removing ''Governmentwide Point of Entry (GPE) at *https://beta.sam.gov* or successor system'' and adding ''System for Award

Management Contract Opportunities at *https://www.sam.gov*'' in its place.

[FR Doc. 2021–18847 Filed 8–31–21; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 210603–0121; RTID 0648–XB334]

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Extension of Emergency Decisions of the Western and Central Pacific Fisheries Commission

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

ACTION: Temporary specifications.

SUMMARY: NMFS is extending the effective date of temporary specifications that implement three short-notice decisions of the Commission on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC). NMFS issued temporary specifications on June 11, 2021, to implement short-notice WCPFC decisions regarding purse seine observer coverage, purse seine transshipments at sea, and transshipment observer coverage. NMFS is extending the effective date of those temporary specifications until January 13, 2022. NMFS is undertaking this action under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to satisfy the obligations of the United States as a Contracting Party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention).

DATES: The temporary specifications are in effect from September 1, 2021 until January 13, 2022.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS Pacific Islands Regional Office, 808–725–5033.

SUPPLEMENTARY INFORMATION: Under authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), NMFS published an interim final rule that established a framework to implement short-notice WCPFC decisions. Also in this rule, NMFS simultaneously issued temporary specifications to implement three short-notice WCPFC decisions; those temporary specifications are in effect until September 14, 2021. Additional background information on the Commission, the Convention, the interim final rule, and temporary specifications, is available in the **Federal Register** document that includes the interim final rule and temporary specifications (86 FR 31178; June 11, 2021).

Background on WCPFC Emergency Decisions

On April 8, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID–19, the Commission made an intersessional decision to suspend the requirements for observer coverage on purse seine vessels on fishing trips in the Convention Area through May 31, 2020. The Commission subsequently extended that decision several times, and the current extension is effective until December 15, 2021.

On April 20, 2020, in response to the international concerns over the health of vessel crews and port officials due to COVID–19, the Commission made an intersessional decision to modify the prohibition on at-sea transshipment for purse seine vessels as follows—purse seine vessels can conduct at-sea transshipment in an area under the jurisdiction of a port State, if transshipment in port cannot be conducted, in accordance with the domestic laws and regulations of the port State. The Commission subsequently extended that decision and the current extension is effective until December 15, 2021.

On May 13, 2020, in response to the international concerns over the health of observers and vessel crews due to COVID–19, the Commission made an intersessional decision to suspend the requirements for observer coverage for at-sea transshipments. The Commission subsequently extended that decision and the current extension is effective until December 15, 2021.

Extension of Temporary Specifications

NMFS is using the framework as set forth at 50 CFR 300.228 to extend the effective date of the temporary specifications implementing the three recent WCPFC intersessional decisions (WCPFC decisions dated April 8, 2020, April 20, 2020, and May 13, 2020), described above, that are in effect until December 15, 2021. The regulations to implement short-notice WCPFC decisions at 50 CFR 300.228 provide that temporary specifications to implement such short-notice decisions will remain in effect no longer than 30 days after the expiration of the underlying Commission decision.

Accordingly, the requirements of the following regulations are waived. Such waiver shall remain in effect until January 13, 2022, unless NMFS earlier rescinds or extends this waiver by publication in the **Federal Register**:

- 50 CFR 300.223(e)(1). During the term of this waiver, U.S. purse seine vessels are not required to carry WCPFC observers [1] on all fishing trips in the Convention Area. However, the regulations at 50 CFR 300.215(c)(1) that require all vessels with WCPFC Area Endorsements or for which WCPFC Area Endorsements are required to carry WCPFC observers when directed by NMFS remain in effect;
- 50 CFR 300.216(b)(1). During the term of this waiver, U.S. purse seine fishing vessels are not prohibited from at-sea transshipment conducted within the national waters of the coastal state, in accordance with applicable national laws. Transshipment on the high seas remains prohibited; and
- 50 CFR 300.216(b)(2) and 50 CFR 300.215(d). During the term of this waiver, owners and operators of U.S. commercial fishing vessels fishing for highly migratory species in the Convention Area are not prohibited from at-sea transshipment without a WCPFC observer on board the offloading or receiving vessel.

Classification

NMFS issues this action pursuant to the WCPFC Implementation Act and the regulations at 50 CFR 300.228. This action is exempt from review under Executive Order 12866.

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on the interim final rule and temporary measures included in this action, because prior notice and the opportunity for public comment is unnecessary and would be contrary to the public interest. Opportunity for public comment is unnecessary because the regulations establishing the framework and providing notice of the Commission's decisions described above have already been subject to notice and public comment, and all that

[1] A WCPFC Observer means a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission's Regional Observer Programme, including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's Regional Observer Programme. See 50 CFR 300.211.

remains is to notify the public of the extension of those Commission decisions. NMFS will be responding to public comments received on the framework and those Commission decisions in a separate rule. In addition, the opportunity for public comment is unnecessary because the extensions of effective date of three short-notice WCPFC decisions have already gone into effect and as a contracting party to the Convention, NMFS is obligated to carry out those extensions.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective dates for the temporary measures.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: August 27, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–18846 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210217–0022; RTID 0648–XB372]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2021 total allowable catch of Pacific cod allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2021, through 2400 hours, A.l.t., December 31, 2021. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 16, 2021.

ADDRESSES: Submit your comments, identified by NOAA–NMFS–2020–0141, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2020–0141 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI under § 679.20(d)(1)(iii) on January 26, 2021 (86 FR 7818, February 2, 2021).

NMFS has determined that as of August 23, 2021, approximately 797 metric tons of Pacific cod remain in the 2021 Pacific cod apportionment for catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2021 total allowable catch (TAC) of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 26, 2021.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 16, 2021.

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

Dated: August 27, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–18855 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 86, No. 167

Wednesday, September 1, 2021

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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1006

[Docket No. CFPB–2021–0007]

RIN 3170–AA41

Debt Collection Practices (Regulation F); Withdrawal of Proposal To Delay Effective Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; withdrawal.

SUMMARY: In 2020, the Bureau of Consumer Financial Protection (Bureau) finalized two rules (together, the Debt Collection Final Rules) revising Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA). As finalized, the Debt Collection Final Rules had an effective date of November 30, 2021. On April 7, 2021, the Bureau issued a proposal to delay that effective date by sixty days, until January 29, 2022. The Bureau is withdrawing that proposal for the reasons provided in this document. The Debt Collection Final Rules will take effect on November 30, 2021.

DATES: The proposed rule, published at 86 FR 20334, April 19, 2021, is withdrawn as of September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Briana McLeod, Honors Attorney, or Seth Caffrey, Courtney Jean, or Kristin McPartland, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: In October and December 2020, the Bureau issued the Debt Collection Final Rules to revise Regulation F, 12 CFR part 1006, which implements the FDCPA.[1] The Debt Collection Final Rules prescribe Federal rules governing the activities of debt collectors as defined in the FDCPA. As finalized, the Debt Collection Final Rules had an effective date of November 30, 2021, one year after the first debt collection final rule was published in the **Federal Register**. In finalizing the effective date for both final rules, the Bureau determined that a one-year period from the publication date of the first final rule would provide debt collectors sufficient time to implement the provisions of both rules.[2]

Because of the ongoing societal disruption caused by the global COVID–19 pandemic, and to afford stakeholders additional time to review and implement the Debt Collection Final Rules, the Bureau proposed in April 2021 to extend the November 30 effective date by 60 days, to January 29, 2022.[3] The Bureau requested comment on whether to extend the effective date, and if so, whether 60 days was an appropriate period for an extension.

Most industry commenters stated that, despite the pandemic, they will be prepared to comply with the Debt Collection Final Rules by November 30, 2021. Many industry commenters also stated that an extension would reduce regulatory certainty and thus increase burden on small entities. Consumer advocate commenters generally supported extending the effective date. However, these commenters generally did not focus on the effects of the COVID–19 pandemic or on whether stakeholders need additional time to review and implement the Rules. Instead, they urged the Bureau to use the extension to reconsider the Debt Collection Final Rules. However, extending the effective date to reconsider the rules is beyond the scope of the Bureau's proposal. For these reasons, the Bureau has decided to withdraw the proposal. The Debt Collection Final Rules will take effect on November 30, 2021.

The April 2021 proposal explained that the Bureau previously considered the costs, benefits, and impacts of the Debt Collection Final Rules' major provisions. It further explained that, compared to the baseline established by the rules, the proposed extension of the rules' effective date would generally benefit covered persons by facilitating initial compliance with the rules' requirements and delaying the start of ongoing compliance costs but that it could also delay consumers' realization of benefits arising from the protections provided by the rules. As discussed above, industry commenters generally did not agree that delaying the effective date would facilitate compliance. In addition, the Bureau indicated that it did not expect the proposed rule to have a differential impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act or on consumers in rural areas. The Bureau also stated that it did not believe that the proposed effective date extension would reduce consumer access to consumer financial products and services, as the evidence discussed in the Debt Collection Final Rules indicates that the rules themselves will have limited negative impact on access to credit. Because this document withdraws the proposal to change the effective date, any costs and benefits associated with an extension will not be realized. Further, there are no additional costs, benefits, or impacts associated with this document beyond those previously considered with respect to the Debt Collection Final Rules' major provisions. The Bureau has determined that this document will not have any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the Paperwork Reduction Act of 1995.[4]

Signing Authority

The Acting Director of the Bureau, David Uejio, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau **Federal Register** Liaison, for purposes of publication in the **Federal Register**.

Dated: August 26, 2021.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2021–18799 Filed 8–31–21; 8:45 am]

BILLING CODE 4810–AM–P

[1] 85 FR 76734 (Nov. 30, 2020); 86 FR 5766 (Jan. 19, 2021).

[2] 85 FR 76734, 76863 (Nov. 30, 2020); 86 FR 5766, 5838 (Jan. 19, 2021).

[3] 86 FR 20334 (Apr. 19, 2021). The April 2021 proposal described the Bureau's legal authority for issuing both that proposal and the Debt Collection Final Rules. *Id.* at 20335.

[4] 44 U.S.C. 3501 *et seq.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0722; Project Identifier MCAI–2021–00329–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This proposed AD was prompted by a report that during re-engineering of galley G5, a 9G forward full scale qualification test was performed, and the door of the waste compartment opened before the required load was reached. This proposed AD would require modifying the waste compartment door of each affected galley, as specified in a European Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 18, 2021.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* For Zodiac Galleys Europe and Safran service information identified in this proposed AD, contact Safran Cabin CZ s.r.o., Univerzitni 1119/34, 301 00 Plzen, Czech Republic; telephone: +420 377 664 111; internet *https://www.safran-group.com/companies/safran-cabin.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0722.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0722; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0722; Project Identifier MCAI–2021–00329–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0255, dated November 27, 2018 (EASA AD 2018–0255) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report that during re-engineering of galley G5, a 9G forward full scale qualification test was performed, and the door of the waste compartment opened before the required load was reached. Investigation revealed that the opening was caused by a galley global deflection on which the latch bolts of the door were pushed inwards by the striker. The FAA is proposing this AD to address failure of the galley door and release of trolleys during a rejected take-off or an emergency landing, which could result in injury to occupants. See

the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2018–0255 describes procedures for modifying the waste compartment door of each affected galley. The modification includes installing a door catch bracket and a new striker.

Safran has issued Zodiac Galleys Europe Service Bulletin 213510–25–001, Revision B, dated January 28, 2018; Zodiac Galleys Europe Service Bulletin 213510–25–001, Revision C, dated May 24, 2018; and Safran Service Bulletin 213510–25–001, Revision D, dated August 15, 2019. This service information describes procedures for modifying the waste compartment door of each affected galley by installing a door catch bracket and striker. These documents are distinct because they contain revised instructions and figures.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2018–0255 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2018–0255 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2018–0255 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2018–0255 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2018–0255. Service information required by EASA AD 2018–0255 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0722 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 141 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × $85 per hour = $425	$0	$425	$59,925

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2021–0722; Project Identifier MCAI–2021–00329–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 18, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2018–0255, dated November 27, 2018 (EASA AD 2018–0255).

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by a report that during re-engineering of galley G5, a 9G forward full scale qualification test was performed, and the door of the waste compartment opened before the required load was reached. The FAA is issuing this AD to address failure of the galley door and release of trolleys during a rejected take-off or an emergency landing, which could result in injury to occupants and damage to airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0255.

(h) Exceptions to EASA AD 2018–0255

(1) Where EASA AD 2018–0255 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2018–0255 does not apply to this AD.

(h) Clarification of Required Service Information

Where Paragraph (1) of EASA AD 2018–0255 requires using, among other service information, ''Zodiac Galleys Europe SB 213510–25–001 rev. B,'' this AD requires using ''Zodiac Galleys Europe Service Bulletin 213510–25–001, Revision B, dated January 28, 2018; or Zodiac Galleys Europe Service Bulletin 213510–25–001, Revision C, dated May 24, 2018; or Safran Service Bulletin 213510–25–001, Revision D, dated August 15, 2019.''

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2018–0255 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2018–0255, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0722.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

(3) For Zodiac Galleys Europe and Safran service information in this AD, contact Safran Cabin CZ s.r.o., Univerzitni 1119/34, 301 00 Plzen, Czech Republic; telephone: +420 377 664 111; internet *https://www.safran-group.com/companies/safran-cabin.*

Issued on August 26, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–18803 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0703; Airspace Docket No. 21–AGL–28]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Frankfort, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Frankfort Dow Memorial Field, Frankfort, MI. The FAA is proposing this action as the result of airspace reviews caused by the decommissioning of the Manistee very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The name and geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before October 18, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2021–0703/Airspace Docket No. 21–AGL–28 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Frankfort Dow Memorial Field, Frankfort, MI, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2021–0703/Airspace Docket No. 21–AGL–28.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by amending the Class E airspace extending upward from 700 feet above the surface to within a 7.2-mile (increased from a 6.4-mile) radius of Frankfort Dow Memorial Field, Frankfort, MI; removing the Manistee VOR/DME and associated extension from the airspace legal description; and updating the name (previously Frankfort Dow Memorial Field Airport) and the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is due to an airspace review caused by the decommissioning of the Manistee VOR, which provided navigation information for the instrument procedures this airport, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

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

* * * * *

AGL MI E5 Frankfort, MI [Amended]

Frankfort Dow Memorial Field, MI
(Lat. 44°37′31″ N, long. 86°12′03″ W)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of the Frankfort Dow Memorial Field.

Issued in Fort Worth, Texas, on August 26, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–18757 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0963]

RIN 1625–AA09

Drawbridge Operation Regulations; Tchefuncta River

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes changing the operating schedule that governs the State Route 22 (SR 22) drawbridge across the Tchefuncta River mile 2.5, Madisonville, St. Tammany Parish, Louisiana. This action is necessary to relieve vehicular traffic congestion and enhance safety along SR 22 in Madisonville, LA.

DATES: Comments and related material must be received by the Coast Guard on or before November 1, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0963 using Federal eRulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671–2128, email *Douglas.A.Blakemore@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
LADOTD Louisiana Department of Transportation and Development
OMB Office of Management and Budget
Pub. L. Public Law
NPRM Notice of proposed rulemaking
§ Section
SR State Road
SNPRM Supplemental Notice of Proposed Rulemaking
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The Town of Madisonville, Louisiana has requested to change the operating schedule of the State Route 22 Bridge (Madisonville SR 22 drawbridge bridge) across the Tchefuncta River, mile 2.5, at Madisonville, St. Tammany Parish, Louisiana. This bridge is regulated under 33 CFR 117.500 and has a vertical clearance of 6.2 feet above Mean High Water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. The draw of this bridge opens on signal from 7 p.m. to 6 a.m. From 6 a.m. to 7 p.m. the draw need only open on the hour and half hour, except that: From 6 a.m. to 9 a.m. Monday through Friday except federal holidays the draw need only open on the hour; and from 4 p.m. to 5:30 p.m. Monday through Friday except federal holidays the draw need not open. Navigation on the waterway consists primarily of recreational traffic.

On November 4, 2016, at the request of the Louisiana Department of Transportation and Development (LA–DOTD), the Coast Guard issued a temporary deviation titled ''Drawbridge Operation Regulations; Tchefuncta River, Madisonville, LA'' (81 FR 76866). There, we stated that the 180-day deviation would test a temporary change to the operating schedule of the Madisonville (SR22) drawbridge bridge to determine whether a permanent change is necessary. From November 21, 2016 through May 18, 2017, this deviation extended the time between openings from 30 minutes to an hour between 6 a.m. and 7 p.m. daily, and allowed the bridge to remain closed at 8 a.m., 5 p.m., and 6 p.m.. Monday through Friday except federal holidays. During the comment period that closed on January 18, 2017, the Coast Guard received no comments.

On November 4, 2016, concurrent with the test deviation and on the basis of a recent traffic study conducted by LA–DOTD, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Drawbridge Operation Regulations; Tchefuncta River, Madisonville, LA'' (81 FR 76889). There, we stated that the traffic study indicated that the intersection of SR 22 and SR 21/SR1077 is overcapacity at peak hours and causes unacceptable levels of delay to roadway traffic, which is compounded by the opening of the Madisonville SR 22 drawbridge bridge during peak hours. The traffic study also indicated that a combination of modifications of the traffic controls at this intersection and the operating schedule of the Madisonville SR 22 drawbridge bridge would enhance the flow of vehicular traffic over SR 22. The NPRM proposed a change to the schedule of the Madisonville SR 22 drawbridge bridge that extended the time between openings from 30 minutes to an hour between 6 a.m. and 7 p.m. daily, and allowed the bridge to remain closed at 8 a.m., 5 p.m., and 6 p.m., Monday through Friday except federal holidays. During the comment period that closed on January 18, 2017, the Coast Guard received no comments.

On July 16, 2018 at the request of LADOTD the Coast Guard published a Supplemental NPRM (SNPRM) in 83 FR 27730 to change the operating schedule to provide daily bridge openings from half-hour intervals to hourly intervals 7 days a week, close the bridge to vessels at 8 a.m., 5 p.m. and 6 p.m. on weekdays. LADOTD had requested that the Coast Guard permanently change the regulation based on information provided in the traffic study and also provided supplemental data and information on the population growth in St. Tammany Parish, including information on vehicle traffic counts on SR 22 from 2015, the locations of schools in the vicinity of SR 22 that contribute to vehicle congestion, St. Tammany Parish projected population growth rates, and residential construction permit growth. During the comment period that closed on July 16 2018, the Coast Guard received 300

comments. The vast majority of comments supported the proposed regulation change. The Coast Guard concluded that there was sufficient information to change the regulation to allow the draw to not open to vessels on Mondays through Fridays from 4 p.m. to 5:30 p.m. and that the draw need only open on the hour from 6 a.m. to 9 a.m. The Coast Guard issued a final rule on this change on November 26, 2018 in 83 FR 53810.

III. Discussion of Proposed Rule

On April 23, 2021 the Town of Madisonville requested that the operating schedule on the SR 23 drawbridge be changed to relieve vehicle congestion during peak, afternoon weekday traffic and to alleviate safety concerns. In the April 23, 2021 letter the Town of Madisonville cited information and documentation from parish and local law enforcement and fire protection agencies identifying safety and fire protection concerns with the traffic congestion and bridge openings every 30 minutes during the day. They requested that the drawbridge regulation be changed to close the bridge to vessel traffic from 4 p.m. to 6 p.m. Monday–Friday and open the bridge on signal on the hour from 6 a.m. to 7 p.m. 7 days a week. This requested change would effectively close the bridge to vessels for a 4 hour period in afternoons Monday–Friday: 3 p.m. to 7 p.m.

There appears to be sufficient information to change the regulations to open the bridge 7 days a week on the hour with the exception of morning and afternoon vehicle rush hours on Monday through Friday. On Monday through Friday there is sufficient information to close the bridge to vessels for 2 hour windows in the morning and afternoon.

Additionally the bridge is required to open for emergencies according to 33 CFR 117.31.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice. Additionally those vessels with a vertical clearance requirement of less than 6.2 feet above mean high water may transit the bridge at any time, and the bridge will open in case of emergency at any time.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

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

review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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.

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).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be 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.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.500 to read as follows:

§ 117.500 Tchefuncta River

The draw of the S22 Bridge, mile 2.5, at Madisonville, LA shall open on signal from 6 p.m. to 6 a.m. The draw will open on signal on the hour from 6 a.m. to 6 p.m. except that on Monday through Friday the bridge will not open to vessels at 7 a.m. and 5 p.m. The bridge shall open anytime at the direction of the District Commander.

Dated: August 19, 2021.

R.V. Timme,

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

[FR Doc. 2021–18640 Filed 8–31–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 11

[Docket No. USCG–2020–0492]

RIN 1625–AC64

Towing Vessel Firefighting Training

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Coast Guard is proposing to revise the training requirements for national Merchant Mariner Credential endorsements as master of towing vessels (limited) or mate (pilot) of towing vessels on inland waters or Western Rivers routes. The proposal would provide mariners seeking these endorsements the option to take a modified basic firefighting course that eliminates training on equipment that is not required to be carried on towing vessels operating on inland waters or Western Rivers. Applicants who take the modified basic firefighting course would reduce their costs due to the courses being shorter and less expensive than the longer basic firefighting courses.

DATES: Comments and related material must be received by the Coast Guard on or before November 1, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0492 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

Collection of information. Submit comments on the collection of information discussed in section VI.D. of this preamble both to the Coast Guard's online docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget (OMB) using their website *www.reginfo.gov/public/do/PRAMain.* Comments sent to OIRA on the collection of information must reach OMB on or before the comment due date listed on their website.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Mr. James Cavo, Coast Guard; telephone 202–372–1205, email *James.D.Cavo@uscg.mil.*

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the

Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2020–0492 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

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

Public meeting. We do not plan to hold a public meeting, but we will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
GT Gross tonnage
GRT Gross register tons
MERPAC Merchant Marine Personnel Advisory Committee
MMC Merchant Mariner Credential
MMLD Merchant Mariner Licensing and Documentation
NAICS North American Industry Classification System
NMC National Maritime Center
NPRM Notice of proposed rulemaking
NVIC Navigation and Vessel Inspection Circular
OMB Office of Management and Budget
OPM Office of Personnel Management
§ Section
SME Subject Matter Expert
STCW Convention International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended
STCW Code Seafarer's Training, Certification and Watchkeeping Code, as Amended
TSAC Towing Safety Advisory Committee
U.S.C. United States Code

III. Basis and Purpose

The legal basis of this proposed rule is title 46 of the United States Code (U.S.C.) section 7101, which authorizes the Secretary of the Department of Homeland Security (DHS) to establish the experience and professional qualifications required for the issuance of merchant mariner credentials with officer endorsements. The DHS Secretary has delegated the rulemaking authority under 46 U.S.C. 7101 to the Coast Guard through DHS Delegation No. 0170.1(92)(e). Additionally, 14 U.S.C. 102(3) grants the Coast Guard broad authority to promulgate and enforce regulations for the promotion of safety of life and property on waters subject to the jurisdiction of the United States, which includes establishing the experience and professional qualifications required for the issuance of credentials.

The purpose of this proposed rule is to revise title 46 of the Code of Federal Regulations (CFR), § 11.201(h)(3) to provide mariners seeking a national officer endorsement as master of towing vessels (limited) [1] or mate (pilot) [2] of towing vessels on inland waters or Western Rivers routes the option to take a modified basic firefighting course instead of a basic firefighting course. The modified basic firefighting course eliminates training on equipment that is not required to be carried on towing vessels operating on inland waters or Western Rivers.[3] This proposed change would apply to applicants for national Merchant Mariner Credential (MMC) endorsements as master of towing vessels (limited) and mate (pilot) of towing vessels. Mariners seeking an endorsement as master of towing vessels would have had to complete firefighting training when they obtained one of the endorsements that are a prerequisite to qualifying for master of towing vessels. Mariners who will not be working solely on Western Rivers or inland waters other than the Great Lakes would need to complete a basic firefighting course and not the modified basic firefighting course.

IV. Background

Coast Guard regulations in 46 CFR part 11, subpart B, contain the general merchant mariner credentialing requirements for national and International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended (STCW Convention) officer endorsements. Currently, 46 CFR 11.201(h)(3)(ii) requires mariners seeking national officer endorsements as master or mate (pilot) of towing vessels on routes other than oceans [4] to complete a Coast Guard-approved firefighting course that meets the basic firefighting training requirements in Regulation VI/1 of the STCW Convention and Table A–VI/1–2 [5] of the Seafarer's Training, Certification and Watchkeeping Code, as Amended (STCW Code). This requirement was implemented by the Coast Guard through the December 24, 2013 final rule titled, ''Implementation of the Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and Changes to National Endorsements.'' (78 FR 77795). Prior to the 2013 final rule, there had not been a requirement to complete firefighting training to obtain a national endorsement for master or mate (pilot) of towing vessels in services other than oceans.[6] The Coast Guard included this requirement in 2013 to improve overall safety by requiring basic firefighting training. Basic firefighting training ensures that mariners have the skills to contain small fires before they can spread, leading to injury, death,

[1] An endorsement as a master of towing vessels (limited) authorizes service as a master (the person in command of the vessel) to work on a towing vessel in a limited local area within inland waters or Western Rivers (*e.g.,* master of towing vessels (limited) restricted to the Lower Mississippi River mile marker 775.0 to mile marker 850.0).

[2] ''Mate'' means a qualified deck officer other than the master. On towing vessels on inland waters or Western Rivers, ''pilot'' also refers to a qualified deck officer other than the master. The terms ''mate'' and ''pilot'' refer to the same position on the vessel and usage varies based on company and regional preference.

[3] Throughout this NPRM, the term modified basic firefighting course describes the basic firefighting course required by 46 CFR 11.201(h)(3) modified to eliminate training on equipment that is not required to be carried on towing vessels operating on inland waters or Western Rivers routes.

[4] For the purposes of this NPRM, we refer to ''routes other than oceans'' as near-coastal, Great Lakes, inland waters, and Western Rivers.

[5] Regulation VI/1 and Regulation VI/3 of the STCW Convention provides two levels of firefighting training, basic and advanced. The competence requirements for basic firefighting are contained in Table A–VI/1–2 of the STCW Code and the competence requirements for advanced firefighting are found in Table A–VI/3 of the STCW Code.

[6] Completion of an approved basic and advanced firefighting course for towing vessel endorsements on ocean routes has been a requirement for several decades.

property damage, or becoming a larger marine hazard.

Federal Advisory Committee Recommendations

Following the implementation of the 2013 final rule, the Coast Guard received requests from industry to review the appropriateness of the basic firefighting training requirement for towing vessel endorsements. As a result, the Coast Guard tasked two Federal Advisory Committees, the Merchant Marine Personnel Advisory Committee (MERPAC) [7] and the Towing Safety Advisory Committee (TSAC) [8] with reviewing the basic firefighting training requirements while taking into consideration the equipment carried on towing vessels operating on inland waters and Western Rivers routes. Prior to the MERPAC meeting held in March of 2017, the Coast Guard invited public comment on the issues listed in the meeting agenda, including Task Statement 95, Recommendations Regarding Training Requirements for Officer Endorsements for Master or Mate (Pilot) of Towing Vessels, except Assistance Towing and Apprentice Mate (Steersman) of Towing Vessels, in Inland Service.[9] In response, MERPAC received input from two mariners working on inland waters and Western Rivers towing vessels transporting tank barges, one as a mate (pilot) and the other as a master. Both mariners suggested that a lack of firefighting skills could directly contribute to the escalation of an emergency that could ultimately lead to injury or death of vessel crewmembers. Both mariners also suggested that mariners on inland waters and Western Rivers towing vessels need to complete approved firefighting training in order to be prepared to adequately respond to a fire on their vessel, and that time and money spent on training is an investment in safety. Each mariner also expressed that onboard training and drills were not conducted in a way that adequately prepares mariners to handle evolving emergency situations on board the vessels. They also stated that annual inspections were not adequate to ensure training and drills were being conducted as they only verify the paper records and do not verify the conduct of practical exercises in handling emergency situations.

In their recommendations to the Coast Guard, both MERPAC and TSAC commented that the basic firefighting requirements in § 11.201(h)(3)(ii) are based on equipment found on deep-sea vessels and not on vessels operating on inland waters or Western Rivers. TSAC identified equipment covered in the basic firefighting training requirements, contained in Table A–VI/1–2 of the STCW Code that is not required to be carried on towing vessels operating on inland waters or Western Rivers.[10] They noted that nowhere in 46 CFR subchapter M, ''Towing Vessels,'' part 142, ''Fire Protection,'' is there a requirement for towing vessels operating on inland waters or Western Rivers to be equipped with firefighters' outfits or self-contained breathing apparatus. Because the basic firefighting training in § 11.201(h)(3)(ii) requires mariners seeking national officer endorsements for master or mate (pilot) of towing vessels to become proficient with equipment that is not required to be carried onboard the vessels they intend to operate, MERPAC and TSAC both recommended that the content of firefighting training be modified for these mariners.

Public Input

In 2017, the Coast Guard sought comments on regulations, guidance documents, and interpretative documents that the public believed should be repealed, replaced, or modified.[11] The Coast Guard received public input from a trade association representing the towing industry regarding the regulations in § 11.201(h)(3)(ii), which requires basic firefighting training for endorsements as master or mate (pilot) of towing vessels. The trade association suggested that the training requirement is excessive, because the current towing vessel regulations in §§ 27.209 and 142.245, which require company provided firefighting instruction and drills, are adequate to address fires onboard towing vessels. The commenter recommended that the Coast Guard eliminate the basic firefighting training requirement in § 11.201(h)(3)(ii) for national officer endorsements as master or mate (pilot) of towing vessels on inland waters and Western Rivers. The commenter asserted that this would alleviate an unnecessary regulatory burden by not requiring mariners or their employers to pay for inappropriate firefighting training that does not address a demonstrated safety need.

As noted in the letter from the trade association, current towing vessel regulations in §§ 27.209 and 142.245 require company provided firefighting instruction and drills that are adequate to address fires onboard towing vessels. However, input provided by mariners in response to the Coast Guard's request for public input on MERPAC Task Statement 95, as previously discussed, provides information on their experience with company provided onboard training and drills. These mariners expressed that training and drills were not conducted in a way that adequately prepares mariners to handle evolving emergency situations on board the vessels. They also stated that annual inspections were not adequate to ensure training and drills were being conducted, as they only verify the paper records and do not verify the conduct of practical exercises in handling emergency situations.

After receiving recommendations from MERPAC and TSAC and reviewing the public comments, the Coast Guard determined that the basic firefighting training for national officer endorsement as master or mate (pilot) of towing vessels on inland waters and Western Rivers should be retained. Basic firefighting training ensures that mariners have basic firefighting skills and leads to increased maritime safety by ensuring mariners will be able to contain a small fire before it spreads throughout the vessel and becomes a threat to life, or a hazard to the environment and public safety. However, we have determined these mariners should not have to train using equipment that is not required to be carried aboard the towing vessels on which they will serve.

With this proposed rule, applicants seeking national officer endorsements as master or mate (pilot) of towing vessels on inland waters or Western Rivers would have the option to take a modified basic firefighting course that excludes training on equipment that is not required to be carried on their vessels.

This proposed change would apply to applicants for national MMC

[7] See ''Merchant Marine Personnel Advisory Committee (MERPAC) Task Statement #95, Inland Firefighting, Draft Report,'' September 14, 2016. This report is available at: *https://homeport.uscg.mil/Lists/Content/Attachments/709/Enclosure%207%20Task%20Statement%2095%20%20Inland%20Firefighting.pdf.*

[8] See ''Towing Safety Advisory Committee, Task 16–02, Recommendations Regarding Firefighting Training Requirements for Officer Endorsements for Master, Mate (Pilot) of Towing Vessels, Except Assistance Towing and Apprentice Mate (Steersman) of Towing Vessels, Inland Service Final Report,'' March 21, 2018. This report is available at: *https://homeport.uscg.mil/Lists/Content/Attachments/799/TSAC%20Task%2016-02%20Inland%20Firefighting%20Final-03212018.pdf.*

[9] See MERPAC notice of Federal Advisory Committee meeting (82 FR 9575).

[10] *Id.* at 8.

[11] *See* Coast Guard Request for Information entitled, ''Evaluation of Existing Coast Guard Regulations, Guidance Documents, Interpretative Documents, and Collections of Information'' (82 FR 26632, June 8, 2017). This document is available at: *https://www.regulations.gov/document?D=USCG-2017-0480-0001.*

endorsements as master of towing vessels (limited) and mate (pilot) of towing vessels on inland waters or Western Rivers routes. The modified basic firefighting training required by § 11.201(h)(3) would have to be approved by the Coast Guard, and training required for MMC endorsements would be approved in accordance with the requirements of §§ 10.402 and 10.403. This proposed change would provide an opportunity for course providers to develop a Coast Guard-approved modified basic firefighting course for applicants for national MMC endorsements as master of towing vessels (limited) and mate (pilot) of towing vessels on inland waters or Western Rivers routes.

This proposed rule would result in a one-time cost to course providers for developing and submitting requests for approval of a modified basic firefighting course, and a one-time cost to the Coast Guard for reviewing and approving these courses. Under existing § 10.402(d) and (f), there would be ongoing costs to both the course providers and the Coast Guard every 5 years for requests for renewal of the course approval.[12] Applicants who take modified basic firefighting courses would receive cost savings due to courses being shorter and less expensive than the longer basic firefighting courses.

V. Discussion of Proposed Rule

Proposed Amendments to § 11.201(h)

The Coast Guard proposes to amend § 11.201(h), which requires mariners seeking national officer endorsements to present a certificate of completion from a Coast Guard-approved firefighting course of instruction.

The Coast Guard proposes to amend paragraph (h)(1) by adding language stating that the firefighting certificate of completion must be ''relevant to the endorsement being sought.'' The Coast Guard proposes this change to ensure that mariners would be required to provide evidence of completing the appropriate firefighting training for the endorsement they are applying for.

We also propose to make several changes to paragraph (h)(3), which contains a list of national officer endorsements that require completion of basic firefighting training in accordance with Regulation VI/1 of the STCW Convention and Table A–VI/1–2 of the STCW Code. Currently, paragraph (h)(3)(ii) requires that ''all officer endorsements for master or mate (pilot) of towing vessels, except apprentice mate (steersman) of towing vessels, in all services except oceans'' must meet this requirement. We propose to revise paragraph (h)(3)(ii) to specify the requirements for officer endorsements for master or mate (pilot) of towing vessels, except apprentice mate (steersman) of towing vessels, for service on near-coastal waters. We are also proposing to add paragraphs (h)(3)(iii) and (h)(3)(iv) to list the specific waters covered by the phrase, ''in all services except oceans.'' Proposed paragraph (h)(3)(iii) would specify the requirements for officer endorsements for master or mate (pilot) of towing vessels, except apprentice mate (steersman) of towing vessels, for service on the Great Lakes. Proposed paragraph (h)(3)(iv) would specify the requirements for officer endorsements for master or mate (pilot) of towing vessels, except apprentice mate (steersman) of towing vessels, for service on inland waters or Western Rivers.

Mariners seeking a national officer endorsement as master or mate (pilot) of towing vessels authorized for service on near-coastal waters or on the Great Lakes would still need to complete the basic firefighting training referenced in paragraph (h)(3). A modified basic firefighting course is not appropriate for mariners operating on towing vessels on near-coastal waters or on the Great Lakes for two reasons: (1) Near-coastal waters and Great Lakes towing vessels may carry the equipment omitted from a modified towing vessel firefighting course, and (2) near-coastal waters and Great Lakes towing vessels operate farther from the shore, where firefighting assistance is not readily available as it is on inland waters or Western Rivers.

Proposed paragraph (h)(3)(iv)(A) would provide a mariner the option of completing a modified basic firefighting course for a national officer endorsement as master or mate (pilot) of towing vessels on inland waters or Western Rivers. The course would be a Coast Guard-approved modified basic firefighting course that would not include training on equipment that is not required to be carried aboard towing vessels for service on inland waters or Western Rivers. When approving modified courses, the Coast Guard intends to consider the requirements of 46 CFR subchapter M, parts 140 and 142, in determining the training to achieve proficiency in firefighting consistent with the equipment available onboard towing vessels on inland waters or Western Rivers. The Coast Guard anticipates this modified basic firefighting course would have a total of about 12 hours of classroom and practical training instead of a total of 16 hours for the basic firefighting course. The Coast Guard is interested in public input regarding whether 12 hours of classroom and practical training is adequate for the course and what subject matters could be omitted from the basic firefighting course.

Currently, national officer endorsements for towing vessels serving on the Great Lakes and inland waters are issued as one route. In proposed paragraph (h)(3)(iv)(A), language would be added to allow separation of these routes so that a mariner who completes a modified basic firefighting course could be issued an endorsement restricted to inland waters or Western Rivers.

The Coast Guard proposes paragraph (h)(3)(iv)(B) to specify that a mariner who qualifies for an endorsement by completing a modified basic firefighting course would be required to complete the basic firefighting course required in paragraph (h)(3) for an increase in scope[13] of the endorsement to add a Great Lakes or near-coastal waters route. For an increase in scope to add oceans routes, a mariner would need to complete both the basic firefighting course required in paragraph (h)(3) and the advanced firefighting course required in paragraph (h)(2).

Other Proposed Changes

The proposed rule would revise the authority citation in 46 CFR part 11 by deleting a reference to ''46 U.S.C. 503'' and inserting a reference to ''46 U.S.C. 102(3),'' which grants the Coast Guard broad authority to promulgate and enforce regulations for the promotion of safety of life and property on waters subject to the jurisdiction of the United States, including establishing the experience and professional qualifications required for the issuance of credentials.

Lastly, we would revise § 11.201(l) to allow the Coast Guard to modify training in addition to the service or examination requirements for an endorsement. The proposed change is needed in order to allow for the option of the modified basic firefighting course for a national officer endorsement as master or mate (pilot) of towing vessels on inland waters or Western Rivers routes.

[12] Approved courses are valid for 5 years from the date of Coast Guard approval. Before the course approval expires, the course provider must seek a course approval renewal if they want to continue to offer the course.

[13] *Increase in scope* means additional authority added to an existing credential, such as adding a new route or increasing the authorized horsepower or tonnage. (46 CFR 10.107).

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. A summary of the proposed rule's impacts are presented below and a more detailed discussion on the estimated cost savings of this rule follows.

As discussed earlier in the preamble, this proposed rule would provide applicants for an MMC endorsement as master of towing vessels (limited) or mate (pilot) of towing vessels on inland waters or Western Rivers routes the option to take a modified basic firefighting course instead of the basic firefighting course. Specifically, this firefighting course would eliminate training on firefighting equipment that is not required to be carried on towing vessels operating on inland waters or Western Rivers routes. Because the modified firefighting course is expected to be shorter in duration and lower in cost than a basic firefighting course, we anticipate eligible mariners will take the modified course. The Coast Guard requests comments on this assumption.

We estimate that this proposed rule would result in a 10-year net cost savings of $835,225, or $118,917 annualized, in 2020 dollars, discounted at 7 percent. The annual cost savings for mariners is approximately $123,598 (in undiscounted 2020 dollars) from the second year onward. The savings would stem from reduced hours spent in training and reduced tuition for firefighting training necessary for an endorsement as master or mate (pilot) of towing vessels on inland waters or Western Rivers routes.[14]

We estimate that this proposed rule would result in a one-time cost to course providers to develop a modified basic firefighting course and submit the course to the Coast Guard for approval. There would also be a one-time cost to the Government resulting from Coast Guard employees reviewing and approving these new courses. Under existing 46 CFR 10.402(d) and (f), there will be ongoing costs to both the course providers and the government every 5 years to renew the modified basic firefighting course. We anticipate course providers that offer the modified basic firefighting course to also continue to provide a basic firefighting course because these courses would serve additional markets. We request comment on whether course providers that plan to offer a modified basic firefighting course would continue to offer a basic firefighting course.

In the first year, we estimate the costs (in 2020 dollars) to industry would be $8,444 and the cost to the Government would be $15,988. These costs would not recur after the first year, but there would be ongoing costs for renewal of course approvals every 5 years resulting in costs to industry of $1,044 and costs to the Government of $14,029. The 10-year net cost savings would be $835,225, or $118,917 annualized, in 2020 dollars, discounted at 7 percent. We do not estimate that there would be any reduction in safety or benefits between the current basic firefighting training and a modified firefighting training, as the modified training would be better suited for the equipment common to the relevant towing vessels. Table 1 summarizes these results. In the following subsections, we describe the changes, the affected population, the potential costs, the potential cost savings, and the qualitative benefits in further detail.

TABLE 1—SUMMARY OF THE NPRM

Category	Summary
Applicability	Update 46 CFR part 11 in order to permit a modified basic firefighting course for national endorsements as master and mate (pilot) of towing vessels on inland waters or Western Rivers routes.
Affected Population	An estimated 23 course providers and 381 applicants for master or mate (pilot) towing vessels would take a modified firefighting course in order to qualify for their endorsement. This is a one-time training requirement for mariners.
Costs to Industry ($, 7% discount rate)	One-time Costs: $8,444; Recurring Costs: $1,044 every 5 years.
Costs to the Government ($, 7% discount rate)	One-time Costs: $15,988; Recurring Costs: $14,029 every 5 years.
Cost Savings ($, 7% discount rate)	10-year: $868,103. Annualized: $123,598.
Qualitative Benefits	Firefighting courses that are more tailored to the credential endorsement.

Description of Regulatory Changes

This proposed rule would result in two changes that would have potential costs and potential cost savings. First, course providers would have the opportunity to develop a modified firefighting course and submit the course to the Coast Guard for approval. Consequently, this proposed rule would initially result in costs to course providers for developing the course, and to the government for reviewing and approving the modified basic firefighting courses. Second, applicants would likely experience cost savings by taking shorter and less costly modified basic firefighting courses rather than the longer basic firefighting courses. The Coast Guard requests comments on all aspects of this analysis and in particular

[14] Operating on the Great Lakes is treated separately from operating on inland waters or Western Rivers. Routes on the Great Lakes would require the same firefighting training as near-coastal routes.

how much savings this proposed rule could generate for mariners.

Table 2 lists and describes the changes we propose to 46 CFR 11.201. The proposed changes contain costs and cost savings, as described above. Text that has been added is underlined, and text that has been deleted is stricken through.

TABLE 2—SUMMARY OF PROPOSED CHANGES TO 46 CFR 11.201 AND PROPOSED IMPACTS

Section	Proposed changes in regulatory text	Description of change	Impact
11.201(h)(1)	Applicants for an original officer endorsement in the following categories must present a certificate of completion from a firefighting course of instruction *relevant to the endorsement being sought* that has been approved by the Coast Guard. The firefighting course must have been completed within the past 5 years, or if it was completed more than 5 years before the date of application, the applicant must provide evidence of maintaining the standard of competence in accordance with the firefighting requirements for the credential sought.	This editorial change would make it clear that the required firefighting training should be based on the operating route of the endorsement sought.	This editorial change would not have any substantive impact and therefore would not impose any costs or cost savings.
11.201(h)(2)(i)	*All n*ational officer endorsements as master or mate on seagoing vessels of 200 GRT or more.	This editorial change would make the text easier to read and makes it consistent with other lines in this section.	This editorial change would not have any substantive impact and therefore would not impose any costs or cost savings.
11.201(h)(3)(i)	*All o*fficer endorsements as master on vessels of less than 500 GT in ocean service.	This editorial change would make the text easier to read and make it consistent with other lines in this section.	This editorial change would not have any substantive impact and therefore would not impose any costs or cost savings.
11.201(h)(3)(ii)	All officer endorsements for master or mate (pilot) of towing vessels *for service on near-coastal waters,* except apprentice mate (steersman) of towing vessels.	This editorial change would make it clear that applicants for master or mate (pilot) of towing vessel endorsements on near-coastal waters must take a basic firefighting course.	This editorial change would not have any substantive impact because these applicants were already required to take a basic firefighting course.
11.201(h)(3)(iii)	*(iii) All officer endorsements for master or mate (pilot) of towing vessels for service on Great Lakes, except apprentice mate (steersman) of towing vessels.*	This editorial change would make it clear that applicants for master or mate (pilot) of towing vessel endorsements on Great Lakes must take a basic firefighting course.	This editorial change would not have any substantive impact because these applicants were already required to take a basic firefighting course.
11.201(h)(3)(iv)	*(iv) All officer endorsements as master or mate (pilot) of towing vessels for service on inland waters or Western Rivers, except apprentice mate (steersman) of towing vessels.*	This editorial change would make it clear that applicants for master or mate (pilot) of towing vessel endorsements on inland waters or Western Rivers routes must take a basic firefighting course.	This editorial change would not have any substantive impact because these applicants were already required to take a basic firefighting course.
11.201(h)(3)(iv)(A)	*(A) The Coast Guard will accept a Coast Guard approved modified basic firefighting course, which is the basic firefighting training described in paragraph (h)(3) of this section modified to only cover the equipment, fire prevention procedures, and firefighting operations required on towing vessels on inland waters or Western Rivers routes required in 46 CFR parts 140 and 142. A mariner who completes this modified course will be issued an endorsement that is restricted to inland waters or Western Rivers.*	These changes would permit master or mate (pilot) applicants operating exclusively on inland waters or Western Rivers routes, other than the Great Lakes, to take a modified basic inland waters and Western Rivers towing vessel firefighting course as opposed to basic firefighting course when they apply for endorsements on inland waters or Western Rivers.	This would lead to costs and costs savings. Costs result from course providers developing a modified firefighting course and submitting the course to the Coast Guard for approval, which would cost an estimated $8,444 to the industry and an estimated $15,988 to the government for review and approval of the course in the first year. Course providers would need to seek a renewal of their course approval in year 6, resulting in $1,044 in costs to course providers and $14,029 in costs to the Coast Guard. Estimated cost savings would come from applicants for towing vessel master or mate (pilot) endorsements spending fewer hours in training and less money on tuition, resulting in an estimated $123,598 in annual cost savings discounted at 7% in 2020 dollars.

TABLE 2—SUMMARY OF PROPOSED CHANGES TO 46 CFR 11.201 AND PROPOSED IMPACTS—Continued

Section	Proposed changes in regulatory text	Description of change	Impact
11.201(h)(3)(iv)(B)	*(B) To increase in scope to Great Lakes, near-coastal or oceans, the applicant will be required to complete the firefighting course appropriate to the route sought.*	This proposed change is a rewording of existing § 11.201(h)(4) to make the text of § 11.201(h) easier to read.	While this new clause is a restatement of the requirements currently existing in § 11.201(h)(4), there could be a cost impact because mariners could apply for an endorsement for inland waters or Western Rivers with a modified basic inland waters and Western Rivers towing vessel firefighting course approved under § 11.201(h)(3)(iv)(A), and later request an increase in scope requiring the mariner to complete an additional basic firefighting course. Because the mariner would need to take the basic firefighting course, they would spend approximately $553.38 on the tuition for the course. Additionally, they would spend 16 hours taking the course, and the travel time to get to and from the course. However, the Coast Guard cannot forecast who would seek an increase in scope or how frequently this would occur.
11.201(l)	(l) *Restrictions.* The Coast Guard may modify the service, *training*, and examination requirements in this part to satisfy the unique qualification requirements of an applicant or distinct group of mariners. The Coast Guard may also lower the age requirement for OUPV applicants. The authority granted by an officer endorsement will be restricted to reflect any modifications made under the authority of this paragraph.	The addition of the word ''training'' in this paragraph would allow the Coast Guard to modify the training requirements based on the unique qualification requirements of a group of mariners, which we have not previously done.	Without the addition of the word ''training'', the Coast Guard would not be able to modify training requirements for specific groups of mariners based on their unique qualifications and the cost savings proposed here would not be attainable. The addition also permits the Coast Guard, in the future, to modify training requirements for other specific groups of mariners. We do not intend to modify other training requirements at this time. As such, we do not estimate any costs or cost savings from this proposed change.

Affected Population

This proposed rule would have two affected populations: (1) Course providers who would offer a modified basic firefighting course; and (2) applicants for MMC endorsements as a master of towing vessels (limited) or mate (pilot) of towing vessels on inland waters or Western Rivers routes. We first estimated the number of course providers who may submit a modified basic firefighting course to the Coast Guard for approval, and then estimated the number of applicants who may apply for an endorsement as master of towing vessels (limited) or mate (pilot) of towing vessels operating on inland waters or Western Rivers.

The Coast Guard does not know how many course providers would request approval for a modified basic firefighting course. However, since this course would be a modified form of the basic firefighting course, we assume that only course providers who already teach a firefighting course would take advantage of the opportunity provided by this proposal. Currently, there are 91 course providers approved to offer a basic firefighting course.[15] Historically, the number of course providers does not significantly change on an annual basis. Therefore, we expect that the course providers who would offer a modified firefighting course would be from these 91 course providers.

A subject matter expert (SME) from the Coast Guard's Office of Merchant Mariner Credentialing with extensive experience involving regular contact with maritime course providers and towing vessel operating companies reviewed publicly available materials from these 91 providers and rated each on how likely they would be to request approval of a modified basic firefighting course. Our SME considered the types of courses offered by each provider, their facilities, geographic location(s), and the segment of the industry their clientele work in. The SME rated each course provider as either 0 percent, 25 percent, 50 percent, 75 percent, or 100 percent likely to request approval of a modified basic firefighting course. Across the 91 course providers with an approved basic firefighting course, we rated 56 of them as having no likelihood of requesting approval to offer a modified firefighting course because our SME's review indicated that they are unlikely to serve the inland towing population. Our SME estimates that 35 providers would request course approval of a modified firefighting course. Among these 35 providers, our SME estimates that the average likelihood to request approval to offer a modified basic firefighting course would be 65 percent. Multiplying 35 by 65 percent yields 23, rounded, or our estimate for the number of training providers likely to offer a modified firefighting course.

The Coast Guard requests comments on our estimate of 23 course providers who may request Coast Guard approval of a modified basic firefighting course or any additional data that we could use to inform and refine our estimate.

Applicants for a national officer endorsement as master of towing vessels (limited) or mate (pilot) of towing vessels on inland water or Western Rivers who take a modified course would realize a cost savings by taking a shorter, less expensive firefighting course. As discussed in section IV of this preamble, the Coast Guard issued a final rule in 2013 requiring mariners seeking national officer endorsements as master or mate (pilot) of towing vessels on routes other than oceans to complete a Coast Guard-approved basic

[15] *https://www.dco.uscg.mil/Portals/9/NMC/pdfs/courses/courses.pdf* lists all courses approved by the Coast Guard. There are 91 course providers approved to offer basic firefighting courses.

firefighting course.[16] Prior to the 2013 final rule, only masters and mates (pilots) of towing vessels serving on an ocean route were required to complete firefighting training.

The 2013 final rule established grandfathering provisions for which the Coast Guard provided guidance in Navigation and Vessel Inspection Circular (NVIC) 03–16, titled ''Guidelines for Credentialing Officers of Towing Vessels.'' [17] As described in Enclosure 10 of NVIC 03–16, the Coast Guard grandfathered in mariners applying for an original MMC endorsed as master or mate (pilot) of towing vessels on non-oceans routes who began sea service prior to March 24, 2014 and submitted an application prior to March 24, 2019. The grandfathering provisions established that applicants for original master or mate (pilot) endorsements on non-oceans routes prior to March 24, 2019 were not required to take a firefighting course.[18]

Mariners raising the grade of their MMC endorsement from mate (pilot) to master of towing vessels were also grandfathered in under NVIC 03–16, and were not required to take a firefighting course. As a result of the grandfathering provisions, this proposal would be applicable to new applicants for master of towing vessels (limited) or mate (pilot) of towing vessels endorsements who choose to take a modified basic firefighting course.

In order to qualify for an MMC endorsement as master of towing vessels, other than master of towing vessels (limited), an applicant must have prior sea service experience as either a mate (pilot) of towing vessels or a master of vessels greater than 200 gross register tons (GRT). In order to hold the endorsement authorizing service in either of these capacities would have required the applicant to either take a firefighting course or be grandfathered in under NVIC 03–16. As a result, this proposed rule does not impact applicants for an endorsement as master of towing vessels other than master of towing vessels (limited).

Masters of towing vessels (limited) do not require prior sea service as a master or mate of vessels greater than 200 GRT. Therefore, this proposed rule would affect applicants for endorsements of inland master of towing vessels (limited) if they do not have a prior endorsement as a mate (pilot) that required a firefighting course. Two towing vessel endorsement applicant groups are thus affected by this rule: (1) Mate (pilot) of towing vessels, and (2) master of towing vessels (limited) with no prior endorsement as a mate (pilot).

The Coast Guard's National Maritime Center (NMC) issues MMCs to applicants who meet the regulatory requirements for endorsements described in 46 CFR parts 11, 12, and 13. Applicants for endorsements as master and mate (pilot) of towing vessels may be endorsed to operate on oceans, near coastal, Great Lakes and inland waters, or Western Rivers routes. The Merchant Mariner Licensing and Documentation (MMLD) database is used by the NMC to issue MMCs and maintain records of U.S. merchant mariners. Data was obtained from the MMLD, for the period between 2015–2019, on each issuance of an original master or mate (pilot) of towing vessel endorsement, including when the endorsement was issued, and the authorized routes of operation.

We excluded applicants for Great Lakes, near-coastal, or oceans routes, because applicants for those endorsements on those routes are required to complete basic firefighting and would not be affected by the rule. Currently, Great Lakes and inland waters are issued as one route for towing vessel endorsements. With this proposed rule, language would be added to allow the separation of these two routes so that a mariner who completes the modified basic firefighting course could be issued an endorsement valid for inland waters or Western Rivers. Because towing vessel endorsements are currently issued for Great Lakes and inland routes, the Coast Guard cannot directly estimate from the MMLD data the number of masters and mate (pilots) of towing vessels operating exclusively on the inland waters. However, we can estimate the number of towing vessels that operate on these waters based on data from towing vessel inspection records.

As of October 2019, 1,265 towing vessels have been inspected, out of an estimated 5,770 46 CFR subchapter M vessels.[19] When vessels are inspected, they must declare their operating route, which may include the Great Lakes, inland waters and Western Rivers.

In order to isolate the vessels operating on the Great Lakes, we first reviewed the number of vessels that operate on the Great Lakes, inland waters or Western Rivers, and then examined the number of vessels that list the Great Lakes as at least one of their routes. Specifically, out of the 1,265 total towing vessels inspected under 46 CFR subchapter M, 900 are recorded as one or more of the following routes: Great Lakes, inland waters, or Western Rivers. Five percent, or 45 of the 900 vessels, include the Great Lakes as one of their listed routes and, therefore, would require basic firefighting training, since they may operate on the Great Lakes. The remaining 95 percent, or 855 vessels, do not include the Great Lakes as one of their listed routes and, therefore, we assume mariners serving on these vessels are eligible to take the modified basic firefighting course.[20]

Table 3 shows the number of endorsements issued from 2016–2020 for master of towing vessels (limited) and mate (pilot) of towing vessels, respectively, endorsed to operate on the Great Lakes, inland waters, or Western Rivers routes. While we report the number of endorsements issued in 2020 in the table below, we intentionally exclude 2020 when calculating the average number of master (limited) and mate (pilot) towing vessel endorsements each year because of the exceptional impact the COVID–19 pandemic on all facets of the U.S. economy. We therefore do not believe the number of endorsements issued in 2020 represents a typical year, and that many individuals that might ordinarily have pursued an endorsement did not because of the general slowdown in business associated with the pandemic. On average between 2016 and 2019, the Coast Guard has issued 13 master of towing vessels (limited) and 450 mate (pilot) of towing vessels endorsements per year, for a total of 463 new endorsements per year on Great Lakes, inland waters, and/or Western Rivers routes.

[16] See 78 FR 77796.

[17] Current Coast Guard NVICs can be found at: *https://www.dco.uscg.mil/Our-Organization/NVIC/Year/2010/*. The NVIC was updated in September 2020 and the discussion about grandfathering was removed because the grandfathering period has expired. The original NVIC was published June 23, 2016 and can be found here: *https://beta.regulations.gov/document/USCG-2016-0611-0001*.

[18] Coast Guard SMEs estimate that nearly all master or mate (pilot) applicants would have begun sea service prior to March 24, 2014.

[19] Data from the Coast Guard's Marine Information for Safety and Law Enforcement database from October, 2019. 46 CFR subchapter M requires all towing vessels greater than 26 feet and those that transport hazardous materials to be inspected. The Coast Guard has not fully implemented the 46 CFR subchapter M requirements, which is why not all affected towing vessels have been inspected.

[20] 45 divided by 900 equals .05 or 5 percent of inspected towing vessels listing an inland waters, Western Rivers, or Great Lakes route operate on the Great Lakes.

TABLE 3—ESTIMATED NUMBER OF NEW GREAT LAKES, WESTERN RIVERS, AND/OR INLAND WATERS MATE (PILOT) AND MASTERS (LIMITED) ENDORSEMENTS ISSUED PER YEAR *

Year	Mate (pilot) applicants	Masters (limited) with no mate (pilot) endorsement
2016	615	19
2017	512	17
2018	372	10
2019	300	6
2020	128	2
Average	450	13

* Numbers may not add due to rounding, and 2020 numbers are not included in the average.

As seen in Table 3, the number of individuals applying for an endorsement as mate (pilot) of towing vessels has been declining. The Coast Guard does not know specifically why fewer individuals have applied for an endorsement as mate (pilot) of towing vessels. It may be associated with grandfathering provisions provided in the 2013 final rule, which established grandfathering provisions for master and mate (pilots) of towing vessels. The 2013 final rule may have caused applicants for master of towing vessels (limited) and mate (pilot) of towing vessels endorsements to seek an MMC earlier than they may have otherwise in order to be grandfathered under the existing regulations. Additionally, the introduction of 46 CFR subchapter M in 2016 may have led to a contraction in the industry. In either case, the Coast Guard believes carrying forward the current decline has been more severe than fundamentals would suggest, so we expect the number of applicants to level off. The Coast Guard therefore utilizes the four-year average of the number of new towing vessel mate applicants, 450, and the four-year average of the number of limited masters, 13, to estimate that 463 mariners that apply to the Coast Guard to be endorsed to operate on the Great Lakes, Western rivers, or inland waters each year. We request comment on this methodology and how many applicants might seek an inland towing mate or limited master endorsement in the coming years.

Applying the percentage of vessels that do not operate on the Great Lakes (95 percent) to the estimated 463 annual new endorsements yields an estimated 440 new endorsements as mate (pilot) of towing vessels or master of towing vessels (limited) operating in inland waters or Western Rivers per year, rounded.[21]

[21] 463 multiplied by 0.95 equals 440, rounded.

Costs

The modified basic firefighting course for towing vessels on inland waters and Western Rivers would be a modified version of the basic firefighting course. Mariners are required to take a firefighting course, and this proposed rule would permit some mariners to take the modified basic firefighting course in lieu of the longer basic firefighting course. As such, this rule presents no additional costs to mariners who will continue to operate on inland waters and Western Rivers.

Before mariners could save hours spent in training and the tuition for a basic firefighting course by taking a modified basic firefighting course, course providers would first need to obtain Coast Guard approval for the modified basic firefighting course. Course providers submit course approval requests to the NMC in accordance with the requirements of 46 CFR part 10, subpart D. The NMC would then evaluate the course to ensure the content demonstrates comprehensive coverage of the firefighting knowledge and competency requirements of the training. If the course submission does not require edits or revisions, and is approved as submitted, the Coast Guard estimates that it would take a training specialist at a course provider 6 hours to develop and submit a request for course approval of a modified basic firefighting course.[22] We used the Bureau of Labor Statistics' (BLS) *Occupational Employment Statistics National-Industry-Specific Occupational Employment and Wage Estimates for May 2020* ''Training and Development Specialists'' category to estimate the wages for the employees who would prepare and submit the course for Coast Guard approval, as these employees ''design and conduct training and development programs to improve individual and organization performance.'' [23] The BLS estimates a training and development specialist's mean hourly wages at $32.43. We then applied a load factor to account for non-wage compensation and benefits, resulting in a fully loaded hourly wage of $45.40.[24]

If the submission does not require a request for additional information to supplement the course approval request, the Coast Guard estimates that a Federal government employee, at a grade level of a GS–7, would take 1 hour to process the receipt of the course approval submission. One Federal employee, at a grade level of a GS–13, would spend 4 hours evaluating the course approval request; another Federal employee, at a grade level of GS–13, would spend 0.5 hours reviewing the course; and a fourth Federal employee, also at a grade level of GS–13, would spend 0.5 hours conducting a final review of the course. In total, the Coast Guard would spend 1 hour of GS–7 time and 5 hours of GS–13 time per course approval request, if the submission does not require a

[22] Information provided by an SME from the Coast Guard's NMC. We request comment on how long it would take to develop and submit the course approvals, and what wages those who develop the course approval would be paid.

[23] *https://www.bls.gov/oes/2020/may/oes131151.htm.*

[24] Data on the employer cost of compensation was sourced from the ''Employer Costs for Employee Compensation'' one screen data search. We searched for both the total compensation and the wages and salaries of private industry workers in the ''Educational Services Industry'' yielding BLS series CMU2016100000000D for total compensation and series CMU2026100000000D for wages. To derive the cost of compensation per hour worked, the Coast Guard first took the average of the four quarters of total compensation or $47.34 and the average of the four quarters of wages and salaries of $33.92, rounded. We then divided the total compensation amount of $47.34 by the wage and salary amount of $33.92 to obtain the load factor of about 1.4 for ''Educational Services'' occupations, rounded (47.34 divided by 33.92 equals 1.4, rounded). To load the wage, the Coast Guard multiplied the estimated hourly wage of $32.43 by the loaded wage factor of 1.4 yielding $45.40, rounded, which accounts for the total cost of compensation per hour of work (32.43 multiplied by 1.4 equals 45.40).

request for additional information to supplement the course approval request.

The impacted employees work in the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA area. The Office of Personnel Management (OPM) lists the hourly pay for Federal employees in the Washington, DC area according to the Washington, DC General Schedule (GS) pay tables.[25] We estimate that the impacted employees would, on average, be at a step 5 pay, because that is the midpoint of the pay band. OPM records the hourly pay of GS–7, step 5 employees as $26.43, and records the hourly pay of GS–13, step 5 employees as $55.75. These wages are not fully loaded, meaning they do not account for associated benefits.

To account for the value of benefits to government employees, we first calculate the share of total compensation of Federal employees accounted for by wages. The Congressional Budget Office (2017) reports total compensation to Federal employees as $64.80 per hour and wages as $38.30.[26] This implies that total compensation is 1.69 times the average wages.[27] We can, therefore, calculate the fully loaded wage rate for the GS–7 and GS–13 hourly wage rates by multiplying by 1.69, yielding $44.67 and $94.22, respectively.

All 23 course providers that may offer a modified basic firefighting course must submit a course approval request to the Coast Guard for evaluation. We estimate the costs of this initial submission to industry and the Coast Guard in table 4.

TABLE 4—COSTS DUE TO INITIAL COURSE APPROVAL APPLICATIONS

	Employee type	Fully loaded wage	Number of course providers	Hours	Total cost
		[A]	[B]	[C]	[A * B * C]
Industry Cost	Training Specialist	$45.4	23	6	$6,265
Government Cost	GS–7	44.67	23	1	1,027
Government Cost	GS–13	94.22	23	5	10,835
Total Government Cost					11,862
Total Cost					$18,127

It is common for course providers to submit insufficient supporting information with a course approval request to the Coast Guard. When this occurs, the Coast Guard will request additional information from the course provider. We reviewed new course approval submissions over 3 years (2018–2020) to determine how likely it is for a course provider to submit a course approval request without the Coast Guard requesting additional information. We report the total number of course approval applications received and the number of course approval applications that require additional information in table 5. We estimate that course providers include insufficient information in their application packet 37 percent of the time.

TABLE 5—COURSE APPROVAL REQUESTS RECEIVED WITH INSUFFICIENT INFORMATION

Year	Course approval requests received	Course approval requests received with insufficient information	Percent of course approval requests with insufficient information
2018	944	362	38
2019	768	335	44
2020	699	199	28
Total	2,411	896	37

When course providers submit a course approval request with insufficient information, the Coast Guard would request that the course providers revise their course request and resubmit. The Coast Guard estimates that both the course provider and the Coast Guard would spend an equal number of hours on each resubmittal as they would on the initial submission. In other words, the course provider would spend 6 hours on an initial approval request and 6 hours on the resubmittal, for 12 hours total, and the Coast Guard would spend 1 GS–7 hour and 5 GS–13 hours on the initial request, and 1 GS–7 hour and 5 GS–13 hours on the resubmittal, for 2 GS–7 hours and 10 GS–13 hours total.[28] We request comment on how long it would take to develop and submit a course approval request and the wages that would be paid to those who develop the course materials and submit the approval request to the Coast Guard.

Thus, the Coast Guard estimates that 37 percent of the course providers, or 8 course providers,[29] would submit the request for course approval with insufficient information, requiring a second submission taking 6 hours to prepare for submission to the Coast Guard. Similarly, the Federal government would spend an additional 1 hour at grade level GS–7 and 5 hours

[25] *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/20Tables/html/DCB_h.aspx.*

[26] Congressional Budget Office (2017), ''Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015,'' *https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf.*

[27] $64.80 divided by 38.30.

[28] Information provided by an SME from the Coast Guard's NMC.

[29] 23 * 37% = 8, rounded.

at grade level GS–13 to review the information resubmitted for the course approval request. We estimate the costs of modified firefighting course approvals resubmissions in Table 6.

TABLE 6—SUMMARY OF RESUBMISSION COSTS FOR MODIFIED FIREFIGHTING TRAINING COURSES

	Employee type	Hourly burdened wage	Number of course providers	Average hours	Total cost [30]
		[A]	[B]	[C]	[A * B * C]
Industry Cost	Training Specialist	$45.40	8	6	$2,179
Government Cost	GS–7	44.67	8	1	357
Government Cost	GS–13	94.22	8	5	3,769
Total Government Cost					4,126
Total Cost					$6,305

We estimate the total costs to course providers from initial applications and any resubmissions to be approximately $8,444 ($6,265 + $2,179), and the total costs to government to be approximately $15,988 ($11,862 + $4,126). Together, we estimate the costs of evaluating approval requests, for the modified basic firefighting courses to be $8,444 + $15,988, or $24,432. This cost would occur during the first year of implementation.

As discussed above, course providers would need to seek a renewal every five years if they wish to continue to offer the course. This course renewal would include a submission similar to that initially provided to and approved by the Coast Guard. Since the Coast Guard would have previously reviewed and approved the course submission, the Coast Guard does not estimate that it would take course providers nearly as long to prepare all materials for the Coast Guard. Specifically, we estimate that the same training specialist who spent 6 hours on an initial course approval request would only spend 1 hour on a renewal request, and the renewal request would be submitted without any revisions.[31] We further estimate that all 23 providers would submit a request for renewal of a course approval because we do not expect turnover in course providers based on a review of previous course approval renewals. The Coast Guard, however, would spend the same amount of time reviewing the renewal requests as it spent with the initial approval request to ensure that the course still meets regulatory requirements, or 1 hour of GS–7 time and 6 hours of GS–13 time.

These costs would occur 5 years after each approval, or in year 6. We estimate the course renewal costs in Table 7. The 10-year distribution of undiscounted and discounted costs from both the initial and renewal requests are recorded in Table 8.

TABLE 7—COURSE RENEWAL SUBMISSION COST

	Employee type	Burdened wage	Number of course providers	Hours	Total cost
		[A]	[B]	[C]	[A * B * C]
Industry Cost	Training Specialist	$45.40	23	1	$1,044
Government Cost	GS–7	44.67	23	1	$1,027
Government Cost	GS–13	94.22	23	6	$13,002
Total Government Cost					$14,029
Total Cost					$15,073

TABLE 8—DISCOUNTED COSTS OVER A 10-YEAR PERIOD OF ANALYSIS IN 2020 DOLLARS DISCOUNTED AT 7% AND 3%

Year	Undiscounted costs	Discounted costs	
		7%	3%
1	$24,432	$22,834	$23,721
2	0	0	0
3	0	0	0
4	0	0	0
5	0	0	0
6	15,073	10,044	12,623
7	0	0	0
8	0	0	0
9	0	0	0

[30] Numbers may not add due to rounding.

[31] According to SMEs from the Coast Guard's Office of Merchant Mariner Credentialing.

TABLE 8—DISCOUNTED COSTS OVER A 10-YEAR PERIOD OF ANALYSIS IN 2020 DOLLARS DISCOUNTED AT 7% AND 3%—Continued

Year	Undiscounted costs	Discounted costs	
		7%	3%
10	0	0	0
Total	39,505	32,878	36,344
Annualized		4,681	4,261

Benefits

The primary benefits of the rule come from the cost savings to mariners in terms of reduced time spent in training and reduced tuition. The modified course content would eliminate the requirement for training using certain firefighting equipment that is not required to be carried on towing vessels operating on inland waters or Western Rivers. Acquiring and maintaining this equipment contributes to the cost of the basic firefighting course. Therefore, the modified basic firefighting course would be shorter, and likely less expensive, than the basic firefighting course. Thus, a mariner would likely prefer to take a modified basic firefighting course instead of a basic firefighting course. Some mariners may prefer to take the basic firefighting course if they are considering the possibility of working on the Great Lakes, near coastal waters, or ocean routes in the future. However, we do not have data to forecast how many of these mariners might opt, in the future, to take the longer basic firefighting course when they apply for the endorsement as master (limited) of towing vessels or mate (pilot) of towing vessels for inland waters or Western Rivers. Because the modified basic firefighting course will be shorter, less expensive, and located in the same area as the basic firefighting course, and because only a small portion of mariners operate in the Great Lakes (5 percent) and we already account for them, we assume all mariners eligible to take a modified basic firefighting course will do so. We request comment on our assessment that mariners would prefer a modified firefighting course is correct and if any mariners would prefer to take the longer basic firefighting course.

The basic firefighting training costs $553.38, on average, and lasts 16 hours.[32] The Coast Guard estimates that the modified basic firefighting courses will be 4 hours shorter than the current 16-hour basic firefighting course. The modified basic firefighting course would likely be less expensive than the basic firefighting course, because it would require fewer resources to host, result in less wear and tear on the facility, and require fewer hours of an instructor's time.

In the affected population section, we estimate that 440 individuals would apply for an MMC endorsement as a mate (pilot) of towing vessels or master of towing vessels (limited) on inland waters or Western Rivers each year, and would be eligible to take the modified basic firefighting course in lieu of the basic firefighting course. Therefore, these applicants would save 4 hours of their time and the difference in costs between the basic firefighting tuition and the modified basic firefighting course tuition.

The Coast Guard estimates that these 440 applicants would be mariners who hold an MMC endorsement as apprentice mate (steersman), which is a position between ordinary seaman and mate. The BLS does not have a labor category for apprentice mate (steersman); however, the BLS *Occupational Employment Statistics National-Industry-Specific Occupational Employment and Wage Estimates for May 2020* lists the wages for both ''Captains, Mates, and Pilots of Water Vessels'' and ''Sailors and Marine Oilers.''[33] Because an apprentice mate (steersman) is a position between ordinary seaman and mates, we derive their wages by taking a weighted average wage of both ''Captains, Mates, and Pilots of Water Vessels'' and ''Sailors and Marine Oilers'' operating in the ''Inland Water Transportation'' industry. We take a weighted average because the duties and responsibilities of an apprentice mate (steersman) are more similar to that of sailors than they are to mates. Consequently, we rate the sailor's wage more heavily than we weight the mate's wage. Specifically, we estimate the wage of an apprentice mate (steersman) by taking one-third of the average mate's wage ($42.39) and two-thirds of the average sailor's wage ($24.01), yielding $30.14 per hour, rounded.[34] We then apply a load factor to account for non-wage compensation and benefits, which results in a fully loaded wage of $46.42.[35] Therefore, we estimate the annual undiscounted cost savings for taking shorter courses to be about $81,699 [(440 endorsements × 4 (the number of hours saved) × $46.42 (the burdened wage)].

Applicants for MMC endorsements as mate (pilot) of towing vessels and master of towing vessel (limited) would also save the difference between the tuition for the less expensive, modified basic firefighting course and the basic firefighting course. If we use the tuition for the basic firefighting course, $553.38, as the cost of 16 hours of firefighting instruction, then 12 hours of instruction would be $415.04,

[32] Data on the price of firefighting training was only publicly available for 21 of the 91 approved course providers. Some of the course providers are private companies that train their own employees, some are in schools like the U.S. Naval Academy that teach basic firefighting to their own cadets but do not separate out the training, and others do not appear to offer basic firefighting training despite having an approval permitting them to teach it.

[33] Master and mates rates were accessed on April 30, 2021 from: *https://www.bls.gov/oes/2020/may/oes535021.htm#ind.* Sailor and Oiler rates were accessed on April 30, 2021 from: *https://www.bls.gov/oes/2020/may/oes535011.htm.* For both rates the hourly mean wage for the ''Inland Water Transportation'' industry was used as this best approximates the wages of towing vessel masters, mates, and deckhands.

[34] [($42.39 divided by 3) plus ($24.01 multiplied by ⅔)] which equals $30.14.

[35] Data *on the employer cost of compensation was sourced from the ''Employer Costs for Employee Compensation'' one screen data search. We searched for both the total compensation and the wages and salaries of private industry workers in the ''Transportation and Warehousing Industry'' yielding BLS series CMU2014300000000D for total compensation and series CMU2024300000000D for wages.* To derive the cost of compensation per hour worked, the Coast Guard first took the average of the four quarters of total compensation or $40.84 and the average of the four quarters of wages and salaries of $26.56, rounded. We then divided the total compensation amount of $40.84 by the wage and salary amount of $26.56 to obtain the load factor of about 1.54 for ''Transportation and Warehousing'' occupations, rounded ($40.84 divided by $26.56 equals 1.54, rounded). To load the wage, the Coast Guard multiplied the estimated hourly wage of $30.14 by the loaded wage factor of 1.54 yielding $46.42, rounded, which accounts for the total cost of compensation per hour of work ($30.14 multiplied by 1.54 equals $46.42).

rounded.[36] We request public comment on whether or not the tuition would decrease proportionally to the reduction in the number of hours of instruction. The cost savings for the modified basic firefighting course due to reduced tuition would be $138.34 or $60,870 total, rounded.[37] In total, applicants for mate (pilot) of towing vessels and master of towing vessels (limited) on inland waters or Western Rivers routes would save $142,569 per year—$81,699 from reduced hours spent in courses and $60,870 from reduced tuition fees.[38]

Because courses must be Coast Guard-approved before they can be offered to mariners, and developing a new course and obtaining approval from the Coast Guard can be a lengthy process, we assume that a modified firefighting course would not be available within the first year. We show the 10-year distribution of cost savings in table 9.

TABLE 9—DISCOUNTED COST SAVINGS OVER A 10-YEAR PERIOD OF ANALYSIS IN 2020 DOLLARS AT 7% AND 3%

Year	Undiscounted cost savings	Discounted cost savings	
		7%	3%
1	$0	$0	$0
2	142,569	124,525	134,385
3	142,569	116,379	130,471
4	142,569	108,765	126,671
5	142,569	101,650	122,981
6	142,569	95,000	119,399
7	142,569	88,785	115,922
8	142,569	82,976	112,545
9	142,569	77,548	109,267
10	142,569	72,475	106,085
Total	1,283,121	868,103	1,077,726
Annualized		123,598	126,342

Unquantified Benefits of the Proposed Rule

We have no data to quantify any change in benefits, other than cost savings, that might result from providing an option to mariners to take a firefighting course more closely tailored to the type of equipment they would find on the vessels they serve on.

Analysis of Alternatives

In addition to our preferred alternative, discussed throughout the remainder of this regulatory analysis, we considered three additional alternatives:

(1) No action, or maintaining the requirement that masters and mate (pilots) of towing vessels be required to take a basic firefighting course. With this alternative, industry would not benefit from a shorter, modified basic firefighting course. Therefore, there would be no cost savings. We rejected the no-action alternative because it would not create cost savings for mariners seeking an endorsement for master or mate (pilot) of towing vessels on inland waters or Western Rivers.

(2) We also considered an alternative from a comment submitted during our request for feedback, discussed earlier in this NPRM. This commenter recommended that the Coast Guard eliminate the approved training requirement and rely instead on drills required by existing regulations to ensure mariner competence in firefighting. Proponents of this alternative are likely to argue that the absence of a training requirement could lead to cost savings from no longer traveling to, paying for or spending time in the training. However, the Coast Guard believes this alternative contains a number of serious drawbacks. First, as noted earlier in this NPRM, firefighting training ensures that mariners have basic firefighting skills that allow for the quick extinguishment of small fires that could otherwise spread and lead to property damage and personnel injury or death. Without the training, the Coast Guard cannot be sure that mariners would have the necessary skills to combat fires should they occur on vessels. Second, instructors in courses that are approved by the Coast Guard are required to have experience or training in effectively delivering course material. Third, the content of company managed training and drills would likely be much less intensive and exhaustive than what course providers will offer. Firefighting courses will include live fire exercises and practical experience identifying potential fire hazards and extinguishing live fires. As part of approved training, these types of activities take place in a controlled environment, allowing students to meet learning objectives while keeping them safe from the associated hazards. These practical exercises cannot be carried out on an operational vessel. While individuals no longer being required to take a firefighting course may view this as a benefit via cost savings, the Coast Guard views this as unacceptably decreasing the quality of firefighting skills and decreasing the safety of the inland waters and Western Rivers towing vessel fleet.

Taken together, these three features would lower the safety and preparedness of the inland waters and Western Rivers towing vessel fleet substantially. Therefore, the Coast Guard rejected this alternative.

(3) The third alternative we considered was permitting firefighting training specific to inland waters and Western Rivers towing vessels, but requiring the new training to have the same 16 hours of coursework and cover additional topics and situations common to inland waters and Western Rivers towing vessels not previously required by regulation. While the addition of topics for training could be beneficial, the Coast Guard has no data or feedback to support its impact on safety. Additionally, the Coast Guard believes course providers would have little incentive to undergo the expense of developing a firefighting course that would not provide cost savings to mariners.

[36] 553.38 multiplied by 12/16 equals 415.04.

[37] 553.38—415.04 = 138.34 and 138.34 × 440 = 60,870, rounded.

[38] We request public comments regarding the accuracy of this estimated reduction in course fees and if a different methodology would be more appropriate to estimate the reduction in course fees.

Both courses would occur over 2 days. In the 16-hour course suggested by this alternative, the mariner would likely experience a cost savings from reduced tuition because there would be fewer equipment needs used for the training; however, we do not have a way to estimate the size of this reduction in fees. This reduction in fees would almost certainly be less than the reduction in fees for a 12-hour course instead of a 16-hour course, because the instructors would spend less time in class. Additionally, a 16-hour course would not result in the cost savings from the 4-hour reduced training duration, estimated at $92,381 annually. As a result, the Coast Guard rejected this alternative because it did not lead to the highest cost savings.

Net Cost Savings

As documented above, there would be costs to course providers and the Coast Guard, and cost savings to mariners who would have the option to complete a modified basic firefighting course. Table 10 presents the net cost savings to industry and the Government over a 10-year period of analysis, in 2019 dollars. Net cost savings are expressed as negative numbers in the first year due to the absence of cost savings.

TABLE 10—DISCOUNTED NET COST SAVINGS OVER A 10-YEAR PERIOD OF ANALYSIS IN 2020 DOLLARS AT 7% AND 3%

Year	Undiscounted cost savings	Discounted cost savings	
		7%	3%
1	−$24,432	−$22,834	−$23,721
2	142,569	124,525	134,385
3	142,569	116,379	130,471
4	142,569	108,765	126,671
5	142,569	101,650	122,981
6	127,496	84,956	106,776
7	142,569	88,785	115,922
8	142,569	82,976	112,545
9	142,569	77,548	109,267
10	142,569	72,475	106,085
Total	1,243,616	835,225	1,041,382
Annualized		118,917	122,082

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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 people.

As described in section VI. A. of this preamble, Regulatory Planning and Review, there would be two affected populations: (1) Course providers who develop and submit a course to the Coast Guard for approval, and (2) applicants for mate (pilot) of towing vessels or master of towing vessels (limited) operating on inland waters or Western Rivers. Applicants are individuals and not entities; as such, the second affected population does not contain any small entities.

Of the 91 course providers approved to offer a basic firefighting course, the Coast Guard identified 35 course providers who might submit requests for course approval to teach a modified firefighting course.[39] Of these 35 providers:

- 13 are public agencies, none of which are classified as small entities;
- 4 are non-profit organizations, and all 4 are classified as small entities;
- 18 are private companies. Of these, 4 are not classified as small businesses, 8 are classified as small businesses, and 6 could not be classified because information could not be found on those 6 businesses. We classify those 6 businesses, where information could not be found, as small entities.

In total, we classified 18 of 35 entities as small entities. Table 11 lists the North American Industry Classification System (NAICS) codes and size standards used to determine whether or not entities are small and the numbers of small entities.

TABLE 11—SIZE STANDARDS AND THE AFFECTED ENTITIES

NAICS U.S. industry title	NAICS code	Size standard	Number of entities	Number of small entities
Small Government Jurisdiction	N/A	''governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.''.	13	0

[39] In the Affected Population section, we estimated that 23 providers would most likely be impacted by this rule based on their location and other factors. While we estimated that 23 providers would be most likely impacted, we identified 35 providers that might offer a modified basic firefighting course. For the purposes of the regulatory flexibility analysis, and because we did not know with certainty which of the 35 course providers would be impacted, we reviewed the potential costs to any of 35 entities to see if this rule would be likely to have a substantial impact on small entities. These 35 course providers are listed in in a document which is available in the docket where indicated under the **ADDRESSES** portion of the preamble (See Table A1: Basic Firefighting Course Providers, Course Cost, and Likelihood to Offer a Modified Basic Firefighting Course).

TABLE 11—SIZE STANDARDS AND THE AFFECTED ENTITIES—Continued

NAICS U.S. industry title	NAICS code	Size standard	Number of entities	Number of small entities
Small Organization	N/A	"any not-for-profit enterprise that is independently owned and operated and not dominant in its field.".	4	4
Crude Petroleum Extraction	211120	1250 employees	1	0
Inland Water Freight Transportation	483211	750 employees	1	1
Inland Water Passenger Transportation	483212	500 employees	1	0
Navigational Services to Shipping	488330	$41.5 million in revenue	2	1
Human Resources Consulting Services	541612	$16.5 million in revenue	1	1
Business and Secretarial Schools	611410	$8 million in revenue	1	1
Other Technical and Trade Schools	611519	$16.5 million in revenue	3	3
Sports and Recreation Instruction	611620	$8 million in revenue	1	1
Ambulance Services	621910	$16.5 million in revenue	1	0
Firms Where the Industry Could not be Identified.	N/A	N/A	6	6
Total			35	18

As shown in the Costs section of this Regulatory Analysis, we estimate that it takes either 6 hours to prepare and submit a course approval request for a modified basic firefighting course or 12 hours if the course approval request requires additional information and resubmission. A training and development specialist's time is valued at a burdened rate of $45.40, for a total cost of either $272.40, or $544.80.[40] For this proposed rule to impose a significant impact on a small entity, the impact would have to be greater than 1 percent (.01) of a small entity's annual revenue. That is, in order for this proposed rule to have a significant economic impact on an entity, the entity's annual revenue would have to be less than $54,480.[41] Out of the 8 small entities for which we had revenue information, none had annual revenue under $54,480. Table 12 indicates the distribution of revenue impacts for the small entities for which we were able to identify revenue information.[42]

TABLE 12—DISTRIBUTION OF REVENUE IMPACTS

Percent of revenue impact	Average annual impact	Small entities with known revenue	Portion of small entities with known revenue
<1%	544.80	8	100
1–3%	544.80	0	0
>3%	544.80	0	0

Therefore, based on this analysis, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section of this preamble. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. 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.

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).

D. Collection of Information

This proposed rule would call for a change to the existing information collection (OMB Control Number 1625–0028) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden

[40] See footnote 24 for a calculation of the burdened wage rate for training and development specialists. 6 hours × $47.66 per hour is $285.96, while 12 hours × $47.66 per hour is $571.92

[41] $571.92 divided by .01 equals $57,192

[42] We were not able to identify revenue information for the 4 nonprofit small entities and for 6 firms we identified as small.

follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Course Approval and Records for Merchant Marine Training Schools

OMB Control Number: 1625–0028.

Summary of the Modification to the Collection of Information: This proposed rule would allow course providers to offer a new course approved under 46 CFR 10.402 and 10.403 by permitting inland waters and Western Rivers towing vessel master and mate (pilot) applicants to take a modified course in lieu of a basic firefighting course.

Need for information: The Coast Guard will need to receive a course approval submission from each course provider in order to approve each course provider's new modified basic inland waters and Western Rivers towing vessel firefighting course.

Proposed Use of the Information: The collection of information is intended to ensure that course providers meet the regulatory requirements for the courses that they offer.

Description of the Respondents: The respondents are course providers wishing to offer a modified basic inland waters and Western Rivers towing vessel firefighting course.

Number of Respondents: The Coast Guard estimates that there will not be any additional respondents, because the course providers who would request approval of a modified basic inland waters and Western Rivers towing vessel firefighting course would already have other courses approved by the Coast Guard. As such, the Coast Guard expects there will be no additional respondents because the respondents are already included in the collection of information. Out of the 315 current annual respondents for OMB Control Number 1625–0028, 91 are currently approved to offer a basic firefighting course. Based on information provided by an SME from the Coast Guard's Office of Merchant Mariner Credentialing, we estimate that 23 of the 91 course providers offering a basic firefighting course would likely request approval of a modified basic inland waters and Western Rivers towing vessel firefighting course.

Frequency of Response: Half the course providers would request course approval and not need to provide additional information, and the other half would request course approval and need to provide additional information. The Coast Guard estimates these requests would happen in the first year. Therefore, we estimate that there would be 35 additional responses from this proposed rule (23 initial submissions, plus 12 submissions of additional information). The current collection of information estimates the annual number of responses at 3,757; adding 35 responses brings the total estimated number of responses to 3,792.

Burden of Response: Out of the 35 responses, the Coast Guard estimates that 23 would take 6 hours to request approval of a modified basic inland waters and Western Rivers towing vessel firefighting course because the course provider's submission complies with Coast Guard policies and regulations. Another 12 responses would take an additional 6 hours because the course package would need to be revised and resubmitted.

Estimate of Total Annual Burden: All 35 responses would take 6 hours to complete. As a consequence, the Coast Guard estimates that 35×6, or 210 hours, will be incurred by course providers in requesting new modified basic firefighting course approvals. The current collection of information annual hour burden is 145,917 hours. Adding 210 to this annual burden brings the total estimated hour burden to 146,127.

As required by 44 U.S.C. 3507(d), we will submit a copy of this proposed rule to OMB for its review of the collection of information. We ask for public comment on the proposed revised collection of information to help us determine, among other things—

- How useful the information is;
- Whether the information can help us perform our functions better;
- How we can improve the quality, usefulness, and clarity of the information;
- Whether the information is readily available elsewhere;
- How accurate our estimate is of the burden of collection;
- How valid our methods are for determining the burden of collection; and
- How we can minimize the burden of collection.

If you submit comments on the collection of information, submit them to both to OMB and to the docket where indicated under **ADDRESSES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this NPRM, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 7101 (personnel qualifications of officers serving on board merchant vessels), and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See, e.g., United States* v. *Locke,* 529 U.S. 89 (2000) (finding that the states are foreclosed from regulating tanker vessels) *see also Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151, 157 (1978) (state regulation is preempted where ''the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it [or where] the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'' (citations omitted)). Because this proposed rule involves the credentialing of merchant mariner officers under 46 U.S.C. 7101, it relates to personnel qualifications for vessels subject to a pervasive scheme of federal regulation, and is therefore foreclosed from regulation by the States. Because the States may not regulate within this category, this proposed rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking

process. If you believe this proposed rule would have implications for federalism under Executive Order 13132, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates

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 million (adjusted for inflation) or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, Rev. 1,[43] associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. This proposed rule would be categorically excluded under paragraphs L52 and L56 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev.1. Paragraph L52 pertains to regulations concerning vessel operation safety standards and paragraph L56 pertains to regulations concerning the training, qualifying, and licensing of maritime personnel.

This proposed rule would revise the existing merchant mariner credentialing training requirements for national endorsements as master and mate (pilot) for towing vessels. The proposed changes would apply to mariners working on towing vessels inspected under 46 CFR subchapter M when operating on inland waters or Western Rivers routes. Under the proposed rule, these mariners would only be required to receive training that is relevant to the firefighting equipment that is available on their vessels. This proposed change would promote marine safety by focusing attention on the resources actually available to affected mariners. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

[43] *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

List of Subjects in 46 CFR Part 11

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 11 as follows:

■ 1. The authority citation for part 11 is revised to read as follows:

Authority: 14 U.S.C. 102(3); 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906, and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

■ 2. Amend § 11.201 by:
■ a. Revising paragraphs (h)(1), (2)(i), and (3)(i) and (ii);
■ b. Adding paragraphs (h)(3)(iii) and (iv); and
■ c. Revising paragraph (l) .

The revisions and additions read as follows:

§ 11.201 General requirements for national and STCW officer endorsements.

* * * * *

(h) * * *

(1) Applicants for an original officer endorsement in the following categories must present a certificate of completion from a firefighting course of instruction relevant to the endorsement being sought that has been approved by the Coast Guard. The firefighting course must have been completed within the past 5 years, or if it was completed more than 5 years before the date of application, the applicant must provide evidence of maintaining the standard of competence in accordance with the firefighting requirements for the credential sought.

(2) * * *

(i) All national officer endorsements as master or mate on seagoing vessels of 200 GRT or more.

* * * * *

(3) * * *

(i) All officer endorsements as master on vessels of less than 500 GT in ocean service.

(ii) All officer endorsements for master or mate (pilot) of towing vessels for service on near-coastal waters, except apprentice mate (steersman) of towing vessels.

(iii) All officer endorsements for master or mate (pilot) of towing vessels for service on Great Lakes, except apprentice mate (steersman) of towing vessels.

(iv) All officer endorsements as master or mate (pilot) of towing vessels for service on inland waters or Western Rivers, except apprentice mate (steersman) of towing vessels.

(A) The Coast Guard will accept a Coast Guard approved modified basic firefighting course, which is the basic firefighting training described in paragraph (h)(3) of this section modified to only cover the equipment, fire prevention procedures, and firefighting operations required on towing vessels on inland waters or Western Rivers routes required in 46 CFR parts 140 and 142. A mariner who completes this modified basic firefighting course will be issued an endorsement that is restricted to inland waters or Western Rivers.

(B) To increase in scope to Great Lakes, near-coastal or oceans, the applicant will be required to complete the firefighting course appropriate to the route sought.

* * * * *

(l) *Restrictions.* The Coast Guard may modify the service, training, and examination requirements in this part to satisfy the unique qualification requirements of an applicant or distinct group of mariners. The Coast Guard may also lower the age requirement for OUPV applicants. The authority granted by an officer endorsement will be restricted to reflect any modifications made under the authority of this paragraph (l).

Dated: August 16, 2021.

J.W. Mauger,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2021–17945 Filed 8–31–21; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25, 73, and 76

[MB Docket No. 21–293; FCC 21–91; FR ID 43007]

Revisions to Political Programming and Recordkeeping Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to update its political programming and recordkeeping rules for broadcast licensees, cable television system operators, Direct Broadcast Satellite (DBS) service providers, and Satellite Digital Audio Radio Service (SDARS) licensees. The Commission proposes to update its political programming rules by adding the use of social media and the creation of a campaign website to the existing list of activities that may be considered in determining whether an individual running as a write-in candidate has made a ''substantial showing'' of his or her bona fide candidacy. The Commission also proposes to update its political recordkeeping rules by incorporating provisions which were adopted in the Bipartisan Campaign Reform Act of 2002.

DATES: Comments are due on or before October 1, 2021; reply comments are due on or before October 18, 2021.

ADDRESSES: You may submit comments, identified by MB Docket No. 21–293, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.[1]
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Gary Schonman, Special Counsel, Federal Communications Commission, Media Bureau, Policy Division, Political Programming Staff, at *Gary.Schonman@fcc.gov* or 202–418–1795.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 21–91, adopted on August 3, 2021, and released on August 4, 2021. The full text of this document is available for public inspection and copying via ECFS at *http://apps.fcc.gov/ecfs* and the FCC's website at *https://docs.fcc.gov/public/attachments/FCC-21-91A1.pdf.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

In this Notice of Proposed Rulemaking (NPRM), we propose to update our political programming and recordkeeping rules for broadcast licensees, cable television system operators, Direct Broadcast Satellite (DBS) service providers, and Satellite Digital Audio Radio Service (SDARS) licensees. While the agency has strived to update its guidance to reflect changes in law and campaign practices, it has not undertaken a formal review to

[1] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, 35 FCC Rcd 2788 (2020).

update the political programming and recordkeeping rules since 1991.[2] Given the substantial growth of such programming in recent years,[3] the updates proposed in this item are intended to conform our rules with statutory amendments, increase transparency, and account for modern campaign practices.

We propose two revisions to our political programming and recordkeeping rules.[4] First, consistent with modern campaign practices, we propose to revise the definition of ''legally qualified candidate for public office'' to add the use of social media and creation of a campaign website to the existing list of activities that may be considered in determining whether an individual running as a write-in candidate has made a ''substantial showing'' of his or her bona fide candidacy.[5] Second, we propose to revise the Commission's political file rules to conform with the Bipartisan Campaign Reform Act of 2002 (BCRA), which included within the political file requirements any request for the purchase of advertising time that ''communicates a message relating to any political matter of national importance'' (*i.e.,* issue ads) and specify the records that must be maintained.[6]

I. Background

In addition to the First Amendment protections afforded to material aired by Commission licensees and regulatees, political programming receives additional, special protections. Congress has recognized the great importance of political programming in the United States by passing laws to ensure that those who run for elective office have access to broadcast and other platforms so that they may inform citizens of their positions on critical issues of the day.

Political Programming Obligations. Political programming obligations for certain Commission licensees and regulatees are set forth in sections 312(a)(7) and 315 of the Communications Act of 1934, as amended (Act).[7] Section 312(a)(7) requires broadcast licensees to give legally qualified candidates for federal office ''reasonable access'' to their facilities, or to permit them to purchase ''reasonable amounts of time on behalf of their candidacy. .'' [8] Section 312(a)(7) of the Act also applies to SDARS licensees [9] and DBS service providers,[10] but it is not applicable to cable system operators.[11] Under section 315(a), if a broadcast licensee permits one legally qualified candidate for a public office to use its station, it must afford all other candidates for that office an ''equal opportunity'' to use the station.[12] Section 315(b) provides that, during certain periods before an election, legally qualified candidates are entitled to ''the lowest unit charge of the station for the same class and amount of time for the same period.'' [13] The requirements in section 315 also apply to cable system operators,[14] SDARS licensees,[15] and DBS service providers.[16] The entitlements embodied in sections 312(a)(7) and 315 of the Act are available only to persons who have achieved the status of ''legally qualified candidate.'' [17]

The Communications Act does not define the term ''legally qualified candidate,'' and therefore the Commission has adopted a definition, as reflected in § 73.1940.[18] Generally, an individual seeking election (other than for President or Vice President) must publicly announce his or her intention to run for office,[19] must be qualified to hold the office for which he or she is a candidate,[20] and must have qualified for a place on the ballot or have publicly committed himself or herself to seeking election by the write-in method.[21] If seeking election by the write-in method, the individual, in addition to being eligible under applicable law to be a write-in candidate, must make a ''substantial showing'' that he or she is a bona fide candidate for the office being sought.[22] Section 73.1940(f) of the Commission's rules specifies the requirements to demonstrate a ''substantial showing'' of a bona fide candidacy by providing a nonexclusive list of activities commonly associated with political campaigning.

Political Recordkeeping Obligations. The political recordkeeping requirements serve to reinforce the statutory protections for political programming. The Commission first adopted rules requiring broadcast stations to maintain public inspection files documenting requests for political advertising time more than 80 years ago.[23] It is crucial that stations maintain political files that are complete and up to date because the information in them directly affects, among other things, the statutory rights of opposing candidates to request equal opportunities under section 315(a) of the Act and present their positions to the public prior to an election.[23][24] Additionally, these files enable the public to verify that licensees have complied with their obligations relating to use of their facilities by candidates for political office and to

[2] *Codification of the Commission's Political Programming Policies,* MM Docket No. 91–168, Report and Order, 7 FCC Rcd 678 (1991) (*1991 Political Programming Order*).

[3] John Haltiwanger, *Americans are Already Exhausted with the 2020 Election, and it's Just Getting Started. Other Countries Have Laws Limiting the Length of Campaigns* (Feb. 10, 2020), *https://www.businessinsider.com/us-presidential-elections-are-absurdly-long-compared-rest-of-world-2020-2* (explaining that the 2020 U.S. Presidential election would last approximately 1,194 days); Karl Evers-Hillstrom, *Most Expensive Ever: 2020 Election Cost $14.4 Billion* (Feb. 11, 2021), *https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16/* (2020 campaign spending doubled the amount in 2016).

[4] Information in a station's political file is available to the public on the Commission-hosted website at *https://publicfiles.fcc.gov/.*

[5] 47 CFR 73.1940(f), 76.5(q).

[6] Public Law 107–155, § 504, 116 Stat. 81 (2002) (codified at 47 U.S.C. 315(e)).

[7] 47 U.S.C. 312(a)(7), 315.

[8] 47 U.S.C. 312(a)(7). *See* 47 CFR 73.1944.

[9] *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band,* IB Docket No. 95–91, Gen. Docket No. 90–357, Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5792, para. 92 (1997) (extending the political programming provisions in sections 312(a)(7) and 315 of the Act to SDARS licensees); 47 CFR 25.702(a)–(b).

[10] *See Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations,* MM Docket No. 93–205, Report and Order, 13 FCC Rcd 23254 (1998) (*DBS Public Interest Obligations Report and Order*) (establishing rules applying the political programming rules in sections 312(a)(7) and 315 of the Act to DBS service providers, in accordance with section 335 of the Act), *recon. denied,* Memorandum Opinion and Order on Reconsideration of the First Report and Order, 19 FCC Rcd 5854 (2003) (*Order on ReconsIderation*), *Order on ReconsIderation vacated and superseded by* Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647 (2004) (*DBS Public Interest Obligations Sua Sponte ReconsIderation);* 47 CFR 25.701(b)–(d).

[11] *See 1991 Political Programming Order,* 7 FCC Rcd at 679, para. 4.

[12] 47 U.S.C. 315(a). *See* 47 CFR 73.1941, 76.205.

[13] 47 U.S.C. 315(b). Pursuant to section 315(b)(1)

[14] Section 315(c) of the Act defines the term ''broadcasting station'' as including cable television systems and the terms ''licensee'' and ''station licensee'' as including cable operators. 47 U.S.C. 315(c) (''For purposes of this section—(1) the term 'broadcasting station' includes a community antenna television system; and (2) the terms 'licensee' and 'station licensee' when used with respect to a community antenna television system mean the operator of such system.'').

[15] *See supra* note 8.

[16] *See supra* note 9.

[17] While section 312(a)(7) applies only to legally qualified candidates for federal office, section 315 applies to all candidates for elective office, whether federal, state, or local.

[18] 47 CFR 73.1940. Section 76.5(q) of the Commission's rules includes an identical definition of ''legally qualified candidates for public office'' used for purposes of the political programming rules governing cable systems. *Id.* § 76.5(q). The definition of ''legally qualified candidates for public office'' set forth in section 73.1940 also applies for purposes of the political programming obligations of DBS providers and SDARS licensees. *Id.* §§ 25.701(b)(1), 25.702(a).

[19] *Id.* § 73.1940(a)(1).

[20] *Id.* § 73.1940(a)(2).

[21] *Id.* §§ 73.1940(a)(3), 73.1940(b)(1), and 73.1940(b)(2).

[22] *Id.* § 73.1940(b)(2).

obtain information about entities sponsoring candidate and issue advertisements.[25] The Commission also has applied political file rules to cable television system operators,[24] DBS providers,[25] and SDARS licensees,[26] finding that the rationale for imposing such requirements on broadcasters similarly applies to these entities.

In 2002, Congress enacted the BCRA, which amended section 315 of the Act.[27] The BCRA added new section 315(e) to codify the Commission's existing political file obligations by requiring that information regarding any request to purchase advertising time that ''is made on behalf of a legally qualified candidate for public office'' be placed in the political file.[28] In addition, the BCRA expanded the political file requirements to include any request to purchase political advertising time that ''communicates a message relating to any political matter of national importance.'' [29] Specifically, section 315(e)(1) of the Act requires licensees to make available for public inspection a complete record of each request for the purchase of broadcast time by or on behalf of a legally qualified candidate and by or on behalf of any other entity whose ad communicates a message relating to any political matter of national importance.

A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that—

(A) is made by or on behalf of a legally qualified candidate for public office; or

(B) communicates a message relating to any political matter of national importance, including—(i) a legally qualified candidate; [30]

The BCRA, at section 315(e)(2) of the Act,[31] also specifies the kinds of records that must be maintained in political files, and it provides, at section 315(e)(3) of the Act, that ''[t]he information required by [section 315(e)] shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.'' [32]

II. Discussion

A. ''Substantial Showing'' for Write-In Candidates

In order to update our rules to make them consistent with present-day campaign practices, we propose to amend §§ 73.1940(f) and 76.5(q) of the Commission's rules to add the use of social media and creation of a campaign website to the list of activities that a broadcast licensee or cable operator may consider in determining whether an individual who is running as a write-in candidate has made a ''substantial showing'' of his or her candidacy.[33] The proposed amendment would recognize both activities as among the practices that are now commonly associated with political campaigning.

Only those individuals who have achieved the status of ''legally qualified candidate'' are entitled to avail themselves of the benefits and privileges bestowed by the political programming rules, including the reasonable access,[34] equal opportunities,[35] and lowest unit charge provisions.[36] If seeking election by the write-in method, an individual, in addition to being eligible under applicable law to be a write-in candidate, must make a ''substantial showing'' that he or she is a bona fide candidate for the office being sought.[37]

Questions as to whether an individual who is running as a write-in candidate has made a ''substantial showing'' ordinarily arise when such individual approaches a broadcast station or cable system and makes a request to purchase time in furtherance of his or her candidacy or seeks to avail himself or herself of equal opportunities.[38] Sections 73.1940(f) and 76.5(q) define what it means to make a ''substantial showing'' by listing various activities that are commonly associated with political campaigning, including ''making campaign speeches, distributing campaign literature, issuing press releases, [and] maintaining a campaign headquarters.'' [39]

At the time our current rules were drafted, social media and campaign websites did not exist. Media coverage of recent campaigns on the national, state, and local levels indicates that the use of social media has become an activity that bona fide candidates routinely use to solicit support, financial contributions, and votes.[40]

[25] *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files* of Broadcast Television and Radio Stations, MM Docket No. 97–138, Report and Order, 13 FCC Rcd 15691, 15716, para. 54 (1998). In order for the public to verify that licensees have complied with their obligations, the public can visit a particular station or other entity's political file on the Commission-hosted website *https://publicfiles.fcc.gov/.*

[24] *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files and Permit System Inspections,* Docket No. 19948, Report and Order, 48 FCC 2d 72, para. 1 (1974); 47 CFR 76.1701.

[25] Section 335 of the Act imposes public interest obligations on DBS providers and requires the Commission, at a minimum, to apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to DBS providers. 47 U.S.C. 335(a). The Commission adopted rules requiring DBS providers to abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems in order to assist in evaluations of compliance with the political programming rules and to enable competing candidates to review other candidates' advertising access and rates. *DBS Public Interest Obligations Report and Order,* 13 FCC Rcd at 23271, para. 41; *DBS Public Interest Obligations Sua Sponte ReconsIderation,* 19 FCC Rcd at 5561, para. 35; 47 CFR 25.701(d).

[26] *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees,* MB Docket No. 14–217, Report and Order, 31 FCC Rcd 526, 537–38, paras. 26–27 (2016) (*Expansion of Online Public File Obligations*); *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee,* MB Docket No. 07–57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12415, para. 146 (2008); 47 CFR 25.702(b).

[27] Public Law 107–155, 504, 116 Stat. 81 (2002) (codified at 47 U.S.C. 315(e)).

[28] 47 U.S.C. 315(e)(1).

[29] *Id.*

[30] The reference to ''licensee'' in section 315(e)(1) includes broadcast licensees and cable system operators, SDARS licensees, and DBS service providers engaged in origination programming. *See* 47 CFR 76.5(p), 76.1701, 25.701, 25.702.

[31] 47 U.S.C. 315(e)(2).

[32] *Id.* Section 315(e)(3). *See infra* para. 15.

[33] 47 CFR 73.1940(f), 76.5(q). As we explain above, the definition of ''legally qualified candidates for public office'' set forth in section 73.1940 also applies for purposes of the political programming obligations of DBS providers and SDARS licensees. *Id.* §§ 25.701(b)(1), 25.702(a). Thus, the analysis and discussion here as well as revisions to the definition in section 73.1940 would apply to these entities as well.

[34] 47 U.S.C. 312(a)(7); 47 CFR 73.1944.

[35] 47 U.S.C. 315(a); 47 CFR 73.1941, 76.205.

[36] 47 U.S.C. 315(b); 47 CFR 73.1942, 76.206.

[37] *Id.* Sections 73.1940(b)(2), 76.5(q)(2).

[38] 47 U.S.C. 315(a).

[39] 47 CFR 73.1940(f), 76.5(q)(5). The Media Bureau has long required that an individual claiming to be a ''legally qualified candidate'' by the write-in method bears the burden of demonstrating that he or she has made a ''substantial showing'' of a bona fide candidacy. *See, e.g., Complaint of Michael Stephen Levinson,* 87 FCC 2d 433, 435 (Broadcast Bur. 1980) (''The burden is on [the potential candidates] to establish to the stations from which [they] seek broadcast time under Section 312 that [they] have 'engaged to a substantial degree in activities commonly associated with political campaigning.' ''). Further, the Media Bureau has held that a broadcaster's or cable operator's determination as to whether a potential write-in candidate has satisfied the ''substantial showing'' requirement is entitled to deference, provided the determination is reasonable and made in good faith. *See Complaint by Michael Levinson Against Station WXXI–TV, Rochester, New York,* 1 FCC Rcd 1305 (MMB 1986) (*Michael Levinson*) (''This agency will review the licensee's decision only to determine if it was unreasonable or made in bad faith.''); *Complaint of Douglas S. Kraegar Against Radio Station WTLB Utica, New York,* 87 FCC 2d 751, 753 (Broadcast Bur. 1980) (''A licensee has the discretion to make a good faith judgment as to the bona fide qualifications of a write-in candidate.''). *Cf., CBS, Inc.* v. *FCC,* 453 U.S. 367, 387 (1981) (''If broadcasters take the appropriate factors into account and act reasonably and in good faith, their decisions will be entitled to deference even if the Commission's analysis would have differed in the first instance.'').

[40] *See, e.g.,* Lata Nott, *Political Advertising on Social Media Platforms* (June 26, 2020), *https://*

Recent articles reveal that bona fide political campaigns use major social media platforms to advertise, connect with supporters, and fundraise [41] and that such engagement in social media use, for example, by creating a Twitter or Facebook account, typically increases donations for new politicians.[42] For instance, reports of the most recent election reflect that candidates garnered support by posting photographs and hosting chats on Instagram.[43] In addition, social media platforms enable political campaigns to build support by disseminating campaign updates [44] and targeting advertisements to potential voters,[45] and they provide sophisticated tools to regularly measure user engagement.[46]

In order that our rules reflect ordinary campaign practices, we propose to add the use of social media for the purpose of promoting or furthering a campaign for public office to the list of recognized campaign activities in §§ 73.1940(f) and 76.5(q). We seek comment on this proposal and the types of campaign-related activities for which social media could be used in demonstrating a substantial showing of a bona fide candidacy. For instance, a candidate might use social media to raise funds, solicit votes, share policy positions, and engage in digital dialogues with voters. We note that we are not proposing that social media presence alone would be sufficient to support a status of ''legally qualified candidate'' but that it would be an additional indicator of activities commonly associated with political campaigning needed to make substantial showing of a bona fide candidacy.

We also propose to add creation of a campaign website to the list of recognized campaign activities in §§ 73.1940(f) and 76.5(q). Recent articles indicate that campaign websites, like social media platforms, are used by candidates to connect to a wide audience of potential voters instantaneously and facilitate direct communication and fundraising.[47] Accordingly, we tentatively conclude that adding the creation of a campaign website to the list of recognized activities is justified for the same reasons provided in support of including use of social media. We again note that a website alone would not be sufficient to support a status of ''legally qualified candidate'' but that it would be an additional indicator of activities commonly associated with political campaigning needed to make substantial showing of a bona fide candidacy. We seek comment on this conclusion and the proposal.

Finally, we seek comment on whether other activities consistent with modern campaign practices, such as the use of digital marketing and advertising, should be added to the list of recognized campaign activities in §§ 73.1940(f) and 76.5(q). If additional activities are included, should the substantial showing analysis involve any limiting factors, such as requiring that the marketing and advertising be directed toward persons in areas where votes are being solicited?

B. Implementation of the BCRA and Section 315 of the Act

We propose to revise the political file rules for broadcast licensees, cable operators, DBS providers, and SDARS licensees to bring them into conformity with the BCRA and section 315(e) of the Act.[48] As discussed above, in 2002, Congress enacted the BCRA, which, among other things, adopted new section 315(e) of the Act.[49] While the Commission has advised relevant parties consistent with the recordkeeping requirements embodied in section 315(e), the rules were not updated. Therefore, the changes that we are proposing today would conform our rules to the statutory requirements. Specifically, section 315(e)(1) codifies the requirement that information regarding any request to purchase advertising time that ''is made on behalf of a legally qualified candidate for public office,'' also known as candidate ads, be placed in the political file. It also specifies that the political recordkeeping obligations include any request for the purchase of advertising time that ''communicates a message relating to any political matter of national importance,'' also known as issue ads.[50] Section 315(e)(2) identifies the specific records that must be placed in political files for both candidate ads and issue ads that communicate a message relating to a political matter of national importance.[51] These records include whether the request to purchase broadcast time has been accepted or rejected, information about the advertisement(s), and information about the advertiser. The Commission's political file rules for broadcast licensees, cable television system operators, DBS providers, and SDARS licensees currently require these entities to maintain for public inspection only those records that relate to requests for time by or on behalf of candidates for public office.[54] These rules make no mention of the obligation specified in section 315(e)(1)(B) of the Act to also maintain records of requests for time about issue ads that communicate a

www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/political-advertising-on-social-media-platforms/; Daniel Kreiss, Regina G. Lawrence, and Shannon C. McGregor, *In Their Own Words: Political Practitioner Accounts of CandIdates, Audiences, Affordances, Genres, and Timing in Strategic Social Media Use,* 35 Pol. Commc'n 26, 12–13 (2018) (finding that each social media platform, with different audiences and capabilities, provides ''a primary way for candidates to introduce themselves to vastly dispersed constituencies and build their support among potential volunteers, donors, and voters'').

[41] *See, e.g.,* Maria Petrova, Ananya Sen, and Pinar Yildirim, *Social Media and Political Contributions: The Impact of New Technology on Political Competition,* Management Science, 7–8 (2020) (Petrova, *Social Media and Political Contributions*); Daniel Kreiss and Shannon C. McGregor, *Technology Firms Shape Political Communication: The Work of Microsoft, Facebook, Twitter, and Google with Campaigns During the 2016 U.S. PresIdential Cycle,* 35 Pol. Commc'n, 158–59 (2018).

[42] Petrova, *Social Media and Political Contributions,* at 28.

[43] University of Pennsylvania Knowledge @ Wharton, *How Social Media Is Shaping Political Campaigns* (Aug. 17, 2020), *https://knowledge.wharton.upenn.edu/article/how-social-media-is-shaping-political-campaigns/.*

[44] *See* Petrova, *Social Media and Political Contributions,* at 5, 26–27 (''[M]ore frequent and more informative tweets (*e.g.,* including links to websites, responding to news fast, or more anti-establishment Tweets) are associated with receiving higher contributions after adopting Twitter.'').

[45] *See, e.g.,* Google Transparency Report Help Center, *Political Advertising on Google FAQs, https://support.google.com/transparencyreport/answer/9575640#zippy=%2Cwhat-targeting-criteria-can-be-used-for-election-ads* (last visited May 25, 2021); Snapchat Business Help Center, *Audience Insights, https://businesshelp.snapchat.com/s/article/audience-insights?language=en_US&_ga=2.101326145.1539846222.1621879796-1506173507.1621879796* (last visited May 25, 2021).

[46] *See, e.g.,* Facebook Business Help Center, *About Breakdowns, Metrics, and Filtering in Ads Reporting, https://www.facebook.com/business/help/264160060861852* (last visited May 25, 2021) (Ads Reporting allows advertisers to analyze demographic metrics including country, region, and designated market region); Google Ads Help, *About Measuring Geographic Performance, https://support.google.com/google-ads/answer/2453994?hl=en* (last visited May 25, 2021) (Report Editor generates reports, which can show performance of ads targeted by location).

[47] *See, e.g.,* Dick Morris, *Direct Democracy and the internet,* 34 Loy. L.A. L. Rev. 1033 (2000); Diana Owen, *New Media and Political Campaigns,* The Oxford Handbook of Pol. Commc'n (2014). (since 2008, campaigns have used websites to incorporate interactive applications and link to their social media accounts); Elisa Shearer, Pew Research Center, *CandIdates' Social Media Outpaces Their websites and Emails As An Online Campaign News Sources* (2016), *https://www.pewresearch.org/fact-tank/2016/07/20/candidates-social-media-outpaces-their-websites-and-emails-as-an-online-campaign-news-source/* (while candidates' social media posts outpace campaign websites as a source of online campaign news, campaign websites are also an important source of online campaign information).

[48] 47 U.S.C. 315(e); 47 CFR 25.701(d), 25.702(b), 73.1943, 76.1701.

[49] Public Law 107–155, § 504, 116 Stat. 81 (2002) (codified at 47 U.S.C. 315(e)).

[50] 47 U.S.C. 315(e)(1)(a) through (b).

[51] 47 U.S.C. 315(e)(2).

[54] 47 CFR 25.701(d), 25.702(b), 73.1943, 76.1701.

message relating to any political matter of national importance. Our rules therefore do not fully reflect all of the statutory requirements. We propose to revise the political file rules for these entities to conform with the language in sections 315(e)(1) and (e)(2) of the Act. Specifically, we propose to revise these rules to require these entities to maintain in their online political inspection files not only records of each request for advertising time that is made by or on behalf of a legally qualified candidate for public office, but also for each request for advertising time that ''communicates a message relating to any political matter of national importance.'' [52] In addition, we propose to revise our rules to list the specific records that must be maintained in online political files for both candidate ads and issue ads, consistent with list enumerated in section 315(e)(2). These proposed revisions would implement Congress's directive in the BCRA and ensure our political recordkeeping rules reflect statutory requirements. We seek comment on this proposal.[53]

C. Cost-Benefit Analysis

Finally, we seek comment on the benefits and costs associated with adopting the proposed changes. In addition to any benefits to the public at large, are there also benefits to industry through clarification of the obligations on licensees and regulatees? We also seek comment on any potential costs that would be imposed on licensees and regulatees if we adopt the proposals contained in this NPRM. In this regard, we note that the proposed changes would largely conform our rules to the requirements of the statute. Comments should be accompanied by specific data and analysis supporting claimed costs and benefits.

III. Procedural Matters

Ex Parte Rules—Permit-But-Disclose. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[54] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Regulatory Flexibility Act Analysis. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [55] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[56] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[57]

With respect to this Notice of Proposed Rulemaking, an Initial Regulatory Flexibility Analysis (IRFA) under the RFA is contained in Appendix B. Written public comments are requested on the IFRA and must be filed in accordance with the same filing deadlines as comments on this Notice of Proposed Rulemaking, with a distinct heading designating them as responses to the IRFA. In addition, a copy of this Notice of Proposed Rulemaking and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the **Federal Register**.

Paperwork Reduction Act. This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[58] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this NPRM. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small

[52] 47 U.S.C. 315(e)(1)(B).

[53] We note that section 315(e)(3) of the Act provides that ''[t]he information required by [section 315(e)] shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.'' 47 U.S.C. 315(e)(3). Our existing political file rules already include this requirement. 47 CFR 25.701(d)(2), 25.702(b)(2), 73.1943(c), 76.1701(c). Therefore, we need not propose changes to these rules to implement section 315(e)(3).

[54] 47 CFR 1.1200 *et seq.*

[55] 5 U.S.C. 603.

[56] *Id.* Section 601(3) (adopting by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.'' 5 U.S.C. 601(3).

[57] 15 U.S.C. 632.

[58] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

Business Administration (SBA).[59] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[60]

Need for, and Objectives of, the Proposed Rules

While the agency has strived to update its guidance to reflect changes in law and campaign practices, it has not undertaken a formal review to update the political programming and recordkeeping rules since 1991.[61] Given the substantial growth of political media messaging in recent years,[62] the updates proposed in this item are intended to conform our rules with statutory amendments, reflect existing practices and guidance,[63] and account for modern campaign practices.

Sections 312(a)(7) and 315 of the Communications Act of 1934, as amended (Act), set forth the political programming obligations of broadcast licensees and other Commission regulatees.[64] Section 312(a)(7) requires broadcast licensees to give legally qualified candidates for federal office ''reasonable access'' to their facilities, or to permit them to purchase ''reasonable amounts of time.''[65] Under section 315(a), if a broadcast licensee, cable operator, or other regulatee permits one legally qualified candidate for a public office to use its station, it must afford all other candidates for that office an ''equal opportunity'' to use the station.[66] Section 315(b) provides that, during certain periods before an election, legally qualified candidates are entitled to ''the lowest unit charge of the station or cable system for the same class and amount of time for the same period.''[67] The entitlements embodied in sections 312(a)(7) and 315 of the Act are available only to persons who have achieved the status of ''legally qualified candidate.''[68]

Section 73.1940 of the Commission's rules defines who is a ''legally qualified candidate for public office.''[69] Generally, an individual seeking election (other than for President or Vice President) must publicly announce his or her intention to run for office,[70] must be qualified to hold the office for which he or she is a candidate,[71] and must have qualified for a place on the ballot or have publicly committed himself or herself to seeking election by the write-in method.[72] If seeking election by the write-in method, the individual, in addition to being eligible under applicable law to be a write-in candidate, must make a ''substantial showing'' that he or she is a bona fide candidate for the office being sought.[73] Section 73.1940(f) of the Commission's rules specifies the requirements to demonstrate a ''substantial showing'' of a bona fide candidacy by providing a nonexclusive list of activities commonly associated with political campaigning.

The political recordkeeping requirements serve to reinforce the statutory protections for political programming. The Commission first adopted rules requiring broadcast stations to maintain public inspection files documenting requests for political advertising time more than 80 years ago.[77] It is crucial that stations maintain political files that are complete and up to date because the information in them directly affects, among other things, the statutory rights of opposing candidates to request equal opportunities under section 315(a) of the Act and present their positions to the public prior to an election.[74] Additionally, these files enable the public to verify that licensees have complied with their obligations relating to use of their facilities by candidates for political office and to obtain information about entities sponsoring candidate and issue advertisements.[75] The Commission also has applied political file rules to cable television system operators,[76] DBS

[59] 5 U.S.C. 603(a).

[60] *Id.*

[61] *Codification of the Commission's Political Programming Policies,* MM Docket No. 91–168, Report and Order, 7 FCC Rcd 678 (1991) (*1991 Political Programming Order*).

[62] John Haltiwanger, *Americans are Already Exhausted with the 2020 Election, and it's Just Getting Started. Other Countries Have Laws Limited the Length of Campaigns* (Feb. 10, 2020), *https://www.businessinsider.com/us-presidential-elections-are-absurdly-long-compared-rest-of-world-2020-2* (explaining that the 2020 U.S. Presidential election would last approximately 1,194 days); Karl Evers-Hillstrom, *Most Expensive Ever: 2020 Election Cost $14.4 Billion* (Feb. 11, 2021), *https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16/* (2020 campaign spending doubled the amount in 2016).

[63] The Commission has a longstanding practice of providing informal guidance to broadcasters and other regulatees regarding their political programming and related recordkeeping obligations and working with industry representatives to foster compliance.

[64] 47 U.S.C. 312(a)(7), 315. The Commission has concluded that section 312(a)(7) does not apply to cable operators. *1991 Political Programming Order,* 7 FCC Rcd at 679, para. 4. Section 315(c) of the Act defines the term ''broadcasting station'' as including cable television systems and the terms ''licensee'' and ''station licensee'' as including cable operators. 47 U.S.C. 315(c) (''For purposes of this section—(1) the term 'broadcasting station' includes a community antenna television system; and (2) the terms 'licensee' and 'station licensee' when used with respect to a community antenna television system mean the operator of such system.''). Thus, the requirements of section 315 apply to cable operators as well as broadcast licensees. In 1997, the Commission extended the political programming provisions in sections 312(a)(7) and 315 of the Act to SDARS licensees. *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band,* IB Docket No. 95–91, Gen. Docket No. 90–357, Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754, 5792, para. 92 (1997); 47 CFR 25.702(a)–(b). In 1998, in accordance with section 335 of the Act, 47 U.S.C. 335, the Commission established rules applying the political programming rules in sections 312(a)(7) and 315 of the Act to DBS service providers. *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations,* MM Docket No. 93–205, Report and Order, 13 FCC Rcd 23254 (1998) (*DBS Public Interest Obligations Report and Order*), *recon. denied,* Memorandum Opinion and Order on Reconsideration of the First Report and Order, 19 FCC Rcd 5854 (2003) (*Order on ReconsIderation*), *Order on ReconsIderation vacated and superseded by* Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647 (2004) (*DBS Public Interest Obligations Sua Sponte ReconsIderation);* 47 CFR 25.701(b)–(d).

[65] 47 U.S.C. 312(a)(7). *See* 47 CFR 73.1944.

[66] 47 U.S.C. 315(a). *See* 47 CFR 73.1941, 76.205.

[67] 47 U.S.C. 315(b). *See* 47 CFR 73.1942, 76.206.

[68] While section 312(a)(7) applies only to legally qualified candidates for federal office, section 315 applies to all candidates for elective office, whether federal, state, or local.

[69] 47 CFR 73.1940. Section 76.5(q) of the Commission's rules includes an identical definition of ''legally qualified candidates for public office'' used for purposes of the political programming rules governing cable systems. *Id.* § 76.5(q). The definition of ''legally qualified candidates for public office'' set forth in section 73.1940 also applies for purposes of the political programming obligations of DBS providers and SDARS licensees. *Id.* §§ 25.701(b)(1), 25.702(a).

[70] *Id.* § 73.1940(a)(1).

[71] *Id.* § 73.1940(a)(2).

[72] *Id.* §§ 73.1940(a)(3), 73.1940(b)(1), and 73.1940(b)(2).

[73] *Id.* § 73.1940(b)(2).

[77] *See* 3 FR 1691 (1938).

[74] Pursuant to section 73.1941(c) of the Rules, candidates have one week from an opponent's initial ''use'' to request equal opportunities. 47 CFR 73.1941(c). The failure by a station to promptly upload information about each ''use'' denies requesting candidates the notice they need to assert their statutory rights to equal opportunities in a timely manner. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* MM Docket Nos. 00–168 and 00–44, Second Report and Order, 27 FCC Rcd 4535, 4562, para. 55 (2012).

[75] *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations,* MM Docket No. 97–138, Report and Order, 13 FCC Rcd 15691, 15716, para. 54 (1998).

[76] *Amendment of Part 76 of the Commission's Rules and Regulations Relative to Obligations of Cable Television Systems to Maintain Public Inspection Files and Permit System Inspections,* Docket No. 19948, Report and Order, 48 FCC 2d 72, para. 1 (1974); 47 CFR 76.1701.

providers,[77] and SDARS licensees,[78] finding that the rationale for imposing such requirements on broadcasters similarly applies to these entities.

In 2002, Congress enacted the Bipartisan Campaign Reform Act (BCRA), which amended section 315 of the Act.[79] The BCRA added new section 315(e) to codify the Commission's existing political file obligations by requiring that information regarding any request to purchase advertising time that ''is made on behalf of a legally qualified candidate for public office'' be placed in the political file.[80] In addition, the BCRA expanded the political file requirements to include any request to purchase political advertising time that ''communicates a message relating to any political matter of national importance.'' [81] Specifically, section 315(e)(1) of the Act requires licensees to make available for public inspection a complete record of each request for the purchase of broadcast time by or on behalf of a legally qualified candidate and by or on behalf of any other entity whose ad communicates a message relating to any political matter of national importance.[82]

The BCRA also specified the records that must be maintained in political files. Specifically, section 315(e)(2) requires licensees to place in their political files information that includes whether the request to purchase broadcast time has been accepted or rejected, information about the advertisement(s), and information about the advertiser.

Section 315(e)(3) of the Act provides that ''[t]he information required by [section 315(e)] shall be placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years.'' [87]

The NPRM proposes to revise the definition of ''legally qualified candidate for public office'' to add the use of social media and creation of a campaign website to the existing list of activities that may be considered in determining whether an individual running as a write-in candidate has made a ''substantial showing'' of his or her bona fide candidacy.[83] The NPRM also proposes to revise the Commission's political file rules to conform with BCRA's amendment to Section 315(e) of the Act, which included within the political file requirements any request for the purchase of advertising time that ''communicates a message relating to any political matter of national importance'' (*i.e.,* issue ads) and specify the records that must be maintained.[84] Additionally, the proposed revisions would specify the records that must be maintained in political files.

Legal Basis

The proposed action is authorized under sections 151, 154(i), 154(j), 303(r), 307, 312, 315,335, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 307, 312, 315, 335, and 403.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted.[85] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [86] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act (SBA).[87] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[88] Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

Television Broadcasting. This U.S. Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' [89] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[90] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts.[91] According to the 2012 Economic Census (when the SBA's size standard was set at $38.5 million or less in annual receipts), 751 firms in the small business size category operated in that year. Of that number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999 and 70 had annual receipts of $50 million or more.[92] Based on this data, we estimate that the

[77] Section 335 of the Act imposes public interest obligations on DBS providers and requires the Commission, at a minimum, to apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to DBS providers. 47 U.S.C. 335(a). The Commission adopted rules requiring DBS providers to abide by political file obligations similar to those requirements placed on terrestrial broadcasters and cable systems in order to assist in evaluations of compliance with the political programming rules and to enable competing candidates to review other candidates' advertising access and rates. *DBS Public Interest Obligations Report and Order,* 13 FCC Rcd at 23271, para. 41; *DBS Public Interest Obligations Sua Sponte ReconsIderation,* 19 FCC Rcd at 5561, para. 35; 47 CFR 25.701(d).

[78] *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees,* MB Docket No. 14.217, Report and Order, 31 FCC Rcd 526, 537–38, paras. 26–27 (2016)*; Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee,* MB Docket No. 07–57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12415, para. 146 (2008); 47 CFR 25.702(b).

[79] Public Law 107–155, 504, 116 Stat. 81 (2002) (codified at 47 U.S.C. 315(e)).

[80] 47 U.S.C. 315(e)(1).

[81] *Id.*

[82] *Id.* Section 315(e)(1).

[87] *Id.* Section 315(e)(3).

[88] *Id.* Section 315(e)(3).

[84] Public Law 107–155, section 504, 116 Stat. 81 (2002) (codified at 47 U.S.C. 315(e)).

[85] 5 U.S.C. 603(b)(3).

[86] 5 U.S.C. 601(6); *see infra* note 38 (explaining the definition of ''small business'' under 5 U.S.C. 601(3)); *see* 5 U.S.C. 601(4) (defining ''small organization'' as ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**''); 5 U.S.C. 601(5) (defining ''small governmental jurisdiction'' as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the **Federal Register**'').

[87] 5 U.S.C. 601(3) (adopting by reference the definition of ''small business concern'' in 15 U.S.C. 632(a)(1)). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' *Id.*

[88] 15 U.S.C. 632(a)(1)–(2)(A).

[89] U.S. Census Bureau, 2017 NAICS Definitions, ''515120 Television Broadcasting,'' *http://www.census.gov./cgi-bin/sssd/naics/naicsrch.*

[90] *Id.*

[91] 13 CFR 121.201; 2012 NAICS code 515120.

[92] U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

majority of commercial television broadcast stations are small entities under the applicable size standard.

Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,374.[93] Of this total, 1,263 stations (or 92%) had revenues of $41.5 million or less in 2019, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 30, 2020, and therefore these stations qualify as small entities under the SBA definition. In addition, the Commission estimates the number of noncommercial educational television stations to be 384.[94] The Commission does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 386 Class A stations.[95] Given the nature of this service, the Commission presumes that all of these stations qualify as small entities under the applicable SBA size standard.

Radio Broadcasting. This U.S. Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' [96] Programming may originate in the establishment's own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $41.5 million or less in annual receipts.[97] According to Economic Census data for 2012 (when the SBA's size standard was set at $38.5 million or less in annual receipts), 2,849 firms in this category operated in that year.[98] Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more.[99] Based on this data, we estimate that the majority of commercial radio broadcast stations were small under the applicable SBA size standard.

The Commission has estimated the number of licensed commercial AM radio stations to be 4,546 and the number of commercial FM radio stations to be 6,682 for a total of 11,228 commercial stations.[100] Of this total, 11,266 stations (or 99%) had revenues of $41.5 million or less in 2019, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 30, 2020, and therefore these stations qualify as small entities under the SBA definition. In addition, there were 4,213 noncommercial, educational (NCE) FM stations. The Commission does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations [101] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

Cable Companies and Systems (Rate Regulation Standard) The Commission has also developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide.[102] Industry data indicates that, of the 777 cable companies currently operating in the United States, 766 serve 400,000 or fewer subscribers.[103] Additionally, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[104] According to industry data, there are currently 4,336 active cable systems in the United States.[105] Of this total, 3,650 cable systems have fewer than 15,000 subscribers.[106] Thus, the Commission believes that the vast majority of cable companies and cable systems are small entities.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [107] As of 2019, there were approximately 48,646,056 basic cable video subscribers in the United States.[108] Accordingly, an operator serving fewer than 486,460 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[109] Based on available data, we find that all but five cable operators are small entities under this

[93] Broadcast Station Totals as of March 31, 2021, News Release (MB Apr. 5, 2021) (Mar. 31, 2021 Broadcast Station Totals), *https://www.fcc.gov/document/broadcast-station-totals-march-31-2021.*

[94] *Id.*

[95] *Id.*

[96] U.S. Census Bureau, 2017 NAICS Definitions, ''515112 Radio Stations,'' *http://www.census.gov./cgi-bin/sssd/naics/naicsrch.*

[97] 13 CFR 121.201; 2017 NAICS code 515112.

[98] U.S. Census Bureau, U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112 Radio Stations) *https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics–515112*|.

[99] *Id.*

[100] Mar. 31, 2021 Broadcast Station Totals.

[101] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 21.103(a)(1).

[102] 47 CFR 76.901(d). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation,* MM Docket Nos. 93–215 and 92–266, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

[103] *See* S&P Global Market Intelligence, *MediaCensus, Operator Subscribers by Geography: National Report, Subscribers by Operator, https://platform.mi.spglobal.com/web/client?auth=inherit#industry/mediaCensusHome* (last visited Jul. 28, 2020).

[104] 47 CFR 76.901(c).

[105] *See* S&P Global Market Intelligence, *MediaCensus, Operator Subscribers by Geography: Headend by Headend Report, Subscribers by Headend, https://platform.mi.spglobal.com/web/client?auth=inherit#industry/mediaCensusHome* (last visited Jul. 28, 2020).

[106] *Id.*

[107] 47 U.S.C. 543(m)(2); *see also* 47 CFR 76.901(e).

[108] S&P Global Market Intelligence, *U.S. Cable Subscriber Highlights, Basic Subscribers(actual) 2019, U.S. Cable MSO Industry Total, see also U.S. Multichannel Industry Benchmarks, U.S. Cable Industry Benchmarks, Basic Subscribers 2019Y, https://platform.marketintelligence.spglobal.com.*

[109] 47 CFR 76.901(e).

size standard.[110] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[111] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. For the purposes of economic classification, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in the Wired Telecommunications Carriers industry.[112] The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services.[113] The SBA determines that a wireline business is small if it has fewer than 1,500 employees.[114] Economic census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[115] Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network.[116] According to industry data, DIRECTV and DISH serve 14,831,379 and 8,957,469 subscribers respectively, and count the third and fourth most subscribers of any multichannel video distribution system in the U.S.[117] Given the capital required to operate a DBS service, its national scope, and the approximately one-third share of the video market controlled by these two companies,[118] we presume that neither would qualify as a small business.

Satellite Radio. The rules proposed in this NPRM would affect the sole, current U.S. provider of satellite radio (SDARS) services, Sirius-XM, which offers subscription services. Sirius-XM reported revenue of $5.78 billion and a net income of $1.1 billion in 2018.[119] In light of these figures, we believe it is unlikely that this entity would be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Reporting Requirements. The NPRM does not propose any new or modified reporting requirements.

Recordkeeping Requirements. The NPRM proposes to revise the political file rules, consistent with the BCRA's amendment to section 315(e) of the Act, to reflect statutory requirements that broadcast licensees, cable television system operators, DBS providers, and SDARS licensees are obligated to maintain in their online political inspection files records of each request for advertising time that ''is made on behalf of a legally qualified candidate for public office'' and each request for advertising time that ''communicates a message relating to any political matter of national importance'' (*i.e.,* issue ads). In addition, the NPRM proposes to list the specific records that must be maintained in political files.

Other Compliance Requirements. The NPRM proposes to revise the political programming rules to add the use of social media to the list of activities that a broadcast licensee or cable operator may consider in determining whether an individual who is running as a write-in candidate has made a ''substantial showing'' of his or her candidacy.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[120]

The proposed revisions to the political file rules to implement the BCRA would largely codify existing Commission policy and guidance. Thus, we expect that these revisions, if adopted, would not impose significant new recordkeeping burdens on small entities. We also seek comment on possible modifications to the proposed revisions to the political file rules to lessen any burdens on small entities.

In addition, we anticipate that the proposal to add the use of social media to the list of activities that may be considered in determining whether an individual who is running as a write-in candidate has made a ''substantial showing'' of his or her candidacy would only benefit small entities by providing additional guidance on how to make such determinations.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in

[110] S&P Global Market Intelligence, *Top Cable MSOs as of 12/2019, https://platform.market intelligence.spglobal.com. The five cable operators all had more than* 486,460 *basic cable subscribers.*

[111] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR 76.910(b).

[112] *See 2017 NAICS Definition,* ''517311 Wired Telecommunications Carriers,'' *https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017%20NAICS%20Search (last accessed Jul. 27, 2020).*

[113] *Id.*

[114] 13 CFR 121.201 (NAICS Code 517311).

[115] *See Information: Subject Series—Estab and Firm Size: Employment Size of Firms for the U.S.: 2012, 2012 Economic Census of the United States, TableID: EC1251SSSZ5, https://data.census.gov/cedsci/table?q=EC1251&hidePreview=true&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&lastDisplayedRow=28# (last accessed Jul. 27, 2020) (NAICS Code 517110 applied at the time of the 2012 Economic Census).*

[116] *See Communications Marketplace Report et al.,* GN Docket No. 18–231 et al., Report, 33 FCC Rcd 12558, 12597, paras. 50–51 (2018).

[117] *See* S&P Global Market Intelligence, *MediaCensus, Operator Subscribers by Geography: National Report, Subscribers by Operator, https://platform.mi.spglobal.com/web/client?auth=inherit#industry/mediaCensusHome* (last visited Jul. 31, 2020).

[118] *See* S&P Global Market Intelligence, *Global Multichannel Top Operators, U.S., https://platform.mi.spglobal.com/web/client?auth=inherit#industry/multichannelIndustryBenchmarks* (last visited Jul. 31, 2020) (There were approximately 63,650,261 total multichannel subscribers in the U.S. in 2019).

[119] *See https://s1.q4cdn.com/750174072/files/doc_financials/2019/ar/2fb89e07-9f09-4e20-be79-9e194d70cd5e.pdf.*

[120] *See* 5 U.S.C. 603(c).

sections 1, 4(i), 4(j), 303, 307, 312, 315, 335, and 403 of the Communications Act, 47 U.S.C 151, 154(i), 154(j), 303, 307, 312, 315, 335, and 403, this Notice of Proposed Rulemaking *is adopted.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Parts 25

Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 73

Cable television, Education, Radio, Reporting and recordkeeping requirements, Telecommunications

47 CFR Part 76

Cable television, internet, Reporting and recordkeeping requirements, Telecommunications

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 25, 73, and 76 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 2. Amend § 25.701 by revising paragraph (d) to read as follows:

§ 25.701 Other DBS Public interest obligations.

* * * * *

(d) *Political File.* (1) Each DBS operator engaged in origination programming shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that:

(i) Is made by or on behalf of a legally qualified candidate for public office; or

(ii) Communicates a message relating to any political matter of national importance, including:

(A) A legally qualified candidate;

(B) Any election to Federal office; or

(C) A national legislative issue of public importance.

(2) *Contents of record.* A record maintained under this paragraph shall contain information regarding:

(i) Whether the request to purchase broadcast time is accepted or rejected by the licensee;

(ii) The rate charged for the broadcast time;

(iii) The date and time on which the communication is aired;

(iv) The class of time that is purchased;

(v) The name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(vi) In the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(vii) In the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(3) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(4) All records required by this paragraph shall be placed in the online political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

* * * * *

■ 3. Amend § 25.702 by revising paragraph (b) to read as follows:

§ 25.702 Other SDARS Public interest obligations.

* * * * *

(b) *Political File.* (1) Each SDARS licensee engaged in origination programming shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that:

(i) Is made by or on behalf of a legally qualified candidate for public office; or

(ii) Communicates a message relating to any political matter of national importance, including:

(A) A legally qualified candidate;

(B) Any election to Federal office; or

(C) A national legislative issue of public importance.

(2) *Contents of record.* A record maintained under this paragraph shall contain information regarding:

(i) Whether the request to purchase broadcast time is accepted or rejected by the licensee;

(ii) The rate charged for the broadcast time;

(iii) The date and time on which the communication is aired;

(iv) The class of time that is purchased;

(v) The name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(vi) In the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(vii) In the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

(3) When free time is provided for use by or on behalf of candidates, a record of the free time provided shall be placed in the political file.

(4) All records required by this paragraph shall be placed in the online political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

* * * * *

PART 73—RADIO BROADCAST SERVICES

■ 4. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 5. Amend § 73.1940 by revising paragraph (f) to read as follows:

§ 73.1940 Legally qualified candidates for public office.

* * * * *

(f) The term ''substantial showing'' of a bona fide candidacy as used in paragraphs (b), (d) and (e) of this section means evidence that the person claiming to be a candidate has:

(1) Satisfied the requirements under applicable law to run as a write-in (such as registering, collecting signatures, paying fees, etc.); and

(2) Has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing

campaign literature, issuing press releases, maintaining a campaign committee, establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager), creating a campaign website, and using social media for the purpose of promoting or furthering a campaign for public office. Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

■ 6. Amend § 73.1943 by revising paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (c) and (d), and adding new paragraph (b) to read as follows:

§ 73.1943 Political file.

(a) A licensee shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that:

(1) Is made by or on behalf of a legally qualified candidate for public office; or

(2) Communicates a message relating to any political matter of national importance, including:

(i) A legally qualified candidate;

(ii) Any election to Federal office; or

(iii) A national legislative issue of public importance.

(b) *Contents of record.* A record maintained under paragraph (a) of this section shall contain information regarding:

(1) Whether the request to purchase broadcast time is accepted or rejected by the licensee;

(2) The rate charged for the broadcast time;

(3) The date and time on which the communication is aired;

(4) The class of time that is purchased;

(5) The name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(6) In the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(7) In the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 7. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 8. Amend § 76.5 by revising paragraph (q)(5) to read as follows:

§ 76.5 Definitions.

* * * * *

(q) * * *

(5) The term ''substantial showing'' of a bona fide candidacy as used in paragraph (q) (2), (3), and (4) of this section means evidence that the person claiming to be a candidate has:

(i) Satisfied the requirements under applicable law to run as a write-in (such as registering, collecting signatures, paying fees, etc.); and

(ii) Has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee, establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his or her campaign manager), creating a campaign website, and using social media for the purpose of promoting or furthering a campaign for public office. Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

* * * * *

■ 9. Amend § 76.1701 by revising paragraph (a), redesignating paragraphs (b) through (d) as paragraphs (c) through (e), and adding new paragraph (b) to read as follows:

§ 76.1701 Political file.

(a) Every cable television system operator engaged in origination programming shall maintain, and make available for public inspection, a complete record of a request to purchase broadcast time that:

(1) Is made by or on behalf of a legally qualified candidate for public office; or

(2) Communicates a message relating to any political matter of national importance, including:

(i) A legally qualified candidate;

(ii) Any election to Federal office; or

(iii) A national legislative issue of public importance.

(b) *Contents of record.* A record maintained under paragraph (a) of this section shall contain information regarding:

(1) Whether the request to purchase broadcast time is accepted or rejected by the licensee;

(2) The rate charged for the broadcast time;

(3) The date and time on which the communication is aired;

(4) The class of time that is purchased;

(5) The name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(6) In the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(7) In the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

* * * * *

[FR Doc. 2021–17754 Filed 8–31–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375; DA 21–978; FR ID 44950]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Federal Communications Commission is extending the time to file comments and reply comments in this proceeding in order to afford interested parties sufficient time to prepare them.

DATES: Comments are due on or before September 27, 2021. Reply Comments are due on or before October 27, 2021.

ADDRESSES: You may submit comments, identified by WC Docket No. 12–375, by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

• Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

• Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Simon Solemani, Pricing Policy Division of the Wireline Competition Bureau, at (202) 418–2270 or via email at *simon.solemani@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 21–978, adopted and released on August 10, 2021. The full text of this document is available at: *https://docs.fcc.gov/public/attachments/DA-21-978A1.pdf.* The full text of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)'s motion is available at: *https://ecfsapi.fcc.gov/file/10802213863368/2021.08.02%20Advocates%20Carceral%20Comms%20Motion%20for%20Extension%20final.pdf.*

1. By this Order, the Wireline Competition Bureau (Bureau) of the Federal Communications Commission grants an extension of time for filing comments and reply comments on the *Fifth FNPRM* (86 FR 40416) in the above-captioned proceeding. As a result, comments are now due on September 27, 2021 and reply comments are now due on October 27, 2021.

2. On May 24, 2021, the Commission released the *ICS Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking* in this proceeding. The *Fifth FNPRM* set deadlines for filing comments and reply comments at 30 and 60 days, respectively, after a summary of the item was published in the **Federal Register**. The **Federal Register** published that summary on July 28, 2021, and established deadlines of August 27, 2021 and September 27, 2021 for filing comments and reply comments, respectively.

3. On August 3, 2021, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), supported by the Benton Institute for Broadband & Society, HEARD, the Human Rights Defense Center, the National Association of the Deaf (NAD), Public Knowledge, the United Church of Christ, OC Inc., Voqal, and Worth Rises (collectively, Movants) filed a Motion for Extension of Time seeking 30-day extensions of the comment and reply deadlines. Movants explain that ''the Commission's important and numerous inquiries in the *Fifth FNPRM* are wide-ranging and complex, and affording additional time for organizations to develop their comments will ensure that a full record is developed.'' Movants further explain that their ability to meet the current comment and reply comment deadlines is compromised due to staffing concerns during the month of August, a reply comment schedule condensed by two holidays, and the need for at least one of the movants to transition to new legal clinic staff between now and the filing deadlines. Movants assert that ''a brief extension would provide the organizations and their counsel sufficient time to finish developing a full array of comments on the broad range of important issues presented by the *Fifth* [*FNPRM*].'' No party has filed an opposition to the Movants' request.

4. As set forth in 47 CFR 1.46, it is the policy of the Commission that extensions of time shall not be routinely granted. Nevertheless, the Bureau finds that Movants have shown good cause for an extension of the comment and reply comment deadlines and that the public interest will be served by extending the comment deadline to September 27, 2021 and, extending the reply comment deadline to October 27, 2021.

5. Under these circumstances, and in the interest of allowing all parties an opportunity to fully and meaningfully respond to the comments and expert reports filed in response to the *Fifth FNPRM,* the Bureau agrees that an extension of the reply comment deadline is warranted.

6. This action is taken pursuant to delegated authority 47 CFR 0.291.

Federal Communications Commission.

Daniel Kahn,

Associate Bureau Chief, Wireline Competition Bureau.

[FR Doc. 2021–18754 Filed 8–31–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2020–0152; FF09E22000 FXES11130900000 212]

RIN 1018–BE62

Endangered and Threatened Wildlife and Plants; Removing the Snail Darter From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the snail darter (*Percina tanasi*), a small freshwater fish native to the Tennessee River watershed, from the Federal List of Endangered and Threatened Wildlife (List). Our review of the best available scientific and commercial data indicates that the threats to the species have been eliminated or reduced to the point that the species no longer meets the definition of an endangered or a threatened species under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to the snail darter. We request information and comments from the public regarding this proposed rule to remove the snail darter from the List (*i.e.,* ''delist'' the species).

DATES: We will accept comments received or postmarked on or before November 1, 2021. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m.

Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 18, 2021.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2020–0152, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2020–0152, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: This proposed rule and supporting documents, including references cited and the 5-year review, are available at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0152.

FOR FURTHER INFORMATION CONTACT: Daniel Elbert, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38506; telephone (931) 528–6481. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for listing species, reclassifying species, or removing species from the Lists of Endangered and Threatened Wildlife and Plants. In the case of any proposed rule to list, reclassify, or delist a species, we must publish a notice of such proposal in the **Federal Register**. Therefore, in order to remove the snail darter from the List, we must publish a proposed rule.

What this document does. This rule proposes to remove (delist) the snail darter from the Federal List of Endangered and Threatened Wildlife based on its recovery.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Under the Act and our implementing regulations at 50 CFR 424.11, we may delist a species if the best available scientific and commercial data indicate that: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species when considering the five factors listed above; or (3) the listed entity does not meet the statutory definition of a species. Here, we have determined that the snail darter no longer meets the definition of an endangered species or a threatened species under the Act and, therefore, it may be delisted due to recovery.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we are requesting comments from independent specialists to ensure that we base our determination on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not remove the snail darter from the List of Endangered and Threatened Wildlife.

(2) Relevant data concerning any threats (or lack thereof) to the snail darter, particularly any data on the possible effects of climate change as it relates to habitat, as well as the extent of State protection and management that would be provided to this fish as a delisted species;

(3) Current or planned activities within the geographic range of the snail darter that may negatively impact or benefit the species; and

(4) Information about the type and extent of monitoring that should be implemented if the species were delisted.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, 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. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0152.

Because we will consider all substantive comments and information received during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remained listed as threatened, or we may conclude that the species should be reclassified from threatened to endangered.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On October 9, 1975, we published a final rule in the **Federal Register** (40 FR 47505) listing the snail darter as an endangered species due to the threat of the impoundment of the only known location of the species by the completion of Tellico Dam. On April 1, 1976, the Service designated 16.5 miles (26.4 km) of the lower Little Tennessee River as critical habitat for the snail darter (41 FR 13926). In 1977, the critical habitat for the snail darter was amended to include a map (42 FR 47840). The Snail Darter Recovery Team prepared the initial recovery plan for the snail darter on April 4, 1979 (Hurst et al. 1979, entire). The plan was revised and finalized on May 5, 1983 (Service 1983, entire). Due to successful translocations into the Hiawassee and Holston Rivers and the discovery of additional populations, we reclassified the snail darter from endangered to threatened and rescinded critical habitat on July 5, 1984 (49 FR 27510). In 2013, we completed a 5-year review for the snail darter. No change in the species' listing classification was recommended as a result of that 5-year review. We initiated a second 5-year review for the species on April 11, 2019 (84 FR 14669), and on July 16, 2019, we were petitioned to delist the snail darter. We were already reviewing the status of the species as part of the 5-year review and, upon receiving the petition, determined that there was substantial scientific and commercial information indicating the delisting the snail darter may be warranted. Based on our review of available data we gathered during preparation of that status review and presented herein, we have determined that the recovery criteria for delisting the species have been met and that the snail darter does not meet the Act's definition of an endangered species or a threatened species. Therefore, we are proposing to delist the snail darter. This proposed rule will also serve as our 5-year review, 90-day finding, and 12-month finding on the petition.

For additional details on previous Federal actions, including recovery actions, see discussion under Recovery, below.

Background

Below, we present a thorough review of the taxonomy, life history, ecology, and overall status of this fish, referencing data from the 2013 5-year review (Service 2013, entire) where appropriate.

Taxonomy

The snail darter is a small fish in the perch family, Percidae, and darter subfamily, Etheostomatinae. The species was first discovered in 1973 (Starnes 1977, p. 1). At that time, and when listed in 1975, the snail darter was recognized as a new, undescribed species in the genus *Percina* and subgenus *Imostoma.* The species was described in 1976 as *Percina tanasi,* named after the historic Cherokee town of Tanasi, near where the snail darter was first discovered (Etnier 1976, p. 485). The snail darter has been recognized as the sister species (closest relative) to the stargazing darter (*P. uranidea*) (Etnier 1976, p. 480; Near and McEachran 2002, p. 8).

Population Genetics

No studies have been completed to determine the level of gene flow between populations or the amount of potential inbreeding within populations. Because snail darters are often found in the lower portions of tributaries, it is likely that tributary populations are part of larger mainstem metapopulations (Service 2013, p. 13). It is not clear to what level the mainstem populations are isolated by the large Tennessee Valley Authority (TVA) dams and reservoirs.

Species Description

The following description is modified from Etnier (1976, pp. 480–485) and Etnier and Starnes (1993, pp. 587–590). The snail darter is a small benthic (bottom-dwelling) fish that grows to 3.55 inches (in) (90 millimeters (mm)). The base color is brown or brownish grey with some green. The back has four clear black or dark brown saddle markings. These markings extend down the sides toward the series of blotches along the lateral line. A dark suborbital bar or ''teardrop'' marking is present below the eye. Fin rays are usually speckled, but pelvic and anal fins are sometimes clear. Males gain a blue-green sheen on the sides and belly during the breeding season when golden flecks become more pronounced on the cheeks and pectoral fins. Females also develop some gold coloring but are less bright than the males. Breeding tubercles (small bony protrusions) form on the rays of the elongated anal fin of males as well as the lower surfaces of rays of the pelvic fins, caudal (tail) fin, and branchiostegal (soft gill cover under head) rays.

The snail darter may occur with two other *Imostoma* darters, the river darter (*Percina shumardi*) and the saddleback darter (*P. vigil*). The snail darter differs from the river darter by having four saddle markings along its back, while the latter lacks saddles altogether. Snail darters and river darters are often found together, but river darters tend to be associated with slightly larger substrate than snail darters (Matthews 2020, pers. comm.). While these species may share similar habitat, there is no evidence that they compete for resources.

Habitat

The snail darter occurs in flowing sections of medium to large rivers. In these streams, snail darters are predominantly found over clean gravel without significant silt or plant coverage (Ashton and Layzer 2010, p. 615). Initially thought to require shallow, unimpounded portions of river to survive (Starnes 1977, pp. 21–23), snail darters were later found in the impounded but flowing upper sections of mainstem Tennessee River reservoirs (Hickman and Fitz 1978, p. 80). Snail darters were found in shoals at a depth of 1 to 3 feet (ft) (0.3 to 1 meters (m)) (Starnes 1977, pp. 21–33; Ashton and Layzer 2010, entire). Snail darters have also been found on gravel and cobble patches in up to 25 ft (7.6 m) of water with regular captures at 10 to 15 ft (3 to 5 m) deep (Ripley 1976, entire; Hickman and Fitz 1978, pp. 80–83; Matthews 2017, pers. comm.; Matthews 2019, pers. comm.). In addition to large river habitats, snail darters also occupy the lower reaches of larger creeks, and during the breeding season, large numbers of darters congregate on the gravel shoals in these creeks to spawn (Starnes 1977, p. 64). Detailed descriptions of snail darter habitat can be found in Ashton and Layzer (2010, entire) and Starnes (1977, pp. 21–33).

Life History

The life history data presented here are modified from Etnier and Starnes (1993, p. 588), with additions from

Hickman and Fitz (1978, pp. 10–38) and Starnes (1977, entire). The snail darter is well adapted to its habitat of clean gravel substrate in large creeks and rivers. The saddle markings on the back of the fish act as camouflage amongst gravel and small cobble, and are a pattern seen in other benthic species (Armbruster and Page 1996, pp. 250–252). Snail darters also can burrow into the substrate with just their eyes exposed to escape predation (Etnier and Starnes 1993, p. 588). The species spawns in the late winter and early spring, from about February to April. Adults gather on shoals during the breeding season. While spawning has not been directly observed, it is likely that the eggs are buried shallowly in the sand and gravel similar to how other *Percina* species bury their eggs. Females produce about 600 eggs per season during multiple spawning events. Eggs hatch after 15–20 days and produce pelagic (in the water column) larvae that drift considerable distances downstream. The developing larvae and juveniles likely use relatively calm deeper areas of rivers and reservoirs. By the end of summer, juveniles are about 1.6 in (40 mm) in length and begin migrating upstream. Some fast-growing individuals may reach sexual maturity in their first year, but most mature in their second year (Etnier and Starnes 1993, p. 588). Snail darters are short-lived fish that rarely survive to their fourth year. As their name implies, snail darters mostly feed on freshwater snails, predominantly in the genera *Leptoxis* and *Lithasia,* as well as caddisfly and dipteran (true fly) larvae (Etnier and Starnes 1993, p. 588).

Distribution

When we listed the snail darter (40 FR 47505; October 9, 1975), the species was only known from about 13 miles (21 kilometers (km)) of the lower Little Tennessee River in Loudoun County, Tennessee. Shortly thereafter, the species was found in the Watts Bar Reservoir portion of the Tennessee River below the mouth of the Little Tennessee River, and efforts were made to conserve the species by translocating individuals into other suitable streams (Hickman and Fitz 1977, pp. 80–83). Snail darters were collected from the Little Tennessee River and stocked into the Hiwassee, Holston, Nolichucky, and Elk Rivers beginning in 1975 to achieve this objective. The introductions into the Nolichucky and Elk Rivers were halted when sharphead darters (*Etheostoma acuticeps*), a species once thought extinct, were rediscovered there, causing concern about competition between the two species. However, the introductions into the Holston and Hiwassee Rivers were successful, and it is thought that the populations in the French Broad and Ocoee Rivers were established by dispersal from these populations (Ashton and Layzer 2008, pp. 55–56). These locations are presented on a map in Figure 1, below.

After the completion of Tellico Dam on the Little Tennessee River, snail darters were located in five additional tributaries and three reservoirs: Little River (1983), Big Sewee Creek (1981), Chickamauga Reservoir (1976), Nickajack Reservoir (1981), South Chickamauga Creek (Tennessee and Georgia portions) (1980), Guntersville Reservoir (Tennessee portion) (1981), Sequatchie River (1981), and Paint Rock River (Alabama portion) (1981) (Service 1983, pp. 12–19; Service 2013, p. 7). A survey in 2005 located the species in seven of the nine tributaries surveyed: French Broad River, Hiwassee River, Holston River, Little River, Sequatchie River, Big Sewee Creek, and South Chickamauga Creek (Ashton and Layzer 2008, p. 54). This survey appears to be the last known record of snail darters in Big Sewee Creek (Simmons 2019, unpublished data). In this survey, snail darters were not located in the Paint Rock River or Ocoee River, though they were discovered at both locations in later years (Kuhajda 2018, unpublished data). In 2007, a single snail darter was collected in Citico Creek, suggesting that snail darters may have persisted in the Little Tennessee River watershed after the dam was constructed; however, they were not found in follow-up surveys (Service 2013, p. 7).

More recent survey efforts have continued to document new snail darter locations, though with limited information on persistence. In 2012, two snail darters were collected in the Flint River in Alabama (Simmons 2019, p. 1), but they have not been found there since. In 2015, snail darters were collected in the Elk River in Alabama and in Bear Creek in Alabama and Mississippi, over 100 river miles (160 km) from the Flint River location. To verify these collections, TVA began an effort to survey the mainstem Tennessee River reservoirs for snail darters (Simmons 2019, p. 2), collecting snail darters from six reservoirs in Tennessee and Alabama: Chickamauga, Nickajack, Guntersville, Wheeler, Pickwick, and the French Broad River arm of Fort Loudoun Reservoir (Simmons 2019, p. 7; TVA unpublished data). Later surveys of the reservoirs located juvenile snail darters in Watts Bar Reservoir (Matthews 2020, pers. comm.), but trawling efforts did not locate individuals in Tellico, Wilson, and Kentucky Reservoirs (Simmons 2019, p. 6).

In 2017 and 2018, an environmental DNA survey was conducted for snail darters in the Alabama portion of the Tennessee River Basin (Shollenberger 2019, p. 6). Environmental DNA (eDNA) is a surveillance tool used to monitor for the genetic presence of an aquatic species. These surveys returned positive eDNA detections in the following streams and reservoirs where TVA surveys had physically collected snail darters during previous survey efforts: Guntersville Reservoir, Wheeler Reservoir, Paint Rock River, Elk River, Pickwick Reservoir, and Bear Creek. The eDNA surveys returned negative results at locations where snail darters had not been collected recently, such as Wilson Reservoir and the Flint River, although an eDNA detection was found and then validated in 2020 in Shoal Creek, a tributary to Wilson Reservoir (Johnson 2020, p. 2).

In summary, the snail darter's known range has greatly expanded since it was first discovered (see Fig. 1). At the time of listing in 1975, the species was only known from a small reach of the Little Tennessee River. By the early 1980s, new populations had been found or established in 10 widely dispersed locations, and in 1984, we reclassified the snail darter from an endangered to a threatened species (49 FR 27510; July 5, 1984), due largely to an increased number of populations and a considerable range expansion. Since 2010, populations in an additional two reservoirs and three tributaries have been discovered (Simmons 2019, pp. 1–2). As a result, snail darters are now considered extant in seven mainstem reservoirs of the Tennessee River (Fort Loudoun, Watts Bar, Chickamauga, Nickajack, Guntersville, Wheeler, and Pickwick) and 12 tributaries in the Tennessee River watershed (Holston River, French Broad River, Little River, Hiwassee River, Ocoee River, South Chickamauga Creek, Sequatchie River, Paint Rock River, Flint River (two individuals), Elk River, Shoal Creek (one individual), and Bear Creek). We consider the snail darter extirpated from the Little Tennessee River mainstem, Citico Creek, and Sewee Creek, and never established in the Nolichucky River.

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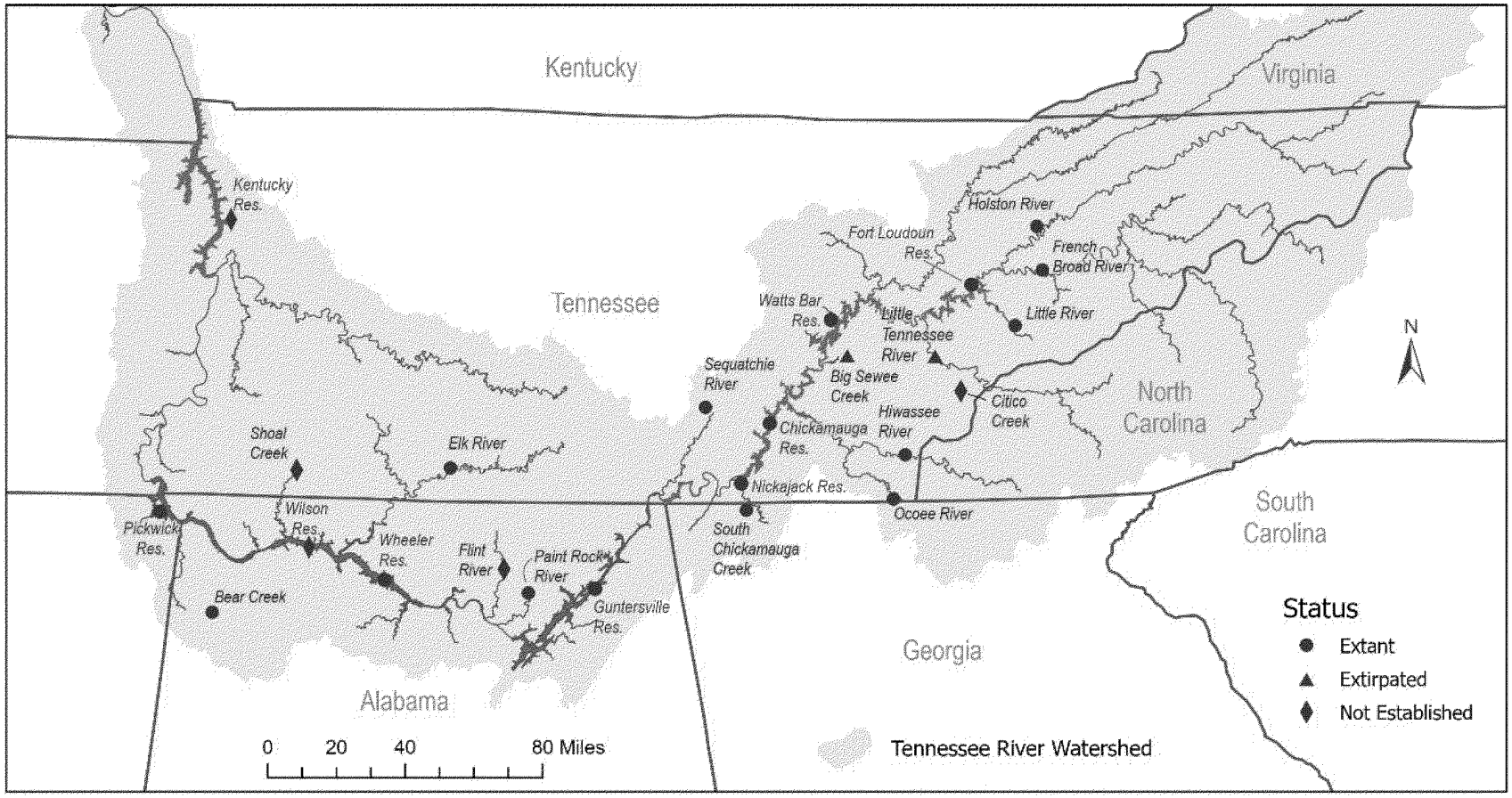

Figure 1. Current range and status of snail darter populations in the Tennessee River watershed.

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Evaluating Populations

There is not currently enough information available to determine population size for the snail darter. Few targeted surveys have been conducted for snail darters since the species was downlisted to threatened in 1984. Stream community monitoring is conducted by TVA throughout the Tennessee River basin using an index of biotic integrity (IBI) approach. The IBI uses fish community metrics, such as percent insectivore, to develop a score of stream health. These surveys are targeting a representative sample of the overall fish assemblage rather than individual species, so are not designed to provide population size information on rare species, but are useful for determining species persistence at a site. Occasional encounters by IBI monitoring crews provide information in the intervening years, but many of these surveys took place in wadeable portions of streams, missing the deeper water habitats often used by the species. Where snail darters are common near IBI sites, surveyors intentionally avoid their habitat to reduce the probability of injury, which can result in artificially reduced numbers of the species in samples. The wide variety of methods used during previous survey efforts also makes comparing populations difficult. Records from snorkel surveys targeted at other species only note incidental sightings of snail darters, not density, and the TVA trawls have mostly been carried out to determine the species' presence and range (Simmons 2019, p. 1). However, it is likely that reproducing populations of the species exist in at least 16 locations (6 reservoirs and 10 tributaries) based on repeated collections that have been made at those locations, evidence of multiple age classes at those locations (*i.e.,* suggesting regular recruitment into the population), and multiple males and females captured at those locations (see Tables 1 and 2 in Summary of Biological Status, below).

Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans must, to the maximum extent practicable, include ''objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions [of section 4 of the Act], that the species be removed from the list.''

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The snail darter recovery plan (Service 1983, entire) included recovery criteria to indicate when threats to the species have been adequately addressed and prescribed actions that were thought to be necessary for achieving those criteria. Below, we discuss our analysis of available data and our determination as to whether recovery criteria for the snail darter have been achieved.

Recovery Criteria

The objective of the recovery plan is to protect and recover the snail darter to the point where it can be removed from the Federal List of Endangered and Threatened Wildlife. The recovery plan states that the species ''shall be considered recovered when one of the alternatives (A, B, or C) listed below is met and no present or foreseeable threats exist that could cause the species to become in danger of extinction'' (Service 1983, p. 27).

- *Alternative A:* Suitable habitat areas of the Tennessee River within the area from the backwaters of Wheeler Reservoir upstream to the headwaters of Watts Bar Reservoir are inhabited by snail darter populations that can survive and reproduce independently of tributary rivers as evidenced by documented reproduction in Watts Bar Reservoir or some other Tennessee River reservoir.
- *Alternative B:* More Tennessee River tributary populations of the species are discovered and existing populations are not lost. The number of additional populations needed to meet this criteria would vary depending on the status of the new populations, but two populations similar to the Big Sewee Creek, South Chickamauga Creek, or Sequatchie River populations, or one comparable to the Hiwassee River population, would denote recovery.
- *Alternative C:* Through maintenance of existing populations and/or by expansion of these populations, there exist viable populations of snail darters in five separate streams such as Big Sewee Creek, Hiwassee River, South Chickamauga Creek, Sequatchie River and Paint Rock River. (For this alternative, ''viable populations'' means that population monitoring over a 10-year period (biannual sampling) indicates that the snail darter is reproducing (at least two year classes present each year sampled) and that the population is either stable or expanding. For some populations, existing data may be used to meet this requirement.)

Achievement of Recovery Criteria

Alternative A of the recovery criteria requires that snail darters be present in suitable habitats within reservoirs from Wheeler Reservoir upstream to Watts Bar Reservoir and evidence of reproduction within reservoirs independent of tributaries in at least one reservoir. We conclude that Alternative A has been met based on collection of seven permanent mainstem populations (Pickwick, Wheeler, Guntersville, Nickajack, Chickamauga, Watts Bar, and Fort Loudoun reservoirs) and evidence of reproduction independent of tributaries in Chickamauga, Nickajack, and Wheeler reservoirs (see Tables 1 and 2 in Summary of Biological Status, below, and Figure 1 in Background, above). These populations represent

multiple reservoirs, rivers and span at least three physiographic regions (Highland Rim, Cumberland Plateau, and Ridge and Valley) (Etnier and Starnes 1993, p. 3; Mettee et al. 1996, p. 5).

Our assessment of the tributary populations of snail darters supports the determination that Alternative B has also been met. Alternative B of the recovery criteria requires the discovery or establishment of at least two new tributary populations similar to the Big Sewee Creek, South Chickamauga Creek, or Sequatchie River populations or one comparable to the Hiwassee River population. In our analysis, we determined that 10 tributary populations are extant that have a moderate or high resilience (see Table 1, below). Four of these (French Broad River, Ocoee River, Elk River, and Bear Creek) have been found or established since the recovery plan was finalized. The largest new population occurs in the lower French Broad River. The founders of this population were likely migrants or juveniles from the stocked population in the Holston (Service 2013, p. 14). Snail darters have been collected across at least 21.8 miles (35.1 km) of the French Broad River and across 19 miles (30.5 km) of the Hiwassee River (Ashton and Layzer 2008, pp. 54–55; Kuhajda 2018, supplementary data; TVA, unpublished data). Therefore, the requirement to discover or establish a population comparable to the Hiwassee River population has been met.

Additionally, Alternative B gives the option of two tributary populations comparable to Big Sewee Creek, South Chickamauga Creek, and Sequatchie River. The current populations in the Ocoee River and Bear Creek are comparable to the Big Sewee Creek, South Chickamauga Creek, and Sequatchie River populations at the time the recovery plan was finalized based on captures and occupied stream length.

Since 2011, snail darters have been found consistently in the Ocoee River by TVA IBI crews, appearing in every biannual sample since 2015. Snail darters have been collected across 5.9 miles (9.5 km) of the Ocoee River, and collections of snail darters in the Hiwassee River near the mouth of the Ocoee suggests that they may occupy more of the river.

Snail darters have only been collected as individuals or pairs, but the lower portion of Bear Creek is in the Gulf Coastal Plain physiographic region, so preferred habitat is more limited than in other streams. Individuals have been collected across 5.8 miles (9.3 km) of Bear Creek, but trawling collections near the mouth of Bear Creek and eDNA detections in the lower parts of the Bear Creek system and at its mouth suggest that snail darters may occur in an additional 25 miles (40 km) of the creek (Simmons 2019, supplementary data; Shollenberger 2019, pp. 14–16).

Since 2015, snail darters have been collected in 1.4 miles (2.3 km) of the Elk River in Tennessee. Snail darters may also occur in the Alabama portion of the Elk River over more than 20 river miles of free-flowing stream down to the portion of the river inundated by Wheeler Reservoir (Simmons 2019, supplementary data; Shollenberger 2019, pp. 14–16).

In summary, our assessment of the tributary populations of the snail darter supports the determination that Alternative B has been met based on the establishment of the French Broad River population that is comparable to the Hiwassee population. Additionally, the Ocoee River, Bear Creek, and Elk River populations are comparable to the Big Sewee Creek historical population, which was found across 4.2 miles of stream, exceeding the prescription in Alternative B for at least one additional large population or two additional small populations.

Alternative C has been partially met. This alternative of the recovery criteria calls for the maintenance of viable populations in five separate streams. The definition for viable populations in the 1983 recovery plan requires biannual monitoring over a 10-year period with enough data to demonstrate a stable or increasing population size and evidence of reproduction indicated by the presence of at least two year classes present in each year sampled. We do not have sufficient specific monitoring data to meet this definition since most of our collections come from TVA IBI surveys that are not species-specific. However, our analysis of the tributary populations found 10 populations that were considered at least moderately resilient (see Table 1 in Summary of Biological Status, below). Of these, nine met the requirement of Alternative C that at least two year classes be present. The discovery of populations in Bear Creek, Elk River, Wheeler Reservoir, and Pickwick Reservoir since 2009 shows evidence of either species expansion, or growth of existing populations to the level of detection (see Table 2 in Summary of Biological Status, below). The presence of resilient populations in 10 tributaries and 7 mainstem reservoirs across four physiographic regions provides evidence of high redundancy and representation for the species (see further explanation of these terms in Analytical Framework, below).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the

effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

To assess species viability, we use the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310).

Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate change). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels and described the beneficial and risk factors influencing the species' viability.

Summary of Biological Status

Resiliency Analysis

As explained above in *Evaluating Populations,* the existing data available do not allow us to estimate population sizes for snail darter. However, collections over multiple years and the presence of multiple age classes provide evidence of persistence in tributaries throughout the snail darter's range. In the reservoirs, the capture of multiple individuals and evidence of multiple age classes typically represents a sustainable population. Where available, presence of snail darters in breeding condition is used as additional evidence of spawning, because snail darters move onto the spawning ground before spawning commences (Starnes 1977, p. 64). We used IBI scores from fixed monitoring stations to address stream health where possible for tributary populations. These scores are generated from fish assemblage surveys throughout the Tennessee River Valley and rank streams from 12 to 60 (poor to excellent) based on metrics such as total number of species, proportions of intolerant and tolerant species, and the numbers of species in various ecological guilds (TVA 2005, pp. 5–7). We use these measures to describe the resiliency of the snail darter populations and their contributions to the species' recovery.

Tributary Resiliency—We characterized snail darter population resiliency in 14 tributaries (11 extant populations, one extirpated, and two apparently not established with only one collection each and no evidence of reproduction) using data related to three factors: Collections in multiple years since 2009, presence of multiple year classes in these samples, and TVA IBI scores for the tributary populations (see resiliency scores for these factors in Table 1, below). Detection of the species in multiple years provides evidence of persistence within a tributary. Consistent collections also indicate population numbers that are high enough to be detected using non-depletion methods (not every fish in a sample reach is caught), which is relevant for species like the snail darter that are difficult to capture with standard fish sampling equipment. The presence of multiple age classes is evidence of successful reproduction in the population. Given that snail darters only live 4 years and likely do not mature until their second year, it would only take a few years of failed reproduction for a population to be extirpated (Etnier and Starnes 1993, p. 588). We reviewed the available data to determine population scores for each of the tributaries. The best available data are not sufficient to determine snail darter population size or trends due to the typically small numbers collected at any given site; however, we can address resiliency of the tributary populations by looking at persistence over time and evidence of reproduction. To do this, we used data from snail darter collections and observations from TVA and Conservation Fisheries, Inc., and data compiled by the Tennessee Aquarium Conservation Institute.

We used IBI scores to address stream community health where possible for tributary populations. Measuring the overall fish community is a way to investigate habitat quality, water quality, and ecosystem stability by proxy of the fish that live in the stream. The IBI incorporates 12 metrics to measure fish community health based on the number of species or proportion of individuals in different guilds (group of species with similar life history) compared to what is expected in a reference condition stream. These metrics are adjusted based on stream size and physiographic region in order to be relevant to the differences in natural conditions across the Tennessee River Basin. Each metric is assigned a value matching a ranking of good (5), fair (3), or poor (1). The 12 metrics are then summed for each, yielding an overall rating of the stream community health. An IBI score of 12 to 22 equates to a very poor rating, 28 to 34 to a poor rating, 40 to 44 to a fair rating, 48 to 52 to a good rating, and 58 to 60 to an excellent rating. Scores between these ranges received intermediate ratings (TVA 2005, entire). To determine potential IBI trends, we compared overall IBI scores for sites within the range of snail darters in each tributary from 2009 to 2019. Roughly half of the tributaries (French Broad River, Little

River, Hiwassee River, Ocoee River, Elk River, and Flint River) showed some improvement during the 1999–2009 period, but during the 2009–2019 analysis period, the communities in all of the tributaries were mostly stable.

We combined the population metrics to give a population score (low, medium, or high), and the habitat metrics combined to form a composite habitat score (low, medium, or high). These scores are compiled in Table 1, below. The population and habitat scores were averaged to provide the overall resilience score. Tributaries with multiple collections (of several fish each collection) and multiple age classes over the 12-year period were ranked high; conversely, those with only one collection and no evidence of reproduction were considered not established. Age classes were assigned by body length, based on life-history studies (Starnes 1977, pp. 47–63; Hickman and Fitz 1978, pp. 10–19). Sites with multiple collections but only one age class were ranked low. Tributaries with good or better IBI scores that were stable or improving were then ranked high, and tributaries with fair IBI scores with stable or improving conditions were ranked moderate. Overall resilience was calculated by averaging the column scores. Where snail darters had been extirpated or not established, IBI scores were not incorporated. While the habitat in Little River is very good, we found that the low numbers (three or fewer individuals in any single observation) of snail darters captured and the lack of multiple age classes did not warrant categorizing the Little River population as moderate or high. Our results of the tributary resiliency analysis are summarized in Table 1.

TABLE 1—TRIBUTARY POPULATION RESILIENCY BASED ON COLLECTION DATA AND TVA IBI SCORES FROM 2009–2019

Tributary	Multiple detections	Multiple age classes	Population score	IBI score	IBI trend	Habitat score	Overall resiliency
Holston River	Yes	Yes	High	Fair	Stable	Moderate	Moderate/high.
French Broad River.	Yes	Yes	High	Fair/good	Stable or improving.	High	High.
Little River	Yes	No	Low	Good/excellent	Stable	High	Low.
Citico Creek	No	No	Not established	Good	Stable	High	Not established.
Big Sewee Creek	No	No	Extirpated	Poor/fair	Stable	Low	Extirpated.
Hiawassee River	Yes	Yes	High	Good/excellent	Stable	High	High.
Ocoee River	Yes	Yes	High	Fair	Stable	Moderate	Moderate/high.
South Chickamauga Creek.	Yes	Yes	High	Fair	Stable or declining.	Moderate	Moderate/high.
Sequatchie River	Yes	Yes	High	Fair	Stable or declining.	Moderate	Moderate/high.
Paint Rock River	Yes	Yes	High	Fair/good	Stable	High	High.
Flint River	No	No	Not established	Fair	Insufficient data	Moderate	Not established.
Elk River	Yes	Yes	High	Fair/good	Stable or improving.	High	High.
Shoal Creek	No	No	Not established	Good	Stable or improving.	High	Not established.
Bear Creek	Yes	Yes	High	Good	Stable or improving.	High	High.

Reservoir Resiliency—Using the data available from the TVA snail darter trawl surveys (Simmons 2019, p. 3), we analyzed resiliency of the reservoir populations based on first, the number of individuals captured; and second, evidence of reproduction, with evidence of reproduction established either through presence of multiple age classes, adults in spawning condition (gravid females and/or males flowing milt [sperm]), or juveniles. To categorize number of individuals, we classified collections of 0–4 individuals as low, 5–9 as moderate, and ≥10 as high. To classify reproduction, given the limited sampling effort to date, collection of more than one age class or other evidence of reproduction resulted in a high rating in the reproduction metrics. Collection of only one age class or no other evidence of reproduction resulted in a low rating. Similar to the stream population, overall resilience was calculated by averaging the scores of the number collected and reproduction metrics. Results are summarized below in Table 2.

TABLE 2—RESERVOIR POPULATION COLLECTIONS BASED ON TVA BENTHIC TRAWLS, 2016–2019 *

Reservoir	Population score (number collected)	Age classes	Evidence of reproduction	Reproduction score	Overall resilience
Fort Loudoun	Low (2)	2	No	High	Moderate.
Watts Bar	Low (3)	1	Yes	High	Moderate.
Chickamauga	Low (4)	2	Yes	High	Moderate.
Nickajack	High (11)	2	Yes	High	High.
Guntersville	High (33)	2	No	High	High.
Wheeler	High (18)	2	Yes	High	High.
Wilson	Low (0)	0	No	N/A	Not established.
Pickwick	High (18)	3	No	High	High.

TABLE 2—RESERVOIR POPULATION COLLECTIONS BASED ON TVA BENTHIC TRAWLS, 2016–2019 *—Continued

Reservoir	Population score (number collected)	Age classes	Evidence of reproduction	Reproduction score	Overall resilience
Kentucky	Low (0)	0	No	N/A	Not established.

* Age classes based on total length measurements from Hickman and Fritz (1978). Evidence of reproduction is based on capture of juvenile individuals, adults in spawning condition, or multiple age classes (Simmons 2019, p. 7).

For the purpose of evaluating the snail darter's status, we considered those tributaries that ranked moderate or high as contributing to resiliency. Because of the limited amount of reservoir sampling that has been completed, we considered those reservoir populations that had evidence of reproduction present as permanent, independent populations (Simmons 2019, p. 2) that contribute to resiliency. We, therefore, considered 7 reservoir populations (Fort Loudoun, Watts Bar, Chickamauga, Nickajack, Guntersville, Wheeler, and Pickwick) and 10 tributary populations (Holston, French Broad, Little, Hiwassee, Ocoee, Sequatchie, Paint Rock, and Elk Rivers, and South Chickamauga and Bear Creeks) as contributing to species resiliency. We did not count Wilson Reservoir or Kentucky Reservoir toward resiliency because snail darters had never been collected there despite trawling efforts. While Watts Bar is only represented by three juveniles, their collection far from any large tributaries is evidence of reproduction within the reservoir. We did not consider Citico Creek, Big Sewee Creek, Flint River, or Shoal Creek as contributing toward resiliency either, because the species had not been collected there within the analysis period, despite multiple efforts (Big Sewee Creek, Citico Creek) or because a single snail darter had been found on only one occasion (Shoal Creek, Flint River) and we considered the populations to be not established in those locations (see Table 1, above).

Analysis of Redundancy and Representation

With discoveries of new tributary and reservoir populations, the known redundancy and representation of the snail darter has expanded during the analysis period. When we listed the species (40 FR 47505; October 9, 1975), it had very low redundancy and representation because only one population was known from several miles of the Little Tennessee River, in the Ridge and Valley physiographic region. Currently, the species is known across more than 400 miles (640 km) of the Tennessee River Valley, with moderately to highly resilient populations in 9 tributaries and 7 reservoirs, providing a level of redundancy that helps shield the species from localized stochastic events.

While we do not have population genetic data for the snail darter, we can look at the species' ability to adapt to changes in the environment (representation) by looking at its distribution across a range of habitats and physiographic regions. Resilient populations are currently known from streams ranging in size from mid-sized creeks to the large Tennessee River itself, with collections in depths ranging from less than 3 ft (1 m) to 25 ft (7.6 m). These populations occur in reservoirs and tributaries with these conditions in four different physiographic regions (Ridge and Valley, Cumberland Plateau, Highland Rim, and Gulf Coastal Plain). This wide range of habitat use and geographic distribution helps to demonstrate the snail darter's adaptability to changing environmental pressures (representation).

Summary of Factors Affecting the Species

A recovered species is one that no longer meets the Act's definition of an endangered species or a threatened species. Determining whether the status of a species has improved to the point that it can be delisted or downlisted requires consideration of the same five factors identified above for listing a species. When we initially listed the snail darter as endangered in 1975, the only identified threat influencing its status was the modification and loss of habitat and curtailment of range (Factor A) caused by the completion of Tellico Dam and the flooding of the entire known range of the species. When we reclassified the species as threatened in 1984, we evaluated a more complete list of factors based on improved knowledge of the snail darter's range and life history. These factors included threats to habitat such as shipping activities in the mainstem Tennessee River, impacts from development in some of the tributaries such as South Chickamauga Creek, threats from agricultural runoff and channelization in streams like the Elk River, impacts from coal mining in the Sequatchie River watershed, and chemical spills in the Hiwassee and Ocoee watersheds (Factor A); excessive collection associated with the notoriety of the species (Factor B); and protections afforded the species by State and Federal laws (Factor D). The following analysis evaluates these previously identified threats, any other threats currently facing the species that we have identified, as well as any other threats that are reasonably likely to affect the species in the foreseeable future.

To establish the foreseeable future for the purpose of evaluating trends in the threats and the species' responses, we analyzed trends from historical data on distribution and abundance, ongoing conservation efforts, factors currently affecting the species, and predictions of future climate change. When combined with our knowledge of factors affecting the species (see discussion below), available data allow us to reasonably predict future conditions, albeit with diminishing precision over time. Given our understanding of the best available data, for the purposes of this proposed rule, we consider the foreseeable future for the snail darter to be approximately 30 years. We determined that we can reasonably predict the threats to the species and the species' response during this timeframe based on climate vulnerability assessments through 2050, the planning horizon of the reservoir release improvement program (RRIP), and enough time for the species to respond based on biology and lifespan.

As noted above, when the species was downlisted (49 FR 27510; July 5, 1984), the reclassification rule identified additional threats to habitat in the additional populations established or discovered since listing (40 FR 47505; October 9, 1975). These included threats from shipping activities in the mainstem Tennessee River, impacts from development in some of the tributaries such as South Chickamauga Creek, threats from agricultural runoff and channelization in streams like the Elk River, impacts from coal mining in the Sequatchie River watershed, and

chemical spills in the Hiwassee and Ocoee watersheds.

One of the biggest factors still affecting the snail darter is the impoundment of large portions of the Tennessee River Valley. The TVA operates 9 dams on the mainstem Tennessee River and 38 dams on tributaries to the Tennessee River. These impoundments create large areas of deep, still water that do not meet the habitat needs of the snail darter. Snail darters are limited in the depth they can occupy by the presence of food resources. Snails, the darter's preferred prey, live only in water shallow enough for light to penetrate and allow algae to grow on the substrate, about 15–20 ft (5–7 m) in much of the Tennessee mainstem. Impoundment also reduces stream flow and allows fine sediments to settle out, which can cover the clean gravel habitats needed by snail darters. Additionally, these dams were initially operated with a hydropeaking strategy, only releasing water when needed to generate electricity or maintain reservoir level or flood storage capacity. In addition, many of these releases came from the water levels within the reservoir that held cold, oxygen-deficient water. Collectively, these factors created conditions in the tailwaters that negatively affected water quality, food availability, and fish diversity.

Given the long operational lifespan of dams (>100 years), it is nearly certain that the TVA reservoirs will be in place for the foreseeable future. However, beginning in 1981, TVA began studies to improve conditions in the tailwaters of their dams. The cold, oxygen-deficient water released from the bottom of many of the dams created conditions that eliminated many fish and mussel species from these areas. Through the RRIP, TVA began implementing strategies to increase minimum flow, dissolved oxygen, and, in some cases, temperature, in the tailwaters of their dams beginning in 1991 (Bednarek and Hart 2005, p. 997). In 2002, TVA conducted a reservoir operation study to consider how to implement these changes across the basin to improve the health of the river (TVA 2004, p. ES–3). The result was to manage the river based on minimum flows instead of reservoir level and improve tailwater conditions. These changes have resulted in significant improvements in biological and abiotic variables and increases in fish and invertebrate diversity in many TVA dam tailwaters (Layzer and Scott 2006, entire; Bednarek and Hart 2005, entire; Scott et al. 1996, entire). These improvements have likely resulted in improved conditions for the snail darter and may have contributed to improvements to the species' status within tailwaters since the 1990s, across more than 400 miles (640 km) of the mainstem of the Tennessee River. Since the RRIP is based on ecologically meaningful parameters in the tailwaters, such as dissolved oxygen and temperature, this program may be able to provide some resiliency to a warming climate and precipitation variability in the future, especially if TVA adjusts the program to maintain the needed conditions in the tailwaters. The reservoir operation study is planned along an approximately 25-year timeline, extending to 2030 (TVA 2004, p. ES–4). However, given the presence of at least 10 other listed aquatic species in the tailwaters of the mainstem Tennessee River reservoirs and the complexities of changing the operations plan, it is very likely that TVA will continue RRIP as part of their compliance with the Act for these other species beyond the timeline of the environmental impact statement (EIS) and biological opinion that were prepared under Section 7 of the Act before alterations were made to dam release management. For these same reasons, TVA will likely incorporate RRIP to protect federally listed mussels present when it revisits its EIS around 2030, and because the current EIS's term is 25 years, it is reasonable to assume TVA will issue another 25-year EIS. Therefore, we estimate these conditions benefiting the snail darter will continue through at least midcentury (Baxter 2020, pers. comm.). Overall, the persistence and expansion of snail darter populations in the mainstem since the 1970s indicate greater resiliency in these habitats than was considered at the time of listing, particularly now with the implementation of TVA's RRIP.

Anthropogenic changes to the land can also negatively impact the snail darter and its habitats. Sedimentation is one of the biggest threats to water quality in the Tennessee River Valley, including in streams occupied by snail darters. Big Sewee Creek has been impacted by sedimentation from persistent farming in the watershed, reducing the amount and quality of gravel habitat in the stream. The predominant agricultural activities contributing to sedimentation in Big Sewee Creek (livestock pasture and row crops) are exempt from many State and Federal regulations designed to reduce sediment runoff, and these activities are likely to continue into the future. Therefore, we do not expect this population to reestablish unless habitat conditions improve in the future. Sedimentation from agriculture and development is also considered a concern in the lower Little Tennessee River, Sequatchie River, South Chickamauga Creek, and Paint Rock River watersheds. There have been watershed-level efforts to address sedimentation issues in some of the tributaries where snail darters have been found. The South Chickamauga Creek Land Treatment Watershed Project, an effort of the Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture (USDA), began in 2001, to reduce the runoff of sediment and nutrients in the watershed by installing animal waste management systems (see 65 FR 44519; July 18, 2000). Additionally, the Limestone Valley Resource Conservation and Development Council is working with a wide variety of partners to implement the South Chickamauga Creek Headwaters Management Plan, developed in 2012, to address water quality issues (Smith and Huser 2012, pp. i–3). In the Paint Rock River, The Nature Conservancy (TNC) has designated a ''landscape conservation area'' and worked to address sedimentation issues from agriculture throughout the watershed, resulting in improved conditions for aquatic fauna (Throneberry 2019, unpublished data). Many of these efforts include restoring natural stream channel characteristics where streams have been channelized. These efforts have been undertaken outside of species-specific recovery efforts for the snail darter, and they are likely to continue regardless of the delisting of the species. Other small-scale efforts have been undertaken to reduce sedimentation in many of the other tributaries inhabited by snail darters. It is likely that sedimentation has resulted in the extirpation of snail darters from Big Sewee Creek, but there is some potential for recolonization by individuals from Chickamauga Reservoir if habitat conditions improve.

Urban and suburban development may impact the snail darter as well. Increases in the amount of impervious surfaces associated with development increase runoff to streams, destabilize hydrology, and increase water temperature. Additionally, residential and commercial development are associated with increased runoff of lawn and automotive chemicals into the streams (Matthaei and Lang 2016, p. 180; Walsh et al. 2005, p. 707). The snail darter tributaries currently most impacted by development and the chemical and sediment runoff associated with it are South

Chickamauga Creek in Chattanooga, Tennessee; Flint River in Huntsville, Alabama; and Little River in Maryville, Tennessee. Based on the SLEUTH (Slope, Land use, Excluded area, Urban area, Transportation, Hillside area) model, these areas are anticipated to have increased suburban and urban growth in the next 30 years, which might further impact South Chickamauga Creek, Flint River, and Little River; there is also the potential for increased urban impacts to the Sequatchie River and Paint Rock River watersheds associated with the growth of Chattanooga and suburban development from Huntsville, respectively (Terando et al. 2014, pp. 1–3). However, based on the persistence of snail darters in South Chickamauga Creek, which scored moderate in our analysis (see Table 1, above), it appears that there is some evidence to support a conclusion that the species is resilient to the impacts of urbanization.

Additionally, the Thrive Regional Partnership is a group working to promote responsible growth in a 16-county region in the Greater Chattanooga area. The partnership's goal is to improve communities while maintaining healthy ecosystems. Thrive has identified portions of streams and surrounding land that are key to preserving and enhancing water quality in the region of interest, with the goals of conserving 50 percent of unprotected forest and improving water quality in at least 50 percent of polluted streams by 2055. The area covered by this initiative includes portions of the Big Sewee Creek, South Chickamauga Creek, Sequatchie River, and Paint Rock River watersheds (Thrive Regional Partnership 2019, entire).

The threat of chemical and industrial spills was raised as a potential threat in the downlisting rule (49 FR 27510; July 5, 1984). The range of the snail darter is crossed by several major highways and railroad lines, making the possibility of a spill during transport an ongoing risk. Such spills have occurred as recently as 1991 in the Hiwassee River, but while spills may have severe impacts locally, they are unlikely to affect the species as a whole given its wide range in the mainstem of the Tennessee River and several tributaries (Service 2013, p. 18). Furthermore, the Ocoee River has suffered from industrial and mine runoff from the historical copper extraction in the watershed. Within the Ocoee River watershed, concerted efforts have been made to clean up industrial and mine-related pollution, resulting in much improved water quality and a healthier ecosystem, which may have contributed to the increased numbers of snail darters seen in that river since the Service's 2013 5-year review (Service 2013, p. 12; Simmons 2019, unpublished data).

The threat to snail darters from coal mining in the Sequatchie Valley has been greatly reduced since the recovery plan was completed. Mining for coal in the Sequatchie Valley ceased in the 1990s, and since that time, there have been efforts to remediate acid mine drainage in the area. Currently, there are no active coal mining permits in the Sequatchie Valley (OSMRE 2016, p. 34; ITRC 2010, entire).

The Tennessee River is a major inland shipping corridor, and in the downlisting rule (49 FR 27510; July 5, 1984), activities associated with barge traffic were considered to potentially threaten snail darters through habitat alterations in the mainstem Tennessee River reservoirs. Barge and large boat wakes can result in significant bank erosion along the river. Within the mainstem reservoirs, bank stabilization efforts have occurred in some significantly impacted areas and have reduced sedimentation at those locations, but there is no concerted plan to address this source of sediment across the Tennessee River basin. However, there is some evidence that areas of consistent traffic, such as barge mooring cells, may provide areas of silt-free habitat swept clean by tug engines (Matthews 2017, pers. comm.; Walker and Alford 2016, p. 1101).

In summary, while effects to snail darter habitat (Factor A) associated with continued urbanization and agriculture are certain to persist into the foreseeable future, efforts are being made to reduce the impact to many of the tributaries inhabited by snail darters. Additionally, snail darters appear to be resilient to urbanization and agriculture, including practices such as channelization, in certain tributaries such as South Chickamauga Creek and Sequatchie River. In the Sequatchie River, the threat from coal mining is reduced with the cessation of mining in the valley and ongoing reclamation efforts. The mainstem populations are less susceptible to sedimentation and runoff associated with agriculture and urbanization due to the buffering capacity of the larger river, but they still may be affected by bank erosion and industrial transport along the Tennessee River. However, population persistence and the apparent expansion in the mainstem since the 1970s demonstrate the resiliency of the snail darter within these habitats, especially with the implementation of TVA's RRIP.

At the time of the downlisting rule (49 FR 27510; July 5, 1984), the Service projected that the notoriety of the snail darter could result in an increase in illegal collection (Factor B); however, no such activities have been observed or documented since that rule was published. Snail darters receive some protection against collection from the States. The species is listed as threatened in Tennessee, endangered in Georgia, and protected as a non-game species in Alabama and Mississippi. These protections require State permits for the collection of the species.

The snail darter's habitat is also protected by State water quality laws that require the use of best management practices, such as leaving a riparian buffer, when clearing or building near a stream (Factor D). In Tennessee, any waterway with a State-listed species is designated an ''Exceptional Tennessee Waterway,'' and projects impacting these streams are required to undergo additional review before receiving the necessary State permits. While agriculture is typically exempt from many of the provisions in State laws, various efforts described above, such as those in the Paint Rock River and South Chickamauga Creek, are working to reduce the impact of sedimentation from agriculture on the snail darter. Additionally, the snail darter's range overlaps with the ranges of more than 10 federally endangered mussels. This provides some protection, as entities implementing projects with a Federal nexus, such as infrastructure repair and construction and dam operation, are required to consult with the Service to reduce the impacts to listed species and designated critical habitat. These consultations may result in changes to the project to reduce sedimentation or limit the time of year when construction can take place to reduce disruption to the life history of a species. The protection, restoration, conservation, and management of ecological resources within the snail darter's range have been broadly enhanced through Executive Orders and Federal regulations since the species was listed. These include provisions emphasizing the protection and restoration of ecosystem function and quality in compliance with existing Federal environmental statutes and regulations (*e.g.,* National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*)) and endorsing Federal efforts to advance environmental goals. Recent water resources authorizations have also enhanced opportunities for the involvement of the U.S. Army Corps of Engineers and other Federal agencies in studies and projects to specifically

address objectives related to the restoration of ecological resources (*e.g.,* section 1135 of the Water Resources Development Act of 1986, as amended, 33 U.S.C. 2201 *et seq.*).

Protections associated with the CWA and State wildlife laws will continue to provide some protection to the snail darter. The fear that the species' notoriety would result in increased collection or other forms of take has not been realized since we reclassified the species to threatened, and collection is unlikely to have a major impact on species resilience in the foreseeable future. Additionally, even if range States were to cease protecting the snail darter, its wide range and current redundancy should minimize its risk of extinction for the foreseeable future.

In addition to the threats mentioned in the downlisting rule (49 FR 27510; July 5, 1984) that are addressed above, we now consider other threats or stressors that reasonably could affect the snail darter in the foreseeable future. One such potential threat is climate change. In the southeastern United States, clear trends in climate predictions are limited. However, annual temperatures are projected to increase, cold days will become less frequent, the freeze-free season will lengthen by up to a month, temperatures exceeding 95 degrees Fahrenheit (°F) (35 degrees Celsius (°C)) will increase, heat waves will become longer, and the number of category 5 hurricanes will increase (Ingram et al. 2013, p. 32). Variability in weather is predicted to increase, resulting in more frequent and more extreme dry years and wet years over the next century, but a directional shift in overall precipitation is not anticipated in the Tennessee River Valley (Mulholland et al. 1997, pp. 951–955; Ingram et al. 2013, pp. 15, 35).

There is some evidence that the increased variability may already be taking effect. 2018 and 2019 were the two wettest years on record for the Tennessee River Valley (Simmons 2020, unpublished data). During the late summer and early fall of 2019, the second wettest year overall, parts of the Valley temporarily experienced abnormally dry or drought conditions (USDA Drought Monitor for Tennessee River Valley, October 1, 2019).

Increased rainfall will result in increased runoff, higher river levels, and longer periods of spilling from the top of dams by TVA. During periods of spilling at dams, there is the chance for more oxygenation of tailwaters and temperature mixing that could benefit the snail darter. However, increased rainfall, especially extreme events, would increase runoff of sediment and pollutants into tributaries and eventually into the mainstem. These inputs could potentially degrade spawning and foraging habitat for the snail darter. Increased flows during the spawning season could also increase the distance that the pelagic larvae of snail darters drift before becoming benthic. If the larvae found suitable habitat, increased flow could expand the range of the species and contribute to genetic mixing; however, there is also the chance that larvae could be pushed into unsuitable habitat, which would result in reduced survival. Drought would most likely impact the shallower habitats inhabited by snail darters in tributaries. The area of shoal habitat available during periods of low flow could be reduced during a drought. The flows could be further reduced by water extraction for irrigation. These reductions of spawning habitat could result in lower spawning success. If discharge is reduced enough, the clean-swept gravel habitats that the snail darter relies on in the mainstem could begin to retain silt, reducing habitat quality.

There is evidence that the habitat and life history of the snail darter will protect it from predicted changes in climate over the next 30 years. In a 2017 climate change vulnerability assessment of 700 species, the Appalachian Landscape Conservation Cooperative (LCC) ranked the snail darter as ''presumed stable'' through 2050 under predicted climate conditions (Appalachian LCC 2017, supplemental data). Being adapted to large river habitats, the snail darter is less susceptible to impacts from high-flow events. As much of its habitat in the mainstem is already impounded, the effects of high water are less meaningful, and TVA flood control efforts may offset some of the strong flow peaks associated with extreme rain events. The species' preference for deeper water habitats and late winter spawning period protects it from drought. Deep water habitats are not impacted by droughts as drastically as shallow habitats. The RRIP in TVA tailwaters ensures availability of suitable water for the mainstem populations throughout the year despite the occurrence of drought. Drought is also unlikely to impact spawning events on shoals in tributaries because late winter and early spring are typically the wettest times of the year within the Tennessee River Valley. The snail darter is likely also protected from the projected temperature increases by adaptation to larger streams and the thermal buffering of the large reservoirs on the mainstem.

If we examine current projections beyond our 30-year foreseeable future, under plausible future greenhouse gas concentrations termed representative concentration pathways (RCP), warming temperatures and precipitation projections continue to suggest mixed effects to the species. Relative to 1981–2010, over 2050–2074, the 50th percentile (median) for the Tennessee Region, maximum air temperature warms by 4.4 °F (2.4 °C) in RCP 4.5, whereas the region warms by 6.4 °F (3.6 °C) in RCP 8.5 (Alder and Hostetler 2013, entire). Changes in precipitation are not as apparent. Relative to 1981–2010, over 2050–2074, the 50th percentile (median) for the Tennessee Region, precipitation increases by only 0.2 in (5.1 mm) per month in both RCP 4.5 and RCP 8.5 (Alder and Hostetler 2013, entire). We are not extending the foreseeable future timeline beyond 2050 because the snail darter's response to changing climatic conditions is less certain after 2050. We have greater certainty about the species' response to changing climactic conditions between now and 2050 because we have both the projections and scientific sources that predict the species' response, such as the LCC report. Further, the climate projections are more reliable between now and 2050 as compared to beyond 2050 because the models diverge after 2050. As a result, we do not consider the snail darter to be vulnerable to the effects of climate change in the foreseeable future.

The increases documented in the abundance and distribution of the snail darter since it was listed in 1975 have led to a better understanding of the current and future condition of the species' resiliency, redundancy, and representation across the range. The observed variations in population size, density, or distribution of the snail darter are typical of metapopulation dynamics. Surveys have shown that individual populations may decline based on localized stressors (*e.g.,* severe sedimentation, toxic spills, streamflow alteration) or their cumulative effects. When threats occur together, one may exacerbate the effects of another, causing effects not accounted for when threats are analyzed individually. However, the best available information does not demonstrate that cumulative effects are occurring at a level sufficient to negatively affect the species.

Determination of the Snail Darter's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50

CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' For a more detailed discussion on the factors considered when determining whether a species meets the definition of an endangered species or a threatened species and our analysis on how we determine the foreseeable future in making these decisions, see Regulatory and Analytical Framework, above.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we have found that snail darter representation and redundancy has increased, with extant populations in 7 mainstem reservoirs of the Tennessee River and 10 tributaries in the Tennessee River watershed. Of the mainstem reservoirs, six populations showed multiple age classes, and for these six, we have observed direct evidence of reproduction in three populations, indicating moderate or high resilience. Collection efforts in two mainstem reservoirs, Wilson and Kentucky reservoirs, failed to find snail darters during our analysis period. Of the tributaries, nine populations demonstrated moderate to high resilience; one population is considered to have low resilience with no evidence of reproduction; three tributary populations (Citico Creek, Flint River, and Shoal Creek) lack sufficient collections during our analysis period to consider them established. Additionally, the species is now known to be present in four physiographic regions, indicating increased representation, and the multiple, resilient populations indicate an increase in redundancy since the species was reclassified to threatened in 1984. Because the snail darter has increased in representation and redundancy generally, and in particular with respect to numbers of resilient, self-sustaining populations, we expect this species to be able to sustain populations into the foreseeable future.

We have carefully assessed the best scientific and commercial information regarding the threats faced by the snail darter in developing this proposed rule. Threats reported at the time of listing (1975) and when we downlisted the species to threatened status (1984) related to habitat loss and curtailment of range (Factor A) have been reduced in many locations, and available data indicate the species possesses greater resilience to the negative effects of dams than was determined at the time of listing. Further, beneficial dam operations (*i.e.,* RRIP) are expected to continue into the foreseeable future.

At the time of the downlisting rule (49 FR 27510; July 5, 1984), it was thought that the notoriety of the snail darter would result in an increase in illegal collection (Factor B); however, no such activities have been seen, and we do not consider this a threat to the current or future viability of the species. State water quality and wildlife laws provide some protections to the snail darter and its habitat, and its range overlaps with other federally protected aquatic animals (Factor D). In addition, we have evaluated potential effects of climate change (Factor E) and determined that it is not a primary threat to the species. Thus, after assessing the best available information, we conclude that the snail darter is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that the snail darter is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant; and (2) the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for the snail darter, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species may be endangered or threatened. For the snail darter, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Habitat modification, curtailment of range, climate change, and illegal collection, including cumulative effects.

Threats related to habitat modification or curtailment of range affect snail darters throughout their range. With the implementation of TVA's RRIP, conditions around the large dams on the mainstem of the Tennessee River have improved. Our analysis of the species' resiliency (see above, Analytical Framework), which integrated information on demographics and threats, determined that six out of nine reservoir populations showed multiple age classes, and for these six, we have observed direct evidence of reproduction in three of these reservoirs. These reservoirs with resilient populations are distributed across the snail darter's range and multiple geographic provinces. Of the 10 resilient tributary populations, 9 populations demonstrated moderate to high resiliency. In tributary watersheds such as the Ocoee and Sequatchie where water quality was impacted by localized mining threats, conditions have improved due in part to the cessation of mining and efforts to clean up the mine sites. In watersheds with higher levels of agriculture and urbanization such as the South Chickamauga Creek and Paint Rock River watersheds, conservation programs are in place to reduce the impact of these activities on the instream habitat used by the snail darter. Based on the distribution of resilient populations and the conservation efforts put in place, we have determined that threats related to habitat modification or curtailment of range are not concentrated in any portion of the species' range.

We have reviewed other potential threats, including climate change, illegal collection, and cumulative effects, and we concluded that none of them is concentrated in any portion of the species' range at a biologically meaningful scale. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future in a significant portion of its range, and we find the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This is consistent

with the court's holding in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018); *and Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best scientific and commercial data available indicates that the snail darter does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we propose to remove the snail darter from the List.

Effects of This Rule

This proposal, if made final, would revise 50 CFR 17.11(h) by removing the snail darter from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to the snail darter. Federal agencies would no longer be required to consult with us under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the snail darter. There is no critical habitat designated for this species, so there would be no effect to 50 CFR 17.95.

This rule would not affect the snail darter's status as an endangered or threatened species under State laws or suspend any other legal protections provided by those laws. States may have more restrictive laws protecting wildlife, and these would not be affected by this Federal action. However, this proposed rule may prompt Tennessee or Georgia to remove protection for the snail darter under their endangered species laws, although we are not aware of any such intention at this time.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as endangered or threatened is not again needed. If at any time during the monitoring period data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

Section 4(g) of the Act explicitly requires that we cooperate with the States in development and implementation of PDM programs. However, we remain ultimately responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation after delisting.

We will coordinate with other Federal agencies, State resource agencies, interested scientific organizations, and others as appropriate to develop and implement an effective PDM plan for the snail darter. The PDM plan will build upon current research and effective management practices that have improved the status of the species since listing. Ensuring continued implementation of proven management strategies that have been developed to sustain the species will be a fundamental goal for the PDM plan. The PDM plan will identify measurable management thresholds and responses for detecting and reacting to significant changes in snail darter numbers, distribution, and persistence. If declines are detected equaling or exceeding these thresholds, the Service, in combination with other PDM participants, will investigate causes of these declines. The investigation will be to determine if the snail darter warrants expanded monitoring, additional research, additional habitat protection, or resumption of Federal protection under the Act. We will draft the PDM plan and will notify the public on our website, *https://www.fws.gov/cookeville,* when it is available. Copies will also be available from the U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). We anticipate finalizing a PDM plan at the time of making a final determination on the proposed delisting rule.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. As we move forward with this rulemaking process, we will continue to consult with Tribes on a government-to-government basis as necessary.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov*

under Docket No. FWS–R4–ES–2020–0152.

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Tennessee Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11 in paragraph (h) by removing the entry for ''Darter, snail'' under FISHES from the List of Endangered and Threatened Wildlife.

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–18127 Filed 8–31–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BK64

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Amendment 7 to the Atlantic Bluefish Fishery Management Plan

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

ACTION: Notification of availability of proposed fishery management plan amendment; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council has submitted Amendment 7 to the Atlantic Bluefish Fishery Management Plan to NMFS for review and approval. Amendment 7 proposes to implement a rebuilding plan for the overfished bluefish stock, as well as revisions to fishery management plan goals and objectives, administrative measures during the specifications process, and the allocation percentages of quota between the commercial and recreational sectors and commercial quota among the states. The purpose of this amendment is to implement a rebuilding plan, as required by the Magnuson-Stevens Fishery Conservation and Management Act, and to update the Bluefish Fishery Management Plan; responding to recent changes in stock health and distribution using the best information available, while recognizing economic need and reliance throughout the management area. This notice is intended to alert the public to this action and provide an opportunity for comment.

DATES: Comments must be received on or before November 1, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0071, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *https://www.regulations.gov,* and enter ''NOAA–NMFS–2021–0071'' in the Search box;
2. Click the ''Comment'' icon, complete the required fields; and
3. Enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The Mid-Atlantic Fishery Management Council prepared an environmental assessment (EA) for this action that describes the proposed measures and other considered alternatives. The EA also provides a thorough analysis of the biological, economic, and social impacts of the proposed measures and other considered alternatives. Copies of Amendment 7, including the EA, the Regulatory Impact Review, and the Regulatory Flexibility Act analysis prepared in support of this action, are available upon request from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N State Street, Dover, DE 19901. These documents are also accessible via the internet at *https://www.mafmc.org/supporting-documents.*

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Policy Analyst, (978) 281–9180.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage bluefish from Maine to Florida under the Atlantic Bluefish Fishery Management Plan (FMP). The Council and Commission initiated Amendment 7 as a joint action in December 2017 to address a comprehensive range of management issues in the bluefish fishery from goals and objectives of the FMP to the allocation and transfer of quota between the commercial and recreational sectors. Following the overfished stock determination from the 2019 operational stock assessment, a rebuilding plan for bluefish was also added to the amendment, and final alternatives were approved at the joint meeting of the Council and Commission's Bluefish Management Board in February 2021. Public hearings on these alternatives were held throughout the spring of 2021, and the Council and Board approved Amendment 7 on June 8, 2021, with the intent that the changes would be effective for the 2022 fishing year that begins on January 1, 2022.

The purpose of this amendment is to implement a rebuilding plan for bluefish, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to update the FMP; responding to recent changes in stock health and distribution using the best information available, while recognizing economic need and reliance throughout the management area. This action proposes to:

- Update the Bluefish FMP goals and objectives from those that were initially established for the fishery in 1991 to better reflect today's fishery;
- Re-allocate bluefish quota between the commercial and recreational fishery sectors to more accurately reflect recent catch and landings data in the fishery, allocating 14 percent to the commercial

fishery and 86 percent to the recreational fishery (a 3-percentage point change from the current allocations of 17 percent to the commercial sector and 83 percent to the recreational sector);

• Re-allocate bluefish commercial quota to the states from Maine to Florida based on the most recent 10 years of landings data (2009–2018) rather than outdated historical information (1981–1989), including a 0.1-percent minimum default allocation so no states in the management unit lose quota entirely;

• Implement a 7-year rebuilding plan using a constant fishing mortality model where fishing mortality (F) = 0.154;

• Revise measures to allow the sector quota transfer to be bi-directional (from commercial to recreational or vice versa), with a revised maximum transfer cap of 10-percent of the Acceptable Biological Catch; and

• Revise administrative measures in the specifications process to allow for the accounting of sector-specific management uncertainty.

Additional information on these proposed changes can be found in the EA for this amendment and forthcoming proposed rule.

Public Comment Instructions

The Magnuson-Stevens Act allows NMFS as the implementing agency to approve, partially approve, or disapprove measures recommended by the Council in a regulatory amendment based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. As such, NMFS is soliciting public comments on whether the measures in Amendment 7 to the Atlantic Bluefish FMP and its supporting documents are consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. Public comments on this amendment may be submitted through the end of the comment period specified in the **DATES** section of this notice of availability (NOA).

A proposed rule that would implement this amendment, including draft regulatory text, will also be published in the **Federal Register** for public comment. All comments received by the end of the comment period on this NOA, whether specifically directed to the NOA or the proposed rule, will be considered in the approval/disapproval decision on Amendment 7. Comments received after the end of the comment period for this NOA will not be considered in the approval/disapproval decision of this action.

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

Dated: August 27, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021–18848 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210826–0168]

RIN 0648–BK56

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Biennial Specifications; 2021–2022 and 2022–2023 Specifications for Pacific Mackerel

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement allowable catch levels, an overfishing limit, an allowable biological catch, and an annual catch limit for Pacific mackerel in the U.S. exclusive economic zone off the West Coast (California, Oregon and Washington) for the fishing seasons 2021–2022 and 2022–2023. This proposed rule is pursuant to the Coastal Pelagic Species Fishery Management Plan. The proposed harvest guideline and annual catch target for the 2021–2022 fishing season are 8,323 metric tons (mt) and 7,323 mt, respectively. The proposed harvest guideline and annual catch target for the 2022–2023 fishing season are 5,822 mt and 4,822 mt, respectively. If the fishery attains the annual catch target in either fishing season, the directed fishery will close, reserving the 1,000-mt difference between the harvest guideline and annual catch target as a set-aside for incidental landings in other Coastal Pelagic Species fisheries and other sources of mortality. This document is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Comments must be received by October 1, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0066, by any of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2021–0066 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, West Coast Region, NMFS, (562) 619–2052, *Taylor.Debevec@noaa.gov.*

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.,* NMFS manages the Pacific mackerel fishery in the U.S. exclusive economic zone (EEZ) off the West Coast in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The CPS FMP and its implementing regulations require NMFS to set annual harvest specifications for the Pacific mackerel fishery based on the annual specification framework and control rules in the FMP. The Pacific mackerel fishing season runs from July 1 to June 30. The purpose of this proposed rule is to implement these harvest specifications, which include allowable harvest levels (*i.e.,* annual catch target (ACT) and harvest guideline (HG)), an annual catch limit (ACL), and annual catch reference points (*i.e.,* overfishing limit (OFL) and acceptable biological catch (ABC)). The uncertainty surrounding the current biomass estimates for Pacific mackerel for the 2021–2022 and 2022–2023 fishing seasons was taken into consideration in the development of these harvest specifications. Any Pacific mackerel harvested between July 1, 2021, and the effective date of the final rule would count toward the 2021–2022 ACT and HG.

During public meetings each year, the NMFS Southwest Fisheries Science Center (SWFSC) presents biomass estimates for Pacific mackerel to the Pacific Fishery Management Council's (Council) CPS Management Team (CPSMT), the Council's CPS Advisory Subpanel (CPSAS) and the Council's Scientific and Statistical Committee

(SSC), and the biomass estimates and the status of the fisheries are reviewed and discussed. The CPSMT, CPSAS, and SSC then provide recommendations and comments to the Council regarding the calculated OFL, ABC, ACL, HG and ACT. Following Council review and after hearing public comment, the Council adopts biomass estimates and makes its harvest specification recommendations to NMFS. Biennial specifications published in the **Federal Register** establish these allowable harvest levels (*i.e.,* ACT/HG) as well as OFL, ABC, and ACL for the upcoming two Pacific mackerel fishing seasons.

The control rules in the CPS FMP include the HG control rule, which, in conjunction with the OFL and ABC rules, are used to manage Pacific mackerel. According to the FMP, the quota for the principal commercial fishery, the HG, is determined using the FMP-specified HG formula. The HG is based, in large part, on the estimate of stock biomass for the fishing year. The biomass estimate is an explicit part of the various harvest control rules for Pacific mackerel, and as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend. The harvest control rule in the CPS FMP is HG = [(Biomass-Cutoff) * Fraction * Distribution] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel for the 2021–2022 management season is 57,832 metric tons (mt). The estimated stock biomass of Pacific mackerel for the 2022–2023 management season is 45,925 mt.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.

3. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested. This is set in the FMP at 30 percent.

4. *Distribution.* Pacific mackerel range from Mexico to Alaska and regularly migrate between Mexico and the U.S. West Coast. Because some of the Pacific mackerel stock exists outside of U.S. waters, the Distribution parameter is used to estimate the proportion of the total biomass in U.S. waters and to calculate U.S. catch limits. The average portion of the total Pacific mackerel biomass estimated in the West Coast U.S. EEZ is set in the FMP at 70 percent. The 70 percent distribution estimate is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

The Council has recommended, and NMFS is proposing, Pacific mackerel harvest specifications for both the 2021–2022 and 2022–2023 fishing seasons. For the 2021–2022 Pacific mackerel fishing season these include an OFL of 12,145 mt, an ABC and ACL of 9,446 mt, a HG of 8,323 mt, and an annual ACT of 7,323 mt. For the 2022–2023 Pacific mackerel fishing season these include an OFL of 9,644 mt, and ABC and ACL of 7,501 mt, a HG of 5,822 mt, and an ACT of 4,822 mt. These catch specifications are based on the control rules established in the CPS FMP and biomass estimates of 57,832 mt (2021–2022) and 45,925 mt (2022–2023). The biomass estimates are the result of a catch-only stock assessment the NMFS SWFSC completed in June 2021. The Council's SSC and the Council approved this stock assessment and resulting biomass estimates as the best scientific information available for management at the June 2021 Council meeting.

Under this proposed action, in the unlikely event that catch reaches the ACT in either fishing season, directed fishing would close, reserving the difference between the HG and ACT (1,000 mt) as a set-aside for incidental landings in other fisheries and other sources of mortality.[1] For the remainder of the fishing season, incidental landings in CPS fisheries would be constrained to a 45-percent incidental catch allowance (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel); and in non-CPS fisheries, up to 3 mt of Pacific mackerel may be landed incidentally per fishing trip. The incidental set-aside is intended to allow continued operation of fisheries for other stocks, particularly other CPS stocks that may school with Pacific mackerel.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure of directed fishing (when harvest levels reach or exceed the ACT). Additionally, to ensure the regulated community is informed of any closure, NMFS will also make announcements through other means available, including email to fishermen, processors, and state fishery management agencies.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. The small entities that would be affected by the proposed action are those vessels that harvest Pacific mackerel as part of the West Coast Coastal Pelagic Species (CPS) purse seine fleet and are all considered small businesses under the above size standards.

The CPS Fishery Management Plan (FMP) and its implementing regulations requires the National Marine Fisheries Service (NMFS) to set an overfishing limit (OFL), acceptable biological catch (ABC), annual catch limit (ACL), harvest guidelines (HG) and annual catch target (ACT) for the Pacific mackerel fishery based on the harvest control rules in the FMP. These specific harvest control rules are applied to the current stock biomass estimate to derive these catch specifications, which are used to manage the commercial take of Pacific mackerel. A component of these control rules is that as the estimated biomass decreases or increases from one year to the next, so do the applicable quotas.

Pacific mackerel harvest is one component of CPS fisheries off the U.S. West Coast, which also includes the fisheries for Pacific sardine, northern anchovy and market squid. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 degrees N latitude; Point Arena, California) of the fishery. Currently there are 53 vessels permitted in the Federal CPS limited entry fishery off California. The average annual per vessel revenue in 2020 for

[1] Directed fishing for live bait and minor directed fishing is allowed to continue during a closure of the directed fishery.

vessels that landed Pacific mackerel was well below the threshold level of $11 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule is considered to equally affect all of these small entities in the same manner. Therefore, this rule would not create disproportionate costs between small and large vessels/businesses.

NMFS used the ex-vessel revenue information for a profitability analysis, as the cost data for the harvesting operations of CPS finfish vessels was limited or unavailable. For the 2019–2020 fishing year, the HG was 11,109 mt with an ACT of 10,109 mt and an incidental set-aside of 1,000 mt. Approximately 3,840 mt of Pacific mackerel were harvested in the 2019–2020 fishing year with an estimated ex-vessel value of approximately $1,299,153.

The HG for the 2021–2022 Pacific mackerel fishing season is 8,323 mt, with an ACT of 7,323 mt and an incidental set-aside of 1,000 mt. The HG for the 2022–2023 Pacific mackerel fishing season is 5,822 mt with an ACT of 4,822 mt and an incidental set-aside of 1,000 mt. The proposed ACTs for these fishing years are lower than the prior two fishing years (*i.e.,* 10,109 mt for 2019–2020 and 6,950 mt for 2020–2021). However, Pacific mackerel landings in the U.S. over the last ten management seasons (2009–2010 through 2019–2020) have averaged only about 3,790 mt. Therefore it is highly unlikely that the ACTs proposed in this rule will limit the potential profitability to the fleet from catching Pacific mackerel compared to last season or recent catch levels. Accordingly, vessel income from fishing is not expected to be altered as a result of this rule as it compares to recent catches in the fishery, including under the previous season's regulations.

Based on the disproportionality and profitability analysis above, the proposed action, if adopted, will not have adverse or disproportional economic impact on these small business entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed action.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 26, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.511, revise paragraphs (i) and (j) to read as follows:

§ 660.511 Catch restrictions.

* * * * *

(i) The following harvest specifications apply for Pacific mackerel:

(1) For the Pacific mackerel fishing season July 1, 2021, through June 30, 2022, the harvest guideline is 8,323 mt and the ACT is 7,323 mt; and

(2) For the Pacific mackerel fishing season July 1, 2022, through June 30, 2023, the harvest guideline is 5,822 mt and the ACT of 4,822 mt.

(j) When an ACT in paragraph (i) of this section has been reached or exceeded, then for the remainder of the Pacific mackerel fishing season, Pacific mackerel may not be targeted and landings of Pacific mackerel may not exceed: 45 percent of landings when Pacific mackerel are landed in CPS fisheries (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel), or up to 3 mt of Pacific mackerel when landed in non-CPS fisheries. The Regional Administer shall announce in the **Federal Register** the date that an ACT is reached or exceeded, and the date and time that the restrictions described in this paragraph go into effect.

* * * * *

[FR Doc. 2021–18851 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 86, No. 167

Wednesday, September 1, 2021

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

Agricultural Marketing Service

[Document No. AMS–TM–21–0026]

Pandemic Response and Safety Program; Request for Emergency Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of emergency request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the U.S. Department of Agriculture (USDA), Agricultural Marketing Service's (AMS) intention to seek approval from the Office of Management and Budget (OMB) for a new information collection to administer the Pandemic Response and Safety Program (PRS) under its Grants Division. AMS Grants Division is implementing this new grant program under section 751 of the Consolidated Appropriations Act, 2021 (CAA), which directs the Secretary of Agriculture to provide ''grants and loans to small or midsized food processors or distributors, seafood processing facilities and processing vessels, farmers markets, producers, or other organizations to respond to coronavirus, including for measures to protect workers against the Coronavirus Disease 2019 (COVID–19).''

DATES: Submit comments on or before November 1, 2021.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *www.regulations.gov.* Written comments may also be submitted to Grants Division; Transportation and Marketing Program; AMS; USDA; 1400 Independence Avenue SW, Room 2055–South Building, Stop 0201; Washington, DC 20250–0264. All comments should reference the docket number AMS–TM–21–0026, the date of submission, and the page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, at *www.regulations.gov* and will be included in the record and made available to the public.

FOR FURTHER INFORMATION CONTACT: John Miklozek, Director, Grants Division; (202) 720–1403 or email *John.Miklozek@usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview of This Information Collection

Agency: USDA, AMS.

Title: Pandemic Response and Safety Program.

OMB Number: 0581–NEW.

Type of Request: Emergency Approval of a New Information Collection.

Abstract: The Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621 *et seq.*) directs and authorizes USDA to administer Federal grant programs. AMS Grant Programs are administered through the Office of Management and Budget (OMB) Guidance for Grants and Agreements based on its regulations under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (85 FR 49506; December 13, 2020). Information collection requirements in this emergency request are needed for AMS to administer a new competitive grant program, in accordance with 2 CFR part 200, entitled the Pandemic Response and Safety (PRS) under OMB No. 0581–NEW.

PRS is authorized pursuant to the authority of section 751 of the Consolidated Appropriations Act, 2021 (CAA) (Pub. L. 116–260) in response to the ongoing COVID–19 pandemic and worker protections in food processing, distribution, farmers markets, and agricultural production. The AMS Grants Division requests to collect information for this new grant program from individuals, small businesses, and nonprofit organizations working in food processing, distribution, farmers markets, and agricultural production.

Because this is a voluntary program, respondents request or apply for this specific competitive grant, and in doing so, they provide information. Information collected is used only by authorized representatives of USDA, AMS, Transportation and Marketing Program's Grants Division to certify that grant participants are complying with applicable program regulations, and the data collected is the minimum information necessary to effectively carry out program requirements.

Information collection requirements in this request are essential to carry out the intent of section 751 of the CAA, to provide respondents the type of service they request, and to administer the program.

Upon OMB approval of the PRS information collection package, AMS will request OMB approval to merge this information collection into the currently approved information collection OMB control number 0581–0240 approved on January 13, 2021.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Grant applicants; or grant recipients.

Estimated Number of Respondents: 800,000.

Estimated Total Annual Responses including Recordkeeping: 1,000,000.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents and Recordkeepers: 916,660 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the new collection of information, including the validity of methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Obtaining OMB's approval of this new information collection enables AMS Grants Division to publish a Request for Applications (RFA) to establish application requirements, the review and approval process, and grant administration procedures, which will

enable eligible entities to develop appropriate grant applications for the program so that AMS can adequately evaluate these new proposals and obligate funds as required by the CAA.

Erin Morris,

Associate Administrator. Agricultural Marketing Service.

[FR Doc. 2021–18810 Filed 8–31–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice for Comment on Two Strategic Plans for the Subcommittee on Aquaculture Science Planning and Regulatory Efficiency Task Forces and on Updating the National Aquaculture Development Plan

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In October 2018, the SCA established a Science Planning Task Force charged with documenting Federal science and technology opportunities and priorities for aquaculture by revising and updating the National Strategic Plan for Federal Aquaculture Research (2014–2019). Similarly, in February 2019, the SCA established a Regulatory Efficiency Task Force charged with developing a new plan for interagency science and technology coordination to improve regulatory efficiency, research and technology development, and economic growth. The Task Forces are seeking public comment on Science and Regulatory Efficiency strategic plans to determine if their respective topics are adequately covered. See **SUPPLEMENTARY INFORMATION** for more details.

DATES: In the **Federal Register** of August 5, 2021, FR Doc. 2021–16711. Doc. 2021–04701, on Pages 42776–42777, under dates should read as follows: Comments must be received by September 18th, 2021 to be assured of consideration.

SUPPLEMENTARY INFORMATION: The Subcommittee on Aquaculture (SCA) is a statutory subcommittee that operates under the Committee on Environment of the National Science and Technology Council (NSTC) under the Office of Science and Technology Policy in the Executive Office of the President [National Aquaculture Act of 1980 (Pub. L. 96–362. 94 Stat. 1198, 16 U.S.C. 2801, *et seq.*) and the National Aquaculture Improvement Act of 1985 (Pub. L. 99–198, 99 Stat. 1641)].

In addition, in May of 2020, the SCA established an Economic Development Task Force charged with developing a strategic plan for economic development through aquaculture. Separately from SCA, the National Aquaculture Act of 1980 requires select federal agencies to develop a National Aquaculture Development Plan (NADP). Last completed in 1983, the NADP describes aquaculture associated technologies, problems, and opportunities in the United States and its territories. It recommends actions to solve problems and analyzes the social, environmental, and economic impacts of growth in aquaculture. The SCA plans to update the NADP using the Science and Regulatory Efficiency plans described here, with the addition of the Economic Development plan currently in process.

Signed at Washington, DC, August 26, 2021.

Yvette Anderson,

Federal Register Liaison Officer, ARS, ERS, NASS.

[FR Doc. 2021–18723 Filed 8–31–21; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 1, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Sugar Imported for Exports as Refined Sugar, as a Sugar-Containing Product, or Used in Production of Certain Polyhydric Alcohols.

OMB Control Number: 0551–0015.

Summary of Collection: The regulation at 7 CFR part 1530 authorizes the Foreign Agricultural Service (FAS) to issue import licenses to enter raw cane sugar exempt from the tariff-rate quota (TRQ) for the raw cane sugar imports and related requirements on the condition that an equivalent quantity of refined sugar be: (1) Exported as refined sugar; (2) exported as an ingredient in sugar containing products; or (3) used in production of certain polyhydric alcohols. The information requirements set forth in the regulation are necessary to enable FAS to administer the licensing program in full compliance with the regulation and to ensure that licensed imports do not enter the commercial sugar market in circumvention of the TRQ for raw cane sugar.

Need and Use of the Information: FAS will collect information to verify that the world-priced sugar is actually exported and not diverted onto the domestic market, thereby undermining the objectives of politically sensitive U.S. sugar policies. This collection enables USDA to monitor participants in an effort to ensure compliance with program parameters. Without the collection, there would be increased opportunity to divert sugar onto the domestic market.

Description of Respondents: Business or other for-profit.

Number of Respondents: 333.

Frequency of Responses: Recordkeeping; Reporting; Quarterly.

Total Burden Hours: 428.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–18796 Filed 8–31–21; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0058]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Qualitative Feedback on Agency Service Delivery

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with qualitative customer and stakeholder feedback on service delivery by the Animal and Plant Health Inspection Service.

DATES: We will consider all comments that we receive on or before November 1, 2021. You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2021–0058 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0058, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at regulations.gov or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For more information on this information collection, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, MRPBS, APHIS, 4700 River Road, Unit 123, Riverdale, MD 20737; (301) 851–2483; email: *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 0579–0377.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: This information collection activity provides a means for the Animal and Plant Health Inspection Service (APHIS) to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with APHIS' commitment to improving service delivery.

By qualitative feedback, we mean information that provides useful insights on perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback provides insights into customer or stakeholder perceptions, experiences, and expectations; provides an early warning of issues with service; or focuses attention on areas where communication, training, or changes in operations might improve delivery of products or services. This collection will allow for ongoing, generic collaborative and actionable communications between APHIS and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on APHIS' services will be unavailable.

APHIS will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collection is voluntary;
- The collection is low burden for respondents (based on considerations of total burden hours, total number of respondents, or burden hours per respondent) and is low cost for both the respondents and the Federal Government;
- The collection is non-controversial and does not raise issues of concern to other Federal agencies;
- The collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of APHIS (if released, APHIS must indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information (*i.e.,* the collection will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study).

As a general matter, this information collection will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.1 hours (6 minutes) per response.

Respondents: Individuals and households; businesses and organizations; State, local, or Tribal governments; and foreign federal governments.

Estimated annual number of respondents: 250,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 250,000.

Estimated total annual burden on respondents: 25,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 26th day of August 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–18795 Filed 8–31–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Privacy Act of 1974; System of Records Revision

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

ACTION: Notice of a proposed modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–108, notice is given that a component agency, the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) is proposing to modify the system of records, currently titled USDA/FNS–11, ''Information on Persons Identified as Responsible for Serious Deficiencies, Proposed for Disqualification, or Disqualified to Participate as Principals or Family Day Care Home Operators in the Child and Adult Care Food Program (CACFP),'' 69 FR 6933, published February 12, 2004, to include unaffiliated centers and responsible individuals of unaffiliated centers terminated or otherwise disqualified from participating in the Child and Adult Care Food Program, and service institutions and responsible individuals that have been terminated or otherwise disqualified from participation in the Summer Food Service Program (SFSP). The system of records will continue to include the records of institutions, day care home providers, and responsible individuals who have been terminated or otherwise disqualified from participation in the Child and Adult Care Food Program.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day notice and comment period in which to comment on the routine uses described in the routine uses section of this system of records notice. Please submit your comments by October 1, 2021.

ADDRESSES: You may submit comments, USDA/FNS–11, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Follow the online instructions at that site for submitting comments.
- Ms. Andrea Farmer, Chief, Community Meals Program Monitoring Branch, Child Nutrition Programs, Food and Nutrition Service, Braddock Metro Center II, 1320 Braddock Place, Alexandria, VA 22314.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact Stephanie Means via telephone at 312–353–7270 or via email at *SM.fn.Privacy-FNS@usda.gov.*

SUPPLEMENTARY INFORMATION: FNS maintains a list of institutions and individuals who have been disqualified from participating in CACFP and/or SFSP. The State agencies access the list to ensure that no one participating in either Program in their state has been disqualified.

State agencies provide the information about the disqualifications they impose by submitting the information to the NDL. FNS reviews and approves the information. This information is then accessible to all State agencies that participate in this matching program to help determine CACFP and/or SFSP eligibility.

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Agriculture's (''Department'' or ''USDA'') Food and Nutrition Service (FNS) proposes to modify the system of records titled, USDA/FNS–11, ''Information on Persons Identified as Responsible for Serious Deficiencies, Proposed for Disqualification, or Disqualified to Participate as Principals or Family Day Care Home Operators in the Child and Adult Care Food Program (CACFP).'' This includes modifying the title to ''USDA/FNS–11, National Disqualified List (NDL)—Information on Entities Disqualified from Participation in the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).''

The NDL system of records currently contains a list of institutions, responsible individuals, and family day care home providers that have been disqualified by State agencies from participating in CACFP. The NDL system of records is being modified to include unaffiliated centers and responsible individuals of unaffiliated centers terminated or otherwise disqualified from participating in the CACFP. The NDL system of records is also being revised to include service institutions and responsible individuals of service institutions that have been terminated or otherwise disqualified from participating in the SFSP as required by Section 322 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111–296 (requiring the Secretary to maintain a list of service institutions and individuals that have been terminated or disqualified from SFSP and to make this list available to State agencies for use in approving or renewing service institutions' applications for SFSP participation).

Responsible individual means: A principal, whether compensated or uncompensated, who the State agency or FNS determines to be responsible for a serious deficiency; any other individual employed by, or under contract with, a sponsoring organization who the State agency or FNS determines to be responsible a serious deficiency; or an uncompensated individual who the State agency or FNS determines to be responsible for a serious deficiency.

FNS will share information from the system in accordance with the requirements of the Privacy Act. A full list of routine uses is included in the routine uses section of the document published with this notice.

In accordance with 5 U.S.C. 552a(r), USDA has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

USDA/FNS–11, ''Information on Persons Identified as Responsible for Serious Deficiencies, Proposed for Disqualification, or Disqualified to Participate as Principals or Family Day Care Home Operators in the Child and Adult Care Food Program (CACFP),'' and also referred to as the National Disqualified List or NDL.

This notice proposes to modify the system name to: ''National Disqualified

List (NDL)—Information on Entities Disqualified from participation in the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP).''

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator, Child Nutrition Programs, FNS, USDA, 1320 Braddock Pl., Alexandria, Virginia 22314.

The data on institutions, service institutions, unaffiliated centers, day care home providers, and responsible individuals who have been disqualified from participation in the CACFP and/or SFSP will be maintained within the NDL system of records.

SYSTEM MANAGER(S):

Branch Chief, Community Meals Program Monitoring Branch, Child Nutrition Programs, Food and Nutrition Service, USDA, (703)305–2470, 1320 Braddock Pl., Alexandria, Virginia 22314.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 243(c) of Public Law 106–224, the Agricultural Risk Protection Act of 2000, which amended section (42 U.S.C. 1766(d)(5)(E)(i) and (ii)) of the Richard B. Russell National School Lunch Act

PURPOSE(S) OF THE SYSTEM:

The purpose of modifying the system of records is to continue to promote integrity in the CACFP and SFSP (''Program(s)'') by providing Program-administering States and CACFP sponsoring organizations with the names of institutions, service institutions, responsible individuals, unaffiliated centers, and family day care home providers that have been terminated or otherwise disqualified from participating in either Program. Once disqualified, these institutions, service institutions, responsible individuals, unaffiliated centers, and family day care home providers are prohibited from participating in either Program for seven years from the effective date of the disqualification, and until any debt under either Program is paid.

Institutions, service institutions, responsible individuals, unaffiliated centers, and family day care home providers may be removed from the NDL system of records before seven years if the Program-administering States and FNS concur that any Program violation that caused their placement on the NDL system of records has been corrected. However, no institution, service institution, responsible individual, unaffiliated center, or family day care home provider may be removed from the NDL system of records if they owe a debt under either Program. Program-administering States and CACFP sponsoring organizations must verify that Program applicants are not on the NDL system of records prior to approval or renewal of participation in the Program. Similarly, CACFP sponsoring organizations must check the NDL system of records to verify that any new employee that will be paid for using Program funds or that will be working in either Program is not on the NDL before hiring.

Maintaining the NDL system of records and making it available to Program-administering States and CACFP sponsoring organizations provides them with a tool for promoting Program integrity by preventing several situations from occurring. First, it prevents institutions, service institutions, or unaffiliated centers whose Program agreements were terminated for cause in one State from reapplying for Program participation in another State. Second, it prevents responsible individuals disqualified from either Program from continuing to be involved in Program administration by forming a new corporate entity and entering the Program under a different organizational name. Third, it prevents responsible individuals associated with a disqualified institution, service institution, or unaffiliated center from re-entering the Program as a family day care home provider, or as a responsible individual with another institution, service institution, or sponsored center. Finally, it prevents family day care home providers terminated for cause by one sponsoring organization from re-entering the Program under the auspices of a different sponsoring organization.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include, but not limited to, responsible individuals and principals of centers and day care home providers that have been terminated or otherwise disqualified from participation in the CACFP. The system also contains information on responsible individuals and principals of service institutions that have been terminated or otherwise disqualified from participation in the SFSP. All individuals, even if they are not users of the USDA/FNS–11, who are mentioned or referenced in any documents entered into USDA/FNS–11 by a user are also covered. This group may include, but is not limited to: Vendors, agents and other business personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system will be modified to include the following information from unaffiliated centers and responsible individuals of unaffiliated centers that have been terminated or otherwise disqualified from participation in the CACFP, and service institutions and responsible individuals of service institutions that have been terminated or otherwise disqualified from participation in the SFSP:

- Full name, previously used names;
- date of birth;
- state and locality in which the disqualification occurred;
- addresses of businesses and individuals;
- disqualification start date;
- reason for disqualification;
- Federal Employer Identification Number (FEIN) or Dun and Bradstreet Data Universal Numbering System (DUNS);
- disqualifying State agency;
- any debt owed;
- supporting documentation such as notices of proposed termination and disqualification; and,
- for records of institutions, service institutions, unaffiliated centers, or individuals requesting early removal, corrective action plans to correct Program violations that led to placement on the NDL system of records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided to FNS by Program-administering State agencies. The FNS appropriate regional office will approve the information and can assist the State agency in entering or correcting the information. The FNS national office can also alter information in the system as needed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records contained in this system may be disclosed outside USDA as a routine use pursuant to 5 U.S.C. 552a(b)(3), to the extent that such uses are compatible with the purposes for which the information was collected. Such permitted routine uses include the following:

(1) To the Department of Justice when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity, or any

employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and USDA determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is deemed by USDA to be for a purpose that is compatible with the purpose for which USDA collected the records.

(2) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the USDA or other Agency representing the USDA determines that the records are both relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(3) To a congressional office in response to an inquiry from that congressional office made at the written request of the individual about whom the record pertains.

(4) To the National Archives and Records Administration or other Federal government agencies pursuant to records management activities being conducted under 44 U.S.C. 2904 and 2906.

(5) To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(6) To other Federal agencies or non-Federal entities under approved computer matching efforts, limited to only those data elements considered relevant to determine eligibility under particular benefit programs administered by those agencies or entities or by USDA or any component thereof, to improve program integrity, and to collect debts and other monies owed under those programs.

(7) To another Federal agency or Federal entity, when 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.

(8) To appropriate agencies, entities, and persons when: (1) USDA suspects or has confirmed that there has been a breach of the system of records; (2) USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (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 USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(9) To contractors and their agents, grantees, experts, consultants, and other performing or working on a contract, service, grant, cooperative agreement, or other assignment for the USDA, when necessary to accomplish an agency function related to this system of records.

(10) When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, USDA may disclose the record to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

(11) USDA/FNS may disclose information from this system of records on individuals who have been disqualified from participation in the CACFP and/or SFSP to every agency that administers the CACFP and/or SFSP directly in the States and to every sponsoring organization participating in CACFP. The information will be available to the State agency directors and staff members, who make decisions about application approval or termination from participation in the program or, in the case of sponsoring organizations, make hiring decisions or submit applications for approval of day care home providers to the State agency.

(12) To the news media and the public, with the approval of the Chief Privacy Officer, the Office of Communications and in consultation with counsel, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(13) USDA will disclose information about individuals from this system of records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101, *et seq.*); section 204 of the E-Government Act of 2002 (Pub. L. 107–347; 44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403 *et seq.*), or similar statutes requiring agencies to make available publicly information concerning Federal financial assistance, including grants, subgrants, loan awards, cooperative agreements and other financial assistance; and contracts, subcontracts, purchase orders, task orders, and delivery orders.

(14) Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

State agencies and FNS can view records in the NDL. eAuthentication level 2 clearance is required to enter, change or view records in the system. Records are maintained electronically. The NDL also contains three notices for each disqualification. These paper notices were mailed to the disqualified individuals and uploaded in the NDL as PDFs. Although NDL records are electronic, State agencies and FNS Regional Offices keep paper copies of the uploaded notices.

For FNS and Program-administering States, records may be retrieved by the individual's name and date of birth for responsible individuals and day care home providers, in addition to FEIN or DUNS number for institutions, service institutions, and unaffiliated centers.

CACFP sponsoring organizations identify records for retrieval using name and state.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Currently, records remain in the NDL after the disqualification expires with a changes status of removed. This process will change to delete all records three years after disqualification expires.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

NDL system of records Username/Password: NDL user IDs and passwords are used to limit access to the application. Access is controlled through USDA eAuthentication service. NDL requires a Level 1 or Level 2 access. Level 1 users are automatically

provided restricted access to the application. Level 2 users have managed access within the application.

The NDL system accomplishes this functionality by requiring that a specific role be assigned to each user. Sponsoring organizations have e-Authentication level 1 clearance allowing them to view individuals' names, other legal names, state, termination date, disqualified status, whether a debt is owed, and pending status. For institutions, they may view institutions' names and previous names, full address, termination date, disqualified status, whether a debt is owed, and pending status.

State agency and FNS users have e-Authentication level 2 clearance, which allows them to view the information listed above, in addition to date of birth and individuals' full addresses. Currently, all States and four territories have access to the NDL with e-Authentication level 2 clearance. Once identified, the system uses the existing functionality within the FNS General Support System platform to selectively control permissions by role. As mentioned, controls for e-Authentication level 1 users include restricting information view privileges by removing dates of birth and individuals' full addresses from view. e-Authentication level 2 can view all the data.

NDL Application software roles: Users with eAuthentication level 2 credentials are assigned roles which determine the level of access they have within NDL.

Server to Server and Client to/from Server communications encryption: Secure Socket Layer (SSL) with 128-bit encryption has been applied to all the application servers, which are only available through FNS Intranet connection. In addition, all communications between servers will be encrypted.

Vulnerabilities and anti-virus: Known vulnerabilities are regularly identified and resolved. Many tools, such as Tenable and Splunk are used scan resources. The sources for these scan services include vendors and the National Vulnerability Database. Industry best practices are followed to resolution. Users on client machines do not have local administrative rights, which maintain low vulnerability. Users have the ability to intentionally or accidentally download and install malicious code. This risk is mitigated using a multi-layered approach. First, anti-virus applications are deployed to all client machines and virus definitions are automatically updated daily using a centrally managed update server. Second, all systems are monitored and randomly inspected for unauthorized software. DISC EDC employs Retina for daily scans of VMs and configured environments to identify vulnerabilities and alert appropriate personnel.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at *https://www.dm.usda.gov/foia/poc.htm.* If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

The request should include a daytime phone number and email. Provide as much information as possible about the subject matter of the records you are requesting. This will help facilitate the search process.

When seeking records about yourself from this NDL system of records, or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 7 CFR 1.112 (Procedures for requests pertaining to individual records in a record system). You must submit a written request in accordance with the instructions set forth in the system of records.

Provide your full name, date, name of system of records, and either (1) have your signature witnessed by a notary; or (2) include the following statement immediately above the signature on your request letter: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].'' Requests that do not contain the required declaration will be processed under the Freedom of Information Act (FOIA), and, if records are found, you may not receive as much information, including information about you. If additional information is required to fulfill a Privacy Act request, you will be notified.

When the request is for one of access, the request should include the full name of the individual making the request, the name of the system of records, and a statement of whether the requester desires to make a personal inspection of the records or to be supplied with copies by mail or email.

In accordance with 7 CFR 1.113, prior to inspection of the records, the requester shall present sufficient identification (*e.g.,* driver's license, employee identification card, social security card, credit cards) to establish that the requester is the individual to whom the records pertain. No identification shall be required, however, if the records are required by 5 U.S.C. 552 to be released. If FNS determines to grant the requested access, fees may be charged in accordance with § 1.120 before making the necessary copies. In place of a notarization, your signature may be submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their request to the address indicated in the ''RECORD ACCESS PROCEDURES'' paragraph, above and must follow the procedures set forth in 7 CFR part 1, subpart G, § 1.116 (Request for correction or amendment to record). All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record. A determination whether a record may be amended will be made within 10 days of its receipt.

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

https://www.federalregister.gov/documents/2004/02/12/04-3116/privacy-act-proposed-new-system-of-records.

Cynthia Long,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2021–18808 Filed 8–31–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

WTO Agricultural Quantity-Based Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, U.S. Department of Agriculture.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the World Trade

Organization (WTO) Agreement on Agriculture.

SUMMARY: This notice lists the updated quantity-based trigger levels for products which may be subject to additional import duties under the safeguard provisions of the WTO Agreement on Agriculture. This notice also includes the relevant period applicable for the trigger levels on each of the listed products.

DATES: This notice is applicable on September 1, 2021.

ADDRESSES: Multilateral Affairs Division, Trade Policy and Geographic Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1070, 1400 Independence Avenue SW, Washington, DC 20250–1070.

FOR FURTHER INFORMATION CONTACT: Souleymane Diaby, (202) 720–2916, *Souleymane.Diaby@usda.gov*.

SUPPLEMENTARY INFORMATION: Article 5 of the WTO Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication as a result of the Uruguay Round, if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties when the volume of imports of that product exceeds the sum of (1) a base trigger level multiplied by the average of the last three years of available import data and (2) the change in yearly consumption in the most recent year for which data are available (provided that the final trigger level is not less than 105 percent of the three-year import average). The base trigger level is set at 105, 110, or 125 percent of the three-year import average, depending on the percentage of domestic consumption that is represented by imports. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994, 60 FR 1007 (Jan. 4, 1995). The Secretary of Agriculture further delegated this duty, which lies with the Administrator of the Foreign Agricultural Service (7 CFR 2.*601*(a)(42)). The Annex to this notice contains the updated quantity trigger levels, consistent with the provisions of Article 5.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States (2021) and in the Secretary of Agriculture's Notice of Uruguay Round Agricultural Safeguard Trigger Levels, published in the **Federal Register** at 60 FR 427 (Jan. 4, 1995).

Notice: As provided in Section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the WTO Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superseded by the levels indicated in the Annex to this notice. The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427 (Jan. 4, 1995).

Clay M. Hamilton,

Acting Administrator, Foreign Agricultural Service.

ANNEX—QUANTITY-BASED SAFEGUARD TRIGGER

Product	2021 Quantity-based safeguard trigger		
	Trigger level	Unit	Period
Beef	267,883	MT	Jan 1, 2021–Dec 31, 2021.
Mutton	3,384	MT	Jan 1, 2021–Dec 31, 2021.
Cream	3,047,452	Liters	Jan 1, 2021–Dec 31, 2021.
Evaporated or Condensed Milk	5,123,257	Kilograms	Jan 1, 2021–Dec 31, 2021.
Nonfat Dry Milk	131,867	Kilograms	Jan 1, 2021–Dec 31, 2021.
Dried Whole Milk	3,248,335	Kilograms	Jan 1, 2021–Dec 31, 2021.
Dried Cream	65,896	Kilograms	Jan 1, 2021–Dec 31, 2021.
Dried Whey/Buttermilk	76,425	Kilograms	Jan 1, 2021–Dec 31, 2021.
Butter [1]	65,347,766	Kilograms	Jan 1, 2021–Dec 31, 2021.
Butteroil	18,209,591	Kilograms	Jan 1, 2021–Dec 31, 2021.
Chocolate Crumb	11,785,460	Kilograms	Jan 1, 2021–Dec 31, 2021.
Lowfat Chocolate Crumb	303,240	Kilograms	Jan 1, 2021–Dec 31, 2021.
Animal Feed Containing Milk	236,222	Kilograms	Jan 1, 2021–Dec 31, 2021.
Ice Cream	9,968,711	Liters	Jan 1, 2021–Dec 31, 2021.
Dairy Mixtures	7,581,497	Kilograms	Jan 1, 2021–Dec 31, 2021.
Infant Formula Containing Oligosaccharides	2,741,347	Kilograms	Jan 1, 2021–Dec 31, 2021.
Blue Cheese	4,086,430	Kilograms	Jan 1, 2021–Dec 31, 2021.
Cheddar Cheese	7,613,990	Kilograms	Jan 1, 2021–Dec 31, 2021.
American-Type Cheese	80,873	Kilograms	Jan 1, 2021–Dec 31, 2021.
Edam/Gouda Cheese	10,535,143	Kilograms	Jan 1, 2021–Dec 31, 2021.
Italian-Type Cheese	22,873,353	Kilograms	Jan 1, 2021–Dec 31, 2021.
Swiss Cheese with Eye Formation	26,375,209	Kilograms	Jan 1, 2021–Dec 31, 2021.
Gruyere Process Cheese	4,008,437	Kilograms	Jan 1, 2021–Dec 31, 2021.
NSPF Cheese	45,205,687	Kilograms	Jan 1, 2021–Dec 31, 2021.
Lowfat Cheese	107,243	Kilograms	Jan 1, 2021–Dec 31, 2021.
Peanut Butter/Paste	4,085	MT	Jan 1, 2021–Dec 31, 2021.
Peanuts [1]	24,220	MT	April 1, 2020–Mar 31, 2021.
	14,274	MT	April 1, 2021–Mar 31, 2022.
Raw Cane Sugar [1]	766,524	MT	Oct 1, 2020–Sep 30, 2021.
	812,543	MT	Oct 1, 2021–Sep 30, 2022.
Refined Sugars and Syrups [1]	256,005	MT	Oct 1, 2020–Sep 30, 2021.

ANNEX—QUANTITY-BASED SAFEGUARD TRIGGER—Continued

Product	2021 Quantity-based safeguard trigger		
	Trigger level	Unit	Period
	375,127	MT	Oct 1, 2021–Sep 30, 2022.
Articles over 65% Sugar	482	MT	Oct 1, 2020–Sep 30, 2021.
	531	MT	Oct 1, 2021–Sep 30, 2022.
Articles over 10% Sugar	11,093	MT	Oct 1, 2020–Sep 30, 2021.
	14,508	MT	Oct 1, 2021–Sep 30, 2022.
Blended Syrups	391	MT	Oct 1, 2020–Sep 30, 2021.
	408	MT	Oct 1, 2021–Sep 30, 2022.
Sweetened Cocoa Powder	459	MT	Oct 1, 2020–Sep 30, 2021.
	707	MT	Oct 1, 2021–Sep 30, 2022.
Mixes and Doughs	781	MT	Oct 1, 2020–Sep 30, 2021.
	1,142	MT	Oct 1, 2021–Sep 30, 2022.
Mixed Condiments and Seasonings	350	MT	Oct 1, 2020–Sep 30, 2021.
	348	MT	Oct 1, 2021–Sep 30, 2022.
Short Staple Cotton [2]	45,688	Kilograms	Sep 20, 2020–Sep 19, 2021.
	7,944	Kilograms	Sep 20, 2021–Sep 19, 2022.
Harsh or Rough Cotton	32,962	Kilograms	Aug 1, 2020–July 31, 2021.
	10	Kilograms	Aug 1, 2021–July 31, 2022.
Medium Staple Cotton	8,417	Kilograms	Aug 1, 2020–July 31, 2021.
	102	Kilograms	Aug 1, 2021–July 31, 2022.
Extra Long Staple Cotton	692,467	Kilograms	Aug 1, 2020–July 31, 2021.
	813,823	Kilograms	Aug 1, 2021–July 31, 2022.
Cotton Waste [2]	1,013,866	Kilograms	Sep 20, 2020–Sep 19, 2021.
	1,458,693	Kilograms	Sep 20, 2021–Sep 19, 2022.
Cotton Processed but not Spun [2]	124,933	Kilograms	Sep 11, 2020–Sep 10, 2021.
	23,676	Kilograms	Sep 11, 2021–Sep 10, 2022

[1] Includes change in U.S. consumption.
[2] 12-month period from October to September.

[FR Doc. 2021–18817 Filed 8–31–21; 8:45 am]
BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Virginia Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Virginia Resource Advisory Committee (RAC) will hold a virtual meeting by phone and/or video conference. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. 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. Additional RAC information, including the meeting agenda and the meeting summary/minutes, can be found at the following website: *www.fs.fed.us/r8/gwj.*

DATES: The meeting will be held on September 22, 2021 from 2:00 p.m.–5:00 p.m., Eastern Daylight Time.

All RAC meetings are subject to cancellation. For the status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held virtually via Microsoft Teams. Participants may join through the following link: *https://msteams.link/J9GS*. Participants may also join via phone by dialing (202) 650–0123, Participant Code: 162316632#.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the George Washington and Jefferson National Forests Supervisor's Office.

FOR FURTHER INFORMATION CONTACT: Stephanie Chapman, RAC Coordinator by phone at (540) 984–4101 or via email at *stephanie.l.chapman@usda.gov.* Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Orient new RAC members; and

2. Vote and nominate on a RAC Chairperson.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 15, 2021 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Stephanie Chapman, RAC Coordinator, George Washington and Jefferson NF Supervisor's Office, 5162 Valleypointe Parkway, Roanoke, Virginia 24019; or by email to *stephanie.l.chapman@usda.gov.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All

reasonable accommodation requests are managed on a case-by-case basis.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–18865 Filed 8–31–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sabine-Angelina Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Sabine-Angelina Resource Advisory Committee (RAC) will hold two virtual meetings by telephone teleconference. 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 Sabine National Forest within Sabine and Shelby Counties, consistent with the Federal Lands Recreation Enhancement Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/pts/specialprojects/racs.*

DATES: The meetings will be held on:

- Thursday, September 16, 2021 at 3:00 p.m., Central Daylight Time, and
- Tuesday, September 21, 2021 at 3:00 p.m., Central Daylight time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held virtually via telephone teleconference. Participants may join by dialing 1–888–844–9904, Access Code: 3659463#.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Becky Nix, Coordinator, by phone at 409–625–1940 or email at *becky.nix@usda.gov* or Kimpton Cooper at 936–897–1068 or email at *kimpton.cooper@usda.gov.*

Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours per day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss project proposals;
2. Make funding reccomendations on Title II projects;
3. Approve meeting minutes; and
4. Schedule the next meeting.

The meetings are open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement at any of the meetings should request in writing by Friday, September 13, 2021, to be scheduled on the agenda for that particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Kimpton Cooper, 111 Walnut Ridge Rd., Zavalla, TX 75980 or by email to *kimpton.cooper@usda.gov.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: August 26, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–18837 Filed 8–31–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lynn Canal Icy Strait Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lynn Canal Icy Strait (LCIS) Resource Advisory Committee (RAC) will hold a virtual meeting via Microsoft Teams. 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. The committee also makes recommendations on recreation fee proposals for sites on the Tongass National Forest within boroughs associated with the LCIS RAC, consistent with the Federal Lands Recreation Enhancement Act. General RAC information can be found at the following website: *http://www.fs.usda.gov/main/pts/specialprojects/racweb.*

DATES: The meeting will be held on Wednesday, September 22, 2021, 6:00 p.m.–9:00 p.m. Alaska Daylight Time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact Robin Hasselquist by phone at 907–789–6212 or email at *robin.hasselquist@usda.gov.*

ADDRESSES: The meeting will be held virtually by Microsoft Teams. The call-in number is 1–202–650–0123, Phone Conference ID: 130 481 648#. To have the conference link emailed to you, please contact Robin Hasselquist by phone at 907–789–6212 or email at *robin.hasselquist@usda.gov* by September 17, 2021.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Robin Hasselquist, RAC Coordinator, by phone at 907–789–6212 or email at *robin.hasselquist@usda.gov.* Individuals who use telecommunications devices for the hearing-impaired (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review/Approve meeting minutes;
2. Review current budget;
3. Hear from Title II project proponents and discuss project proposals;
4. Make funding recommendations on Title II projects; and
5. Schedule the next meeting.

The meeting is open to the public. The agenda will include time for people

to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing, by Friday, September 17, 2021, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Robin Hasselquist, 8510 Mendenhall Loop Road, Juneau, AK 99801, or by email to *robin.hasselquist@usda.gov.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the proceedings, please contact Robin Hasselquist. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: August 26, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–18838 Filed 8–31–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Services Surveys: BE–45, Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance, in accordance with the Paperwork Reduction Act of 1995 (PRA), on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 10, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Economic Analysis, Commerce.

Title: Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons.

OMB Control Number: 0608–0066.

Form Number(s): BE–45.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 2,200 annually (550 filed each quarter; 515 reporting mandatory data, and 35 that would file exemption claims or voluntary responses).

Average Hours per Response: 9 hours is the average for those reporting data and one hour is the average for those filing an exemption claim. Hours may vary considerably among respondents because of differences in company size and complexity.

Burden Hours: 18,680 hours annually.

Needs and Uses: The data are needed to monitor U.S. trade in insurance services, to analyze the impact of these cross-border services on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities. The data are used in estimating the trade in insurance services component of the U.S. international transactions accounts (ITAs) and national income and product accounts (NIPAs).

Affected Public: Business or other for-profit organizations.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0608–0066.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–18910 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–52–2020]

Foreign-Trade Zone 38—Spartanburg County, South Carolina; Application for Production Authority; Teijin Carbon Fibers, Inc.; (Polyacrylonitrile-based Carbon Fiber); Extension of Rebuttal Comment Period

The current rebuttal comment period pertaining to the amended application for production authority within Foreign-Trade Zone (FTZ) 38 on behalf of Teijin Carbon Fibers, Inc., is being extended to September 10, 2021, based on a request from the applicant. The original closing of the rebuttal period had been set for September 2, 2021 (86 FR 38010, July 19, 2021). Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: August 26, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–18884 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–100–2021]

Approval of Expansion of Subzone 50R; VF Outdoor, LLC; Ontario, California

On July 12, 2021, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Port of Long Beach, grantee of FTZ 50, requesting an expansion of Subzone 50R, on behalf of VF Outdoor, LLC, in Ontario, California.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (86 FR 37737–37738, July 26, 2021). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to expand Subzone 50R was approved on August 26, 2021, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 50's 2,000-acre activation limit.

Dated: August 26, 2021.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2021–18883 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Review: Notice of NAFTA Panel Decision

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of NAFTA Panel Decision in the matter of Ammonium Sulphate from the United States of America. (Secretariat File Number: MEX–USA–2015–1904–01).

SUMMARY: On July 7, 2021, a NAFTA Binational Panel issued its Decision in the matter of Ammonium Sulphate from the United States of America (Determination on Remand). The Binational Panel remanded the Secretaria de Economia's (Economia) second Determination on Remand and ordered Economia to issue a redetermination within 90 days.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Acting United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Article 1904 of Chapter 19 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to provide judicial review of the trade remedy determination being challenged and then issue a binding Panel Decision. The NAFTA Binational Panel Decision is available publicly at *https://can-mex-usa-sec.org/secretariat/report-rapport-reporte.aspx?lang=eng.* The NAFTA Panel Decision is being announced pursuant to Rule 70 of the *NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews.* For the complete Rules, please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/nafta-alena-tlcan/rules-regles-reglas/article-article-articulo_1904.aspx?lang=eng.*

Dated: August 27, 2021.

Vidya Desai,

Acting U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2021–18895 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

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

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC Case No.	ITC Case No.	Country	Product	Commerce contact
A–602–809	731–TA–1291	Australia.		
A–351–845	731–TA–1292	Brazil	Hot-Rolled Steel Flat Products (1st Review).	Jacky Arrowsmith, (202) 482–5255.
A–588–874	731–TA–1293	Japan	Hot-Rolled Steel Flat Products (1st Review).	Jacky Arrowsmith, (202) 482–5255.
A–421–813	731–TA–1295	Netherlands	Hot-Rolled Steel Flat Products (1st Review).	Jacky Arrowsmith, (202) 482–5255.
A–580–883	731–TA–1294	South Korea	Hot-Rolled Steel Flat Products (1st Review).	Jacky Arrowsmith, (202) 482–5255.
A–489–826	731–TA–1296	Turkey	Hot-Rolled Steel Flat Products (1st Review).	Jacky Arrowsmith, (202) 482–5255.
A–412–825	731–TA–1297	United Kingdom	Hot-Rolled Steel Flat Products (1st Review).	Jacky Arrowsmith, (202) 482–5255.
A–821–809	731–TA–808	Russia	Certain Hot-Rolled Carbon Steel Flat Products (4th Review).	Jacky Arrowsmith, (202) 482–5255.
C–351–846	701–TA–545	Brazil	Hot-Rolled Steel Flat Products (1st Review).	Mary Kolberg, (202) 482–1785.
C–580–884	701–TA–546	South Korea	Hot-Rolled Steel Flat Products (1st Review).	Thomas Martin, (202) 482–3936.
A–357–818	731–TA–1105	Argentina	Lemon Juice (2nd Review)	Jacky Arrowsmith, (202) 482–5255.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 16, 2021.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2021–18922 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to* COVID–19, 85 FR 41363 (July 10, 2020).

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 210826–0169]

National Cybersecurity Center of Excellence (NCCoE) Automation of the Cryptographic Module Validation Program (CMVP)

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide letters of interest describing products and technical expertise to support and demonstrate security platforms for the *Automation of the Cryptographic Module Validation Program (CMVP)* project. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE), in collaborating with technology companies, to address cybersecurity challenges identified under the *Automation of the Cryptographic Module Validation Program (CMVP)* project. Participation in the project is open to all interested organizations.

DATES: Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than October 1, 2021.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *applied-crypto-testing@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Interested parties can access the letter of interest template by visiting *https://www.nccoe.nist.gov/projects/building-blocks/applied-cryptography/cmvp-automation* and completing the letter of interest webform. NIST will announce the completion of the selection of participants and inform the public that it will no longer accept letters of interest for this project at *https://www.nccoe.nist.gov/projects/building-blocks/applied-cryptography/cmvp-automation.* Organizations whose letters of interest are accepted will be asked to sign a consortium Cooperative Research and Development Agreement (CRADA) with NIST; a template CRADA can be found at: *https://nccoe.nist.gov/library/nccoe-consortium-crada-example.*

FOR FURTHER INFORMATION CONTACT: Apostol Vassilev via phone (301) 975–3221 or email *applied-crypto-testing@nist.gov;* by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the *Automation of the Cryptographic Module Validation Program (CMVP)* project are available at *https://www.nccoe.nist.gov/projects/building-blocks/applied-cryptography/cmvp-automation.*

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the *Automation of the Cryptographic Module Validation Program (CMVP)* project. The full project can be viewed at: *https://www.nccoe.nist.gov/projects/building-blocks/applied-cryptography/cmvp-automation.*

Interested parties can access the template for a letter of interest by visiting the project website at *https://www.nccoe.nist.gov/projects/building-blocks/applied-cryptography/cmvp-automation* and completing the letter of interest webform. On completion of the webform, interested parties will receive access to the letter of interest template, which the party must complete, certify as accurate, and submit to NIST by email or hardcopy. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the project objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below, up to the number of participants in each category necessary to carry out this project. When the project has been completed, NIST will post a notice on the *Automation of the Cryptographic Module Validation Program (CMVP)* project website at *https://www.nccoe.nist.gov/projects/building-blocks/applied-cryptography/cmvp-automation* announcing the completion of the project and informing the public that it will no longer accept letters of interest for this project.

Completed letters of interest should be submitted to NIST and will be accepted on a first come, first served basis. There may be continuing opportunity to participate even after initial activity commences for participants who were not selected initially or have submitted the letter interest after the selection process. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above).

Objective: The Cryptographic Module Validation Program (CMVP) validates third-party assertions that cryptographic module implementations satisfy the requirements of Federal Information Processing Standards (FIPS) Publication 140–3, *Security Requirements for Cryptographic Modules.* Current industry cryptographic product development, production, and maintenance processes place significant emphasis on time-to-market efficiency. A number of elements of the validation process are manual in nature, and the period required for third-party testing and government validation of cryptographic modules is often incompatible with industry requirements. The purpose of the project is to demonstrate the value and practicality of automation to improve the efficiency and timeliness of CMVP operation and processes. The proposed proof-of-concept solution(s) will integrate commercial and open source products that leverage cybersecurity standards and recommended practices to demonstrate the use case scenarios detailed in the *Automation of the Cryptographic Module Validation Program (CMVP)* project description at *https://www.nccoe.nist.gov/projects/building-blocks/applied-cryptography/cmvp-automation.* This project will result in a publicly available NIST Cybersecurity Practice Guide as a Special Publication 1800 series, a detailed implementation guide describing the practical steps needed to implement a cybersecurity reference implementation.

Requirements for Letters of Interest: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in section 3 of the *Automation of the Cryptographic Module Validation Program (CMVP)* project description at *https://www.nccoe.nist.gov/projects/building-blocks/applied-cryptography/cmvp-automation* and include, but are not limited to:

- Validation authority server
- ACV proxy server
- ACV client
- Hardware or software cryptographic modules
- Host processors for software cryptographic modules
- Network devices supporting web-based exchange of information in JSON format
- Harnesses for integration of ACV clients with hardware or software cryptographic modules
- Automated cryptographic module testing expertise

Each responding organization's letter of interest should identify how its products help address one or more of the following desired characteristics and properties in section 1 of the *Automation of the Cryptographic Module Validation Program (CMVP)* project description at *https://www.nccoe.nist.gov/projects/building-blocks/applied-cryptography/cmvp-automation:*

- Support necessary schemas and protocols for evidence submission and validation for a scalable application programming interface (API) based architecture
- Support standard tests for the functional tests of specific classes of technologies (*e.g.,* software modules) and corresponding reporting of functional and non-functional security requirements
- Be compatible with an infrastructure required to support a new automated validation program architecture
- Include reusable test harnesses for test automation for different types of modules within the program architecture
- Support maintaining validation within a changing operational environment
- Support validation in third-party operational environments (*e.g.,* cloud providers, contracted environments)
- Support identification of positive and negative impacts that the new automation program may have on cryptographic product development,

production, integration, and testing organizations, including lessons learned
- Contribute to recommend policies and best practices for the automated validation scope in appropriate NIST documents
- Support a roadmap for migrating organizations and their customers from the current human-effort-centric CMVP to the new automated program, including recommended practices based on lessons learned
- Broadly support improvements in cryptographic modules across all vendors participating in the CMVP through voluntary sharing of test data (*e.g.,* seeds or test vectors) that result in failures to improve regression testing for module vendors

In their letters of interest, responding organizations need to acknowledge the importance of and commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components.

2. Support for development and demonstration of the Automation of the Cryptographic Module Validation Program (CMVP) project, which will be based on the most recent versions of FIPS 140, SP 800–140, and Handbook (HB) 150–17 and conducted in a manner consistent with the most recent version of the following standards and guidance: FIPS 200, SP 800–37, SP 800–52, SP 800–53, SP 800–63, and SP 1800–16. Additional details about the *Automation of the Cryptographic Module Validation Program (CMVP)* project are available at *https://www.nccoe.nist.gov/projects/building-blocks/applied-cryptography/cmvp-automation.*

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the *Automation of the Cryptographic Module Validation Program (CMVP)* project. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the *Automation of the Cryptographic Module Validation Program (CMVP)* project. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the *Automation of the Cryptographic Module Validation Program (CMVP)* project capability will be announced on the NCCoE website at least two weeks in advance at *https://nccoe.nist.gov/.* The expected outcome will demonstrate how the components of the solutions that address *Automation of the Cryptographic Module Validation Program (CMVP)* can enhance security capabilities that provide assurance of mitigation of identified risks while continuing to meet industry sectors' compliance requirements. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE website *https://nccoe.nist.gov/.*

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2021–18868 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB327]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Fuel Pier Inboard Pile Removal Project in San Diego, California

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

ACTION: Notice; issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an IHA to the United States Navy to incidentally harass, by Level B harassment only, marine mammals during pile driving/removal activities associated with the Fuel Pier Inboard Pile Removal Project in San Diego Bay, California.

DATES: This Authorization is effective from January 15, 2022 through January 14, 2023.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-fuel-pier-removal-naval-base-san-diego-california.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as

''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On February 3, 2021, NMFS received a request from United States Navy (Navy) for an IHA to take marine mammals incidental to pile driving/removal activities at Naval Base Point Loma in San Diego Bay, California. The application was deemed adequate and complete on May 17, 2021. The Navy's request is for take of a small number of six species of marine mammals by Level B harassment only. Neither the Navy nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Naval Base Point Loma provides berthing and support services for Navy submarines and other fleet assets. The existing fuel pier previously served as a fuel depot for loading and unloading fuel. Naval Base Point Loma is the only active Navy fueling facility in southern California. The current project is to remove piles that were part of the old pier that was replaced over the past few years. This IHA includes up to 84 days of in-water pile driving/removal activities.

NMFS has previously issued incidental take authorizations to the Navy for similar activities over the past 8 years at Naval Base Point Loma in San Diego Bay, including IHAs issued effective from September 1, 2013, through August 31, 2014 (78 FR 44539, July 24, 2013; Year 1 Project), October 8, 2014 through October 7, 2015 (79 FR 65378, November 4, 2014; Year 2 Project), October 8, 2015 through October 7, 2016 (80 FR 62032, October 15, 2015; Year 3 Project), October 8, 2016 through October 7, 2017 (81 FR 66628, September 28, 2016; Year 4 Project), October 8, 2017 through October 7, 2018 (82 FR 45811, October 2, 2017; Year 5 Project), September 15, 2020 through September 14, 2021 (85 FR 33129, June 1, 2020; Floating Dry Dock Project), and October 1, 2021 through September 30, 2022 (86 FR 7993, February 3, 2021; Pier 6 Replacement Project). The Navy has complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of past IHAs. Monitoring reports from these activities are available on NMFS website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*).

Description of the Specified Activity

Overview

The purpose of this project is to remove old piles from the Fuel Pier at Naval Base Point Loma to allow for continued Naval Fleet readiness activities. More specifically, the in-water construction work includes the removal of 409 piles by a variety of techniques (*i.e.,* one to two pile clippers, an underwater chainsaw, a diamond wire saw, or a vibratory hammer, possibly with assistance from a diver). Concurrent pile removal may occur for some piles by using only two pile clippers. The piles include an estimated 12 13-inch diameter polycarbonate fender piles, 56 14-inch diameter concrete fender piles, and 341 16-inch diameter concrete structural piles.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (86 FR 38274; July 20, 2021). Since that time, no changes have been made to the planned pile removal activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and the Monitoring and Reporting sections).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to the Navy was published in the **Federal Register** on July 20, 2021 (86 FR 38274). That notice described, in detail, the Navy's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received public comments from one commenter. The United States Geological Survey noted that they have ''no comment at this time''.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all marine mammal species with expected potential for occurrence in the vicinity of Naval Base Point Loma during the project timeframe and summarizes key information, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats. For taxonomy, we followed the Society for Marine Mammalogy's Committee on Taxonomy (2020).

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates, for most species, represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's 2019 Pacific SARs (Carretta *et al.,* 2020a) and recently finalized 2020 U.S. Pacific SARs (Carretta *et al.,* 2020b). Upon the finalizing of the 2020 SARs, none of the stock information for the species that are expected to occur in the project area for this project has changed. All values presented in Table 1 are the most recent available at the time of publication and are available in the 2019 Pacific SARs and 2020 Pacific SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*).

TABLE 1—SPECIES EXPECTED TO OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises) Family Delphinidae						
Bottlenose dolphin	*Tursiops truncatus*	California coastal	-, -, N	453 (0.06, 3436, 2011)	2.7	≥2.0
Short-beaked common dolphin	*Delphinus delphis*	California/Oregon/Washington	-, -, N	969,861 (0.17, 839,325, 2014).	8393	≥40
Long-beaked common dolphin	*Delphinus capensis*	California	-, -, N	101,305 (0.49, 68,432, 2014).	657	≥35.4
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	California/Oregon/Washington	-, -, N	26,814 (0.28, 21,195, 2014).	191	7.5
Order Carnivora—Superfamily Pinnipedia Family Otariidae (eared seals and sea lions)						
California sea lion	*Zalophus californianus*	United States	-, -, N	257,606 (N/A, 233,515, 2014).	14011	>320
Family Phocidae (earless seals)						
Harbor seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012).	1641	43
Northern elephant seal	*Mirounga angustirostris*	California breeding	-, -, N	179,000 (N/A, 81,368, 2010).	4882	8.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury (M/SI) from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

For Risso's dolphins (*Grampus griseus*) and gray whales (*Eschrichtius robustus*), occurrence is such that take is unlikely and we have not authorized take of these species.

A detailed description of the species likely to be affected by the project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (86 FR 38274; July 20, 2021); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the Navy's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA that was published in the **Federal Register** (86 FR 38274; July 20, 2021) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the Navy's construction on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (86 FR 38274; July 20, 2021).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are for Level B harassment only, in the form of disruption of behavioral patterns and TTS for individual marine mammals resulting from exposure to the sounds produced from the underwater acoustic sources (*i.e.,* vibratory hammer, single use or concurrent use of pile clippers, underwater chainsaw, diamond wire saw). Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* PSO monitoring and shutdown zone) discussed in detail below in the Mitigation and the Monitoring and Reporting sections, Level A harassment is neither anticipated nor will be authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals would be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that would be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these

basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals will be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (root mean square (rms)) for continuous (*e.g.,* vibratory hammer) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* impact hammers (pile-driving)) or intermittent (*e.g.,* scientific sonar) sources.

The Navy's pile driving/removal activities includes the use of stationary, non-impulsive, and continuous noise sources (vibratory hammer, diamond wire saw, underwater chainsaw, single use or concurrent use of pile clippers), and therefore the 120 dB re 1 μPa (rms) is applicable. However, as discussed above, the Navy measurements support an ambient noise estimate of 129.6 dB re 1 μPa (rms) in the project area. Accordingly, we have adjusted the standard Level B harassment threshold of 120 dB to 129.6 dB, as it likely provides a more realistic and accurate basis for predicting Level B harassment in the San Diego Bay area.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 2018a) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Navy's pile driving/removal activities includes the use of non-impulsive (vibratory pile removal and other cutting and removal methods) sources.

These thresholds are provided in Table 2 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018a Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT (PTS)

Hearing group	PTS onset acoustic thresholds [1] (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

[1] Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds would be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels, durations, and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from this project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* vibratory pile removal, diamond wire saw, single use or concurrent use of pile clippers, and underwater chainsaws).

Vibratory hammers produce constant sound when operating, and produce vibrations that liquefy the sediment surrounding the pile, allowing it to penetrate to the required seating depth or be withdrawn more easily. The actual durations of each method vary depending on the type and size of the pile.

In order to calculate the distance to the Level B harassment sound threshold for piles of various sizes being used in this project, the Navy used acoustic monitoring data from other locations and projects to develop source levels for the various pile types, sizes, and methods of removal. Data for the removal methods (*i.e.,* a diamond wire saw, individual use or concurrent use of pile clippers, and an underwater chainsaw) comes from data gathered at other nearby or related Navy projects as reported in their San Diego Noise

Compendium (NAVFAC SW, 2020). The only exception to this is the sound source data for the vibratory hammer, which was sourced from the City of Seattle Pier 62 project (Greenbusch Group, 2018). The source levels for the pile clippers, single and simultaneous use, and underwater chainsaw for this project utilized the mean maximum RMS SPL rather than the median sound levels we typically use as this will provide a more conservative measure. The diamond wire saw utilized the noise profile measurements associated with the removal of 66-inch and 84-inch caissons in the Navy Compendium (NAVFAC SW, 2020). The Navy has noted, and we agree, that these values are likely much lower in reality as this project would remove 16-inch concrete piles instead of the much larger variants modeled in the Compendium. However, no recorded data currently exists for the wire saws cutting concrete; therefore, we used the mean of the source level data from the Navy Compendium. The vibratory hammer used the highest average weighted RMS sound level per the Seattle Pier 62 project acoustic monitoring report (Greenbusch Group, 2018).

During pile driving/removal activities, there may be times when two pile extraction methods (*i.e.,* pile clippers) are used simultaneously. The likelihood of such an occurrence is anticipated to be infrequent, will depend on the specific methods chosen by the contractor, and will be for short durations on that day. In-water pile removal occurs intermittently, and it is common for removal to start and stop multiple times as each pile is adjusted and its progress is measured. Moreover, the Navy has multiple options for pile removal depending on the pile type and condition, sediment, and how stuck the pile is, etc. When two continuous noise sources, such as pile clippers, have overlapping sound fields, there is potential for higher sound levels than for non-overlapping sources. When two or more pile removal methods (pile clippers) are used simultaneously, and the sound field of one source encompasses the sound field of another source, the sources are considered additive and combined using the following rules (see Table 3). For addition of two simultaneous methods, the difference between the two sound source levels (SSLs) is calculated, and if that difference is between 0 and 1 dB, 3 dB are added to the higher SSL; if difference is between 2 or 3 dB, 2 dB are added to the highest SSL; if the difference is between 4 to 9 dB, 1 dB is added to the highest SSL; and with differences of 10 or more dB, there is no addition (NMFS, 2018b; WSDOT, 2018).

TABLE 3—RULES FOR COMBINING SOUND LEVELS GENERATED DURING PILE REMOVAL

Difference in SSL	Level A harassment isopleths	Level B harassment isopleths
0 or 1 dB	Add 3 dB to the higher source level	Add 3 dB to the higher source level.
2 or 3 dB	Add 2 dB to the higher source level	Add 2 dB to the higher source level.
4 to 9 dB	Add 1 dB to the higher source level	Add 1 dB to the higher source level.
10 dB or more	Add 0 dB to the higher source level	Add 0 dB to the higher source level.

Source: Modified from USDOT, 1995; WSDOT, 2018; and NMFS, 2018b.
Note: dB = decibel; SSL = sound source Level.

Level A Harassment Zones

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources, such as the localized pile removal activities discussed above, the NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it will incur PTS.

The Navy provided estimates to NMFS for the duration of sound exposure for each pile removal activity. The durations used in this project for each pile removal method were noted as ''conservative estimates that are greater than durations observed in the San Diego Noise Compendium'' by the Navy. In discussions with NMFS, the Navy has explained that the average durations found in the IHA application and Compendium were based around data collected in the from the old Fuel Pier demolition projects (NAVFAC SW 2014, 2015a, 2016, 2017a, 2017b, 2018a, and 2018b). These values were adjusted to account for either the maximum amount of time the activity could occur (*i.e.,* pile clippers), a duration that is greater than the maximum (*i.e.,* underwater chainsaw and vibratory hammer), or an adjusted duration based on the removal of a smaller pile (*i.e.,* diamond wire saw) in order to provide somewhat more conservative measurements using real-world data. These values were likely considered more realistic for past projects and could safely be assumed as conservative for this project as the Navy will be cutting smaller sized piles. The Navy also performed an ''ultra-conservative'' hypothetical review by modeling a 1-hour duration for each pile being removed. Using a rate of five piles removed per day, the resulting Level A harassment isopleths were still smaller than the 20 m shutdown zone the Navy plans to implement. Further information on durations can be found in the Compendium (NAVFAC SW, 2020).

All inputs used in the User Spreadsheet are reported below in Table 4.

TABLE 4—PROJECT SOUND SOURCE LEVELS AND USER SPREADSHEET INPUTS

Activity [3]	Type of source	Source level (dB RMS) [1]	Duration of sound production (hours) [2]	Transmission loss coefficient
Vibratory pile driving	Stationary source, non-impulsive, continuous	152	0.1667	15
13-inch polycarbonate pile removal	Stationary source, non-impulsive, continuous	154	0.42	11.7
16-inch concrete pile removal	Stationary source, non-impulsive, continuous	147	0.42	15
16-inch concrete pile clipping with +3dB adjustment for two simultaneous pile clippers.	Stationary source, non-impulsive, continuous	150	0.42	15
16-inch concrete pile removal using hydraulic chainsaw (underwater chainsaw).	Stationary source, non-impulsive, continuous	150	0.83	15
Wire saw for caisson cutting	Stationary source, non-impulsive, continuous	156	1.7	15

[1] All of these sound source data for use in the Level A and B harassment threshold modeling were calculated from acoustic data found in the 2020 San Diego Noise Compendium (NAVFAC SW, 2020); the only exception is the vibratory hammer source level which was sourced from the City of Seattle Pier 62 Project (Greenbusch Group, 2018).
[2] The User Spreadsheet inputs assumed 5 piles will be removed within a single 24-hour period using data from the Navy's Compendium (NAVFAC SW, 2020).
[3] All activities utilized a weighting factor adjustment (kHz) of 2.5.

For this project, we modeled sound propagation using the practical spreading value of 15 for transmission loss for all pile removal methods, except for the removal of the 13-inch polycarbonate piles. For this, 11.7 was used as the transmission loss coefficient as this value was a calculated measure from recorded data that was fit with a logarithmic trendline during the clipping of a 13-inch round concrete pile using small pile clippers in February 2017 at the old Fuel Pier (NAVFAC SW, 2020). The above input scenarios lead to PTS isopleth distances (Level A harassment thresholds) of less than 1 meter for all methods and piles (Table 5).

TABLE 5—MODELED AND EXPECTED LEVEL A AND B HARASSMENT ISOPLETHS (USING TWO METHODS) FOR THE PILE TYPE AND REMOVAL METHOD (METERS)

Pile information	Removal method	(A) Projected distances to Level A harassment isopleth [3]			(B) Projected distances to Level B harassment isopleth [5]	
		MF	PW	OW	Practical spreading loss model	Real-time data
13-inch polycarbonate pile	One pile clipper	0.0	0.0	0.0	[5] 423	350
14-inch, 16-inch concrete piles.	One pile clipper	0.0	0.0	0.0	145	[5] 250
14-inch, 16-inch concrete pile [1].	Two pile clippers	0.0	0.0	0.0	229	[5] 250
14-inch, 16-inch concrete pile.	Underwater chainsaw	0.0	0.1	0.0	[5] 229	45
14-inch, 16-inch concrete pile.	Diamond wire saw	0.1	0.7	0.0	[5] 575	350
14-inch, 16-inch concrete pile.	Vibratory hammer	0.1	0.9	0.1	[5] 311	([4])

MF = mid-frequency cetaceans, PW = phocid pinnipeds, OW = otariid pinnipeds.
[1] The Navy added an adjustment of +3 dB to the noise of a single pile clipper (147 dB RMS re 1μPa) and increased to 150 dB RMS re 1μPa where two clippers are used simultaneously (Kinsler et al., 2000). This adjustment is consistent with NMFS guidance for simultaneous sound sources.
[2] All sound sources were taken from the Compendium of Underwater and Airborne Sound Data during Pile Installation and In-Water Demolition Activities in San Diego Bay, California (San Diego Noise Compendium; NAVFAC SW, 2020), with exception of the vibratory hammer which was sourced from the City of Seattle Pier 62 Project (Greenbusch Group, 2018).
[3] Because of the small sizes of the Level A harassment isopleths (as determined by NMFS's User Spreadsheet Tool) and the mitigation methods implemented during this project, neither NMFS nor the Navy expects Level A harassment (and, therefore, take) to occur.
[4] No information available.
[5] Designate the most conservative isopleths NMFS will use for the subsequent Level B take analyses and Level B harassment impact zones.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log10 (R1/R2),$$

where:

TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the Navy's activity in the absence of specific

modeling. We used the Navy's realistic, site-specific averaged median ambient noise measurement of 129.6 dB RMS re 1 μPa for the Level B harassment threshold in San Diego Bay (NAVFAC SW, 2020). It should be noted that based on the bathymetry and geography of San Diego Bay, sound will not reach the full distance of the Level B harassment isopleths in all directions.

To determine the most appropriate and conservative Level B harassment isopleths, we compared two methods and selected the isopleth between each method that was largest, thus providing the greatest coverage for the Level B harassment zone. Level B harassment isopleths were considered appropriate based on the distance where the source level reached the 129.6 dB ambient value. The two methods compared the empirical data provided in the Navy's Compendium for work at Naval Base Point Loma (NAVFAC SW, 2020) with the Practical Spreading Loss model using a transmission loss coefficient of 15, as described above. Results of each method are shown in Table 5 and described below.

For the Compendium method, the average and maximum sound levels (in dB re 1 μPa) measured at the source (10 m) and then at various far-field distances typically showed a monotonic decline in average and maximum sound pressure levels distance increased. The Navy chose to use the average values for two main reasons: (1) Consistency with using the average median (L50) ambient values; and (2) average source values were used for the same activities in the Pier 6 project nearby (86 FR 7993, February 3, 2021). However, some level of variability in the recorded sound pressure levels was present where noise levels will drop to ambient levels and then increase to higher levels at greater distances. An example of this will be measurements for the 84-inch caisson removal by a single wire saw. At source (10 m), the average and maximum source levels exceeded the ambient noise levels for both measurements at the source (136.1 and 141.4 dB re 1 μPa; 140.9 and 146.5 dB re 1 μPa, respectively). At far-field distances (>20 m), the averages show variability with a gradual decline and then a subsequent increase, *i.e.,* 140.8 dB re 1 μPa at 20 m and 134.8 at 40 m, then 137.1 dB re 1 μPa at 60 m. The distance where sound was measured ends at 283 m from the source with an average level of 130.3 dB re 1 μPa and a maximum level of 137.0 dB re 1 μPa, both in exceedance of the ambient level. These instances could be attributed to the presence of vessel traffic at distance from the acoustic recorder, causing some interference or competing background noise to the pure sound measurements of the wire saw or to random variation from other acoustic effects related to the specific location of the hydrophone. In any event, the distance at which the sound declined below ambient was not always entirely clear and the Navy was unable to develop a consistent criterion to determine the likely distance at which sound decreased below ambient or to account for factors like the topography or hydrophone location. Therefore we describe the analysis of the Navy Compendium's field data for each pile removal method individually below.

For the 13-inch polycarbonate piles with pile clippers the Navy believes that at between 300 and 400 m (984 to 1,312 ft), a majority of the background noise measured is directly related to traffic transiting to/from the Everingham Brothers Bait Company (EBBCO) bait barges which are to the southwest of the project area. Boat traffic for that specific route ranges from small boats to large recreational/commercial fishing vessels and traffic is nearly constant throughout the day. Because of that, the Navy believes values between those distances will likely be artificially high relative to the transmission loss associated with the project-related activities. Furthermore, in the turning basin the slope rises up from a max depth of 20.12 m (66 ft) to 11.58 m (38 ft) between 200 to 400 m (656.17 to 1,312.34 ft). As is evidenced by the Navy's acoustical model for south-central San Diego Bay (see the Naval Base Point Loma Pier 6 project at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-naval-base-san-diego-pier-6-replacement-project-san-diego*), changes in bathymetry (*i.e.,* channel walls) act as noise attenuators. Therefore, the Navy estimated the Level B harassment isopleth for this source at 350 m, smaller than the Practical Spreading Loss model prediction of 423 m. Given the uncertainty discussed above, we used the 423 m distance for the Level B harassment isopleth.

For the one pile clipper on concrete pile source, the Navy again believes the Compendium data were influenced by boat activity and topography of the channel. In this particular case, Table 39 of the Compendium shows that the average dB level at 215 m was 129.0 dB RMS. However, the two measurements at 309 m were split, one higher and one lower than the value at 215 m. The Navy decided that ''Understanding that acoustics is not an ''exact science,'' we evaluated the data and chose a distance (250 m) that fit the data (average noise levels dropped below 129.6 dB at between 215 and 309 m).'' As this 250 m distance exceeded the practical spreading loss model distance of 145 m, we chose the 250 m distance for the Level B harassment isopleth.

For the two pile clipper on concrete pile source the Navy decided that ''Because the project footprint is parallel to the shoreline, we created a monitoring zone that used a source level of 150 dB, but at two points at the extreme north and south of the project footprint (see Fig 6–3 in the IHA application) because we felt that this would generate a more conservative'' zone that led to an estimate of the Level B harassment isopleth of 250 m. As this 250 m distance exceeded the practical spreading loss model distance of 229 m, we chose the 250 m distance for the Level B harassment isopleth.

For the underwater chainsaw the Navy noted the ''transmission loss (27logR) was steep when compared to other equipment, but the source value was in line with the pile clippers. Because of the very steep TL value, we looked at the perceived far-field data points for the clipper activities and chose a distance that was in-between the drop off to ambient for the chainsaw (from 26 to 45 m) and the clippers (250 m).'' The Navy estimated the Level B harassment isopleth for this source at 45 m, smaller than the Practical Spreading Loss model prediction of 229 m. Given the uncertainty discussed above, we used the 229 m distance for the Level B harassment isopleth.

For the diamond wire saw the Navy again believes the Compendium data were influenced by boat activity and topography of the channel. The available data are from caissons which consist of 1.5 inch thick hardened steel shells filled with concrete, and with wooden piles in the center of the concrete. For lack of information on wire saws, the Navy evaluated the likely far-field values for the potential zones based on the 84-inch caissons (Table 34 in the Compendium), which had more data at multiple distances. The Navy ''felt that this was a valid approach based on the similarity of the average noise data at 40 m (132.5 dB for 66-inch caisson, 134.8 for the 84-inch caisson). Per Table 34, using the average dB values at distance, the data shows a drop below 129.6 dB RMS at 200 m, but a rise again at 283 m. If you plot the regression curve based on the average 84-inch data, we cross the ambient threshold at app[roximately] 350 m . . . Because the data at far-field distances was variable, we chose a monitoring zone (350 m) that was based on the available real-time data. . . . Our assumption is that, if a wire saw were

to be used on the concrete piles, the noise levels would be lower than either the 66- or 84-inch caisson.'' The Navy estimated the Level B harassment isopleth for this source at 350 m, smaller than the Practical Spreading Loss model prediction of 575 m. Given the uncertainty discussed above, we used the 575 m distance for the Level B harassment isopleth.

Marine Mammal Occurrence, Take Calculation, and Take Estimation

In this section, we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Here we describe how the information provided above is brought together to produce a quantitative take estimate.

We examined two approaches towards estimating the Level B take for the requested six marine mammal species within the project area at Naval Base Point Loma. The first approach was using our standard approach of using species density multiplied by isopleth size. The second approach utilized daily sightings from monitoring reports produced from past Navy projects at Naval Base Point Loma (NAVFAC SW, 2015a; NACFAC SW, 2017; NAVFAC SW, 2018).

Density estimates for any specific area assumes that the species' in question are evenly distributed across the entire site, which is rarely the case. Using the first approach for this project, we examined the use of densities, using an overall density for San Diego Bay, within a much smaller and definitive area (specifically Naval Base Point Loma). This approach, in combination with the predicted Level B harassment isopleths, yielded take estimates that were determined to not be conservative enough in nature for these activities and activity source levels as compared to the results of the in situ measurements included in the Navy's Compendium (NAVFAC SW, 2020) and as discussed above. Furthermore, the take estimates produced from this method did not appropriately account for group size of all marine mammal species as the density estimate was for a much larger area (consisting of a primarily offshore environment) and assumed a much larger distribution of marine mammals. Therefore, this approach was not utilized and will not be discussed further.

The second approach utilized average daily sightings from the Year 1–5 monitoring reports from IHAs that were previously issued (NAVFAC SW, 2015a; NACFAC SW, 2017; NAVFAC SW, 2018). This information was provided by the Navy in Table 6.

TABLE 6—MONITORING RESULTS FROM THE NAVY'S YEARS 1–5 PROJECTS AT NAVAL BASE POINT LOMA IN SAN DIEGO, CALIFORNIA

Species	Year 1 project (10 days; potential El Niño year)			Year 2 project (100 days; El Niño year)			Year 3 project (59 days)			Year 4 project (152 days)			Year 5 project (49 days)		
	Total	*Average/day*	*Average group size*	*Total*	*Average/day*	*Average group size*	*Total*	*Average/day*	*Average group size*	*Total*	*Average/day*	*Average group size*	*Total*	*Average/day*	*Average group size*
California sea lions	2,229	229.9	2.2	7,507	75.1	1.4	483	8.2	1.3	2,263	*14.9	1.7	618	12.6	1.3
Harbor seal	25	2.5	1.1	248	2.5	1.0	25	0.4	1.0	88	*0.6	1.1	28	0.6	1.0
Bottlenose dolphins	83	8.3	2.4	695	7.0	2.8	25	0.4	1.9	67	*0.4	2.7	13	0.3	2.2
Common dolphins	19	19	6.3	850	*8.5	[2] 42.5	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Pacific white-sided dolphins	n/a	n/a	n/a	27	*0.3	3.9	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Northern elephant seals	n/a	n/a	n/a	([1])	([1])	([1])	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

*These estimates were chosen for the second method in which to estimate take of marine mammals for this action.
[1] Same individuals was observed hauled out on a beach twice.
[2] This includes four sightings of groups of 100+ animals outside of San Diego Bay. When these observations are eliminated, the average group size is 6.75 animals observed inside of San Diego Bay.

The Year 1 and 2 monitoring reports demonstrated marine mammal estimates during a potential and known El Niño year, respectively. Because of this, these values were likely not representative of the typical conditions around Naval Base Point Loma and were not preferred.

California sea lions, harbor seals, and bottlenose dolphins were recorded during all other years. Within these, Year 4 was considered the most conservative as these activities consisted of the longest duration (152 days) with the highest number of sightings for these species. Therefore, for these species we used the Year 4 average daily values.

Pacific white-sided dolphins were only recorded during Year 2. While these estimates are likely not fully representative of the typical distributions of Pacific white-sided dolphins around San Diego Bay, they will serve as the basis for our conservative take estimates for this species. Common dolphins were observed in Years 1 and 2; however, the length of the project period in Year 2 (100 days) was considered more representative than the Year 1 project (10 days). Therefore, the values from the Year 2 estimates were used for common dolphins. A single Northern elephant seal was only recorded to have hauled out on a beach twice during all Year 1–5 work. Due to this, no average daily estimates were present for analysis; however, some discretionary take is authorized in the event Northern elephant seals are present during this action.

For all species (excluding Northern elephant seals), these daily sightings were extrapolated over the number of days of pile removal activities (84).

This second approach yielded larger and more conservative Level B take estimates, but more realistic for particular species occurrence and group size given the data was previously collected at the location of this project for similar or the same species during past projects. Here we describe how the information provided above is brought together to produce a quantitative take estimate.

By following this daily occurrence-based approach using past sightings at Naval Base Point Loma, we will expect that 15 California sea lions, 1 harbor seal, 9 common dolphins, 1 Pacific white-sided dolphin, and 1 bottlenose dolphin will be sighted per day. Multiplication of the above daily occurrences times the number of pile removal days planned (84) results in the Level B harassment take of 1,260 California sea lions, 84 harbor seals, 756 common dolphins, 84 Pacific white-sided dolphins, and 84 bottlenose dolphins (see Table 7 for final estimates).

The Navy has noted that northern elephant seals are very rarely seen in this area, with the only true record being of a hauled out and distressed juvenile during the Year 2 IHA (NAVFAC SW, 2015a). As a precaution that a greater number of northern elephant seal may occur around Naval

Base Point Loma, we authorize seven Level B takes.

TABLE 7—ESTIMATED TAKE USING THE PAST SIGHTING APPROACH FOR EACH SPECIES AND STOCK DURING THE PROJECT

Common name	Scientific name	Stock	Estimated sightings per day	Total Level B take requested [2]	Data source	Percent of stock
California sea lion	*Zalophus californianus*	U.S. Stock	15	1,260	NAVFAC SW (2017, 2018).	0.49.
Harbor seal	*Phoca vitulina*	California Stock	1	84	NAVFAC SW (2017, 2018).	0.27.
Northern elephant seal	*Mirounga angustirostris.*	California Breeding Stock.		[1] 7	NAVFAC SW (2015a)	0.00.
Common dolphins (Short-beaked, long-beaked).	*Delphinus sp.*[3]	California/Oregon/ Washington Stock; California Stock.	9	756 (between both species).	NAVFAC SW (2015a)	0.08 per SBCD stock; 0.31 per LBCD stock.
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens.*	California/Oregon/ Washington—Northern and Southern Stocks.	1	84	NAVFAC SW (2015a)	0.31.
Bottlenose dolphin	*Tursiops truncatus*	California Coastal Stock.	1	84	NAVFAC SW (2017, 2018).	18.54.

[1] Only recently documented near the project occurrence with one distressed individual hauled out on a beach inshore to the south during the second year of the previous Fuel Pier IHA (NAVFAC SW, 2015a). A conservative estimate of 2 was assumed with a +5 take buffer added.
[2] These numbers were derived by multiplying the rounded average daily sightings by 84 days and then summed for the total requested Level B harassment take.
[3] See discussion in the section on Common Dolphins (Short-beaked and Long-beaked) regarding the Society for Marine Mammalogy's Committee on Taxonomy decision (Committee on Taxonomy, 2020).

By using the sighting-based approach, take values are not affected by the chosen isopleth sizes from Table 5.

Given the very small Level A harassment isopleths for all species, no take by Level A harassment is anticipated or authorized.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are included in the IHA:

- All pile removal activities will occur individually, with the exception for the removal of the 14-inch and 16-inch concrete piles, which may be removed simultaneously by use of the pile clippers;
- A 20 m (66-ft) shutdown zone will be implemented around all pile removal activities (Table 8). If a marine mammal enters the shutdown zones, pile removal activities must be delayed or halted;
- Two Protected Species Observers (PSOs) will be employed and establish monitoring locations. The Holder must establish monitoring locations as described in the Monitoring Plan. For all pile removal activities, a minimum of one PSO must be assigned to each active pile removal location to monitor the shutdown zones. PSO(s) must be able to monitor the entire shutdown zone and the entire Level B harassment zone, or out to at least 400 m of the radial distance of the larger Level B harassment zones towards the Navigation Channel. In the event of concurrent pile removal (*i.e.,* via two pile clippers) at two different locations that cannot be appropriately monitored by one PSO, the pier or location where the lead PSO is stationed being blocked by a refueling vessel or other obstruction, multiple PSOs may be necessary to monitor the necessary shutdown and Level B harassment zones;
- If pile removal activities have been halted or delayed due to the presence of a species in the shutdown zone, activities may commence only after the animal has been visually sighted to have voluntarily exited the shutdown zone, or after 15 minutes have passed without a re-detection of the animal;
- If the take reaches the authorized limit for an authorized species, or if a marine mammal species that is not authorized for this project enters the Level B harassment zone, pile removal will cease until consultation with NMFS can occur. If in-water pile removal activities are occurring when a non-authorized species enters the Level B harassment zone, activities must shutdown;
- The placement of the PSOs during all pile removal activities will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will

not be visible (*e.g.,* fog, heavy rain), pile removal must be delayed until the lead PSO is confident that marine mammals within the shutdown could be detected;

• PSOs must record all observations of marine mammals as described in the Monitoring Plan, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed;

• The marine mammal monitoring reports must contain the informational elements described in the Monitoring Plan;

• A draft marine mammal monitoring report, and PSO datasheets and/or raw sighting data, must be submitted to NMFS within 90 calendar days after the completion of pile driving activities. If no comments are received from NMFS within 30 calendar days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 calendar days after receipt of comments; and

• In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov* and *ITP.Potlock@noaa.gov*), NMFS and to the West Coast Regional Stranding Coordinator as soon as feasible.

TABLE 8—SHUTDOWN AND HARASSMENT ZONES

[(Meters)]

Pile information	Removal method	Harassment zone	Shutdown zone[1]
13-inch polycarbonate pile	One pile clipper	423	20
14-inch, 16-inch concrete piles	One pile clipper	250	
14-inch, 16-inch concrete pile	Two pile clippers	250	
14-inch, 16-inch concrete pile	Underwater chainsaw	229	
14-inch, 16-inch concrete pile	Diamond wire saw	575	
14-inch, 16-inch concrete pile	Vibratory hammer	311	

[1] The shutdown zone is the same for all mid-frequency cetaceans, phocid pinnipeds, and otariid pinnipeds.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the submitted Monitoring Plan and the Mitigation and the Monitoring and Reporting sections of the IHA. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

• Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;

• At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

• Other PSOs may substitute education (degree in biological science or related field) or training for experience;

• Where a team of two or more PSOs are required, one PSO will be designated as the ''Command'', or lead PSO, and will coordinate all monitoring efforts. The lead PSO must have prior experience performing the duties of an observer;

• In the event of concurrent pile removal activities, two lead PSOs may be designated and will coordinate and communicate all monitoring efforts if a single observer cannot observe the two concurrent activities. Each position will act independently and both will maintain the ability to call for a shutdown. Each lead PSOs will communicate to the other of a potential sighting of a marine protected species traveling from one location to the other within the appropriate shutdown and Level B zones during concurrent pile removal activities.

• The Navy must submit PSO Curriculum Vitae (CV) for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction

operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Up to two PSOs will be employed. PSO locations will provide an unobstructed view of all water within the shutdown zone, and as much of the Level A and Level B harassment zones as possible. PSO locations have been discussed above. An additional monitoring location is described as follows:

(1) An additional monitoring location on the Fuel Pier trestle or on a captained vessel may be utilized for pre-activity monitoring if the monitoring zone is beyond the visual range of the lead PSO's position. This vessel will start south of the Project area (where potential marine mammal occurrence is lowest) before the pile removal activity has begun and move north.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity and distance from the buffered shutdown zone and Level B harassment isopleth, and shall document any behavioral reactions in concert with distance from piles being removed.

Hydroacoustic Monitoring and Reporting

The Navy has indicated in their application that they may perform hydroacoustic monitoring on any removal method and sound source that was not previously recorded and included in the *Compendium of Underwater and Airborne Sound Data during Pile Installation and In-Water Demolition Activities in San Diego Bay, California* (NAVFAC SW, 2020). However, as data from the Compendium (for pile clippers, wire saw, and underwater chainsaw) and the City of Seattle Pier 62 project (for the vibratory hammer; Greenbusch Group, 2018) are recent, it is unlikely that hydroacoustic monitoring will occur during this project.

Reporting

A draft marine mammal monitoring and acoustic measurement report will be submitted to NMFS within 90 calendar days after the completion of these activities, or 60 days prior to a requested date or issuance of any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including how many and what type of piles were removed and by what method (*i.e.,* vibratory and if other removal methods were used);

• Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);

• The number of marine mammals observed, by species, relative to the pile location and if pile removal was occurring at time of sighting;

• Age and sex class, if possible, of all marine mammals observed;

• PSO locations during marine mammal monitoring;

• Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile removal was occurring at time of sighting);

• Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;

• Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;

• Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and

• Submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above).

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition), the lead PSO will report to the Navy POC. The Navy POC shall then report the incident to the Office of Protected Resources (OPR), NMFS and to the regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• Description of marine mammals observation in the 24-hours preceding the incident;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact

determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Level A harassment is extremely unlikely given the small size of the Level A harassment isopleths and the required mitigation measures designed to minimize the possibility of injury to marine mammals. No mortality is anticipated given the nature of the activity.

Pile removal activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment only from underwater sounds generated from pile cutting and removal activities. Takes could occur if individuals are present in the ensonified zones when these activities are underway. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation and the Monitoring and Reporting sections).

Take would occur within a limited, confined area (mouth of San Diego Bay) of each stock's range. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small, except for bottlenose dolphins, when compared to stock abundance.

Behavioral responses of marine mammals to pile removal at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock (ABR, 2016; see 80 FR 60636, October 7, 2015)) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day and that pile removal would occur across six months, any harassment would be temporary. There are no areas or times of known biological importance for any of the affected species.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact reproduction or survival of any individual marine mammals, much less affect rates of recruitment or survival and would therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or Level A harassment is anticipated or authorized;
- No biologically important areas have been identified with the project area;
- The Navy is required to implement mitigation measures to minimize impacts, such as PSO observation and a shutdown zone of 20 m (66 ft);
- For all species, San Diego Bay is a very small and peripheral part of their range; and
- Monitoring reports from similar work in San Diego Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity would have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundances for all six species (Table 7). For most requested species, the take of individuals is less than 1 percent of the abundance of the affected stock (with exception for common bottlenose dolphins at 18.54 percent). This is likely a conservative estimate because it assumes all take are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the Navy's activity (including the Mitigation and the Monitoring and Reporting sections) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal

consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act (NEPA)

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that will preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to the Navy for the potential harassment of small numbers of six marine mammal species incidental to the pile removal activities at Naval Base Point Loma in San Diego Bay, California from January 15, 2022 through January 14, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 27, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–18877 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Scientific Research, Exempted Fishing, and Exempted Activity Submissions

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to the Office of Management and Budget.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 1, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference Office of Management and Budget (OMB) Control Number 0648–0309 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Karen Abrams, Supervisory Fishery Management Specialist, NOAA Fisheries, 1315 East West Highway Silver Spring MD 20910, 301–427–8508, and *Karen.abrams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection. Under section 318 (d) of the Magnuson-Stevens Fishery and Conservation and Management Act (Magnuson-Stevens Act) [16 U.S.C. 1801 *et seq.*], as amended by the Sustainable Fisheries Act [Pub. L. 104–297], the Secretary of Commerce (Secretary) is required to promulgate regulations that create an expedited, uniform, and regionally-based process to promote issuance, where practicable, of experimental fishing permits. Regulations under 50 CFR 648.12 and 50 CFR 600.745 establish processes for scientific research plans as well as exempted fishing and exempted educational activities that are exempted from applicable fishing regulations.

Fishing regulations do not generally affect scientific research activities conducted by a scientific research vessel. Persons planning to conduct such research are encouraged to submit a scientific research plan to ensure that the activities are considered research and not fishing. NMFS reviews each scientific research plan submitted to establish that the sponsoring organization and personnel involved are recognized scientific investigators, that the specific project contemplated appears to be scientific research and not fishing, and that the vessel or vessels to be used are or will be used exclusively for research for the duration of the scientific research cruise. The researchers are also requested to submit reports of their scientific research activity after its completion. NMFS Regions, Fishery Science Centers, and NMFS and Coast Guard enforcement personnel use information obtained from voluntarily submitted research plans and subsequent reports in monitoring such activities to ensure they are bona fide scientific research activities.

The National Marine Fisheries Service (NMFS) may also grant exemptions from fishery regulations for educational or other activities (*e.g.,* using non-regulation gear). Exempted fishing, by definition, is fishing outside of the standard regulations. To control this fishing and determine the extent of this fishing, NMFS needs information to determine the justification of granting an exempted fishing permit (EFP) or exempted educational activity authorization (EEAA), and documentation of catches landed as a result of granting the permit/authorization. A NMFS Regional Administrator or Director may authorize, for limited testing, public display, data collection, exploratory fishing, compensation fishing, conservation engineering, health and safety surveys, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under a Fishery Management Plan (FMP) or fishery regulations that would otherwise be prohibited. The applications for these exemptions must be submitted, as well as reports on activities. NMFS Regions, Regional Fishery Management Councils, Fishery Science Centers, and NMFS and USCG enforcement personnel use the EFP application statement of purpose and goals in evaluating proposals to determine their usefulness to the overall goals of the applicable fishery management plan and for issuance of permits, and evaluate them comparatively with other applicants for the same fishery. NMFS evaluates EEAA applications to confirm their educational value and determine their usefulness to the overall goals of the applicable fishery management plan and for issuance of permits. NMFS Regions, Centers, and enforcement personnel use

exempted fishing and exempted educational activity reports to ensure activities are carried out as described in the permit, document the catch for inclusion in the total catch, and consider the permittee for future permits.

Eligible researchers on board federally permitted fishing vessels that plan to temporarily possess fish in a manner not compliant with applicable fishing regulations for the purpose of collecting scientific data on catch may submit a request for a temporary possession letter of authorization. The researchers are requested to submit reports of their scientific research activity after its completion.

II. Method of Collection

Responses are typically received electronically. However, information may also be submitted on paper or by telephone.

III. Data

OMB Control Number: 0648–0309.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit; individuals or households; not for profit organizations; state, local or tribal governments.

Estimated Number of Respondents: 121.

Estimated Time per Response: Scientific research plans, 13 hours; scientific research reports, 6 hours; exempted fishing permit requests, 10 hours; exempted fishing permit reports, 4.5 hours; exempted educational requests, 5 hours; exempted educational reports, 2.5 hours.

Estimated Total Annual Burden Hours: 2,141.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mix of Voluntary, Required to Obtain or Retain Benefits, or Mandatory.

Legal Authority: The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–18881 Filed 8–31–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB346]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Fugro USA Marine, Inc. (Fugro) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from December 1, 2021, through November 30, 2022.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities

on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the five-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Fugro plans to conduct a 3D Ultra-Ultra High Resolution (3DUUHR) seismic survey in the Mississippi Canyon Block 20 using two sparkers and a multibeam echosounder. The objective of the 3DUUHR survey is to provide targeted subsurface data in the vicinity of the well bay where gas in the shallow section can be seen to attenuate high frequency sub bottom data. Please see Fugro's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Fugro in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

Exposure modeling results were generated using the single airgun proxy. Because those results assume use of a 90-in^3 airgun, the take numbers authorized through this LOA are considered conservative (*i.e.,* they likely overestimate take) due to differences in the sound source planned for use by Fugro, as compared to those modeled for the rule. The survey is planned to occur for 10 days in Zone 5 during the winter, which provides the basis for the take estimation.

In this case, use of the exposure modeling produces results that are substantially smaller than average GOM group sizes for multiple species [3] (*i.e.,* estimated exposure values are less than 10 percent of assumed average group size for the majority of species) (Maze-Foley and Mullin, 2006). NMFS' typical practice in such a situation is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, other relevant considerations here lead to a determination that increasing the estimated exposures to average group sizes would likely lead to an overestimate of actual potential take. In this circumstance, the very short survey duration and relatively small Level B harassment isopleths produced through use of the sparker (compared with an airgun array) mean that it is unlikely that certain species would be encountered at all, much less that the encounter would result in exposure of a greater number of individuals than is estimated through use of the exposure modeling results. As a result, in this case NMFS has not increased the estimated exposure values to assumed average group sizes in authorizing take.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this document and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock abundance reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	51	n/a

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

[3] These species include: Bottlenose dolphins, short-finned pilot whales, Atlantic spotted dolphin, Clymene dolphin, false killer whale, Fraser's dolphin, melon-headed whale, pantropical spotted dolphin, pygmy killer whale, Risso's dolphin, rough-toothed dolphin, spinner dolphin, striped dolphin.

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take [1]	Abundance [2]	Percent abundance
Kogia spp.	2	4,373	0.0
Beaked whales	158	3,768	4.2
Bottlenose dolphin	16	176,108	0.0
Short-finned pilot whale	2	1,981	0.1
Sperm whale	8	2,207	0.3
Atlantic spotted dolphin	6	74,785	0.0
Clymene dolphin	8	11,895	0.1
False killer whale	2	3,204	0.1
Fraser's dolphin	1	1,665	0.1
Killer whale	0	267	n/a
Melon-headed whale	6	7,003	0.1
Pantropical spotted dolphin	34	102,361	0.0
Pygmy killer whale	1	2,126	0.0
Risso's dolphin	2	3,764	0.1
Rough-toothed dolphin	2	4,853	0.0
Spinner dolphin	9	25,114	0.0
Striped dolphin	3	5,229	0.1

[1] Scalar ratios were not applied in this case due to brief survey duration.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (86 FR 47022; August 23, 2021).

Based on the analysis contained herein of Fugro's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Taylor authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: August 27, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–18872 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2021–0036]

Performance Review Board

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of revised board members.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, the United States Patent and Trademark Office (USPTO) announces the appointment of persons to serve as members of its Performance Review Board (PRB). This is an update to the recently published **Federal Register** notice (published on August 4, 2021), to reflect the changes made to the board members serving in the Chair and Acting General Counsel positions due to the departure of Coke Stewart, who was Performing the Functions and Duties of the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the USPTO.

ADDRESSES: Office of Human Resources, USPTO, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Lari B. Washington, Acting Director, Human Capital Management, USPTO, at 571–272–5187.

SUPPLEMENTARY INFORMATION: The membership of the USPTO PRB is as follows:

David L. Berdan, Chair, Performing the Functions and Duties of the Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the USPTO.

Frederick W. Steckler, Vice Chair, Chief Administrative Officer, USPTO.

Andrew I. Faile, Acting Commissioner for Patents, USPTO.

David S. Gooder, Commissioner for Trademarks, USPTO.

Dennis J. Hoffman, Chief Financial Officer, USPTO.

Henry J. Holcombe, Chief Information Officer, USPTO.

David M. Shewchuk, Acting General Counsel, USPTO.

Mary Critharis, Chief Policy Officer and Director for International Affairs, USPTO.

Gerard F. Rogers, Chief Administrative Trademark Judge, USPTO.

Scott R. Boalick, Chief Administrative Patent Judge, USPTO.

Bismarck Myrick, Director of the Office of Equal Employment Opportunity and Diversity, USPTO.

Cara Duckworth, Acting Chief Communications Officer, USPTO.

Alternates:

Richard Seidel, Deputy Commissioner for Patents, USPTO.

Greg Dodson, Deputy Commissioner for Trademark Administration, USPTO.

Andrew Hirshfeld,

Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2021–18893 Filed 8–31–21; 8:45 am]

BILLING CODE 3510–15–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Childcare Benefit Forms

AGENCY: The Corporation for National and Community Service.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by November 1, 2021.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: AmeriCorps, Attention Courtney Russell, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Courtney Russell, 202–380–7825, or by email at *crussell@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Childcare Benefit Forms.

OMB Control Number: 3045–0142.

Type of Review: Renewal.

Respondents/Affected Public: AmeriCorps members and their childcare providers.

Total Estimated Number of Annual Responses: 700 AmeriCorps members and 1,400 childcare providers.

Total Estimated Number of Annual Burden Hours: 1,225.

Abstract: AmeriCorps is soliciting comments concerning its Child Care application forms. These forms are submitted by members of AmeriCorps and by the childcare providers identified by the member for the purpose of applying for, and receiving payment for, the care of children during the day while the member is in service. Completion of this information is required to be approved and required to receive payment for invoices. AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on 12/31/2021.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

Dated: August 23, 2021.

Erin Dahlin,

Chief of Program Operations.

[FR Doc. 2021–18813 Filed 8–31–21; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Free Application for Federal Student Aid (FAFSA®) Information To Be Verified for the 2022–2023 Award Year

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: For each award year, the Secretary publishes in the **Federal Register** a notice announcing the FAFSA information that an institution and an applicant may be required to verify, as well as the acceptable documentation for verifying FAFSA information. This is the notice for the 2022–2023 award year, Assistance Listing Numbers 84.007, 84.033, 84.063, and 84.268.

FOR FURTHER INFORMATION CONTACT: Vanessa Gomez, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C179, Washington, DC 20202. Telephone: (202) 453–6708. Email: *Vanessa.Gomez@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: If the Secretary selects an applicant for verification, the applicant's Institutional Student Information Record (ISIR) includes flags that indicate (1) that the applicant has been selected by the Secretary for verification and (2) the Verification Tracking Group in which the applicant has been placed. The Verification Tracking Group indicates which FAFSA information needs to be verified for the applicant and, if appropriate, for the applicant's parent(s) or spouse. The Student Aid Report (SAR) provided to the applicant will indicate that the applicant's FAFSA

information has been selected for verification and direct the applicant to contact the institution for further instructions for completing the verification process.

To help institutions and applicants deal with the challenges resulting from the novel coronavirus disease (COVID–19) pandemic, the Secretary has provided flexibilities to the verification regulations through the end of the first payment period that begins after the date that the COVID–19 national emergency is rescinded.

The following chart lists, for the 2022–2023 award year, the FAFSA information that an institution and an applicant and, if appropriate, the applicant's parent(s) or spouse may be required to verify under 34 CFR 668.56. The chart also lists the acceptable documentation that must, under § 668.57, be provided to an institution for that information to be verified.

FAFSA information	Acceptable documentation
Income information for tax filers: a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions and Pensions d. IRA Deductions and Payments e. Tax Exempt Interest Income f. Education Credits	(1) 2020 tax account information of the tax filer that the Secretary has identified as having been obtained from the Internal Revenue Service (IRS) through the IRS Data Retrieval Tool and that has not been changed after the information was obtained from the IRS; (2) A transcript [1] obtained at no cost from the IRS or other relevant tax authority of a U.S. territory (Guam, American Samoa, the U.S. Virgin Islands) or commonwealth (Puerto Rico and the Northern Mariana Islands), or a foreign government that lists 2020 tax account information of the tax filer; or (3) A copy of the income tax return [1] and the applicable schedules [1] that were filed with the IRS or other relevant tax authority of a U.S. territory, or a foreign government that lists 2020 tax account information of the tax filer.
Income information for tax filers with special circumstances: a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions and Pensions d. IRA Deductions and Payments e. Tax Exempt Interest Income f. Education Credits	(1) For a student, or the parent(s) of a dependent student, who filed a 2020 joint income tax return and whose income is used in the calculation of the applicant's expected family contribution and who at the time the FAFSA was completed was separated, divorced, widowed, or married to someone other than the individual included on the 2020 joint income tax return— (a) A transcript obtained from the IRS or other relevant tax authority that lists 2020 tax account information of the tax filer(s); or (b) A copy of the income tax return and the applicable schedules that were filed with the IRS or other relevant tax authority that lists 2020 tax account information of the tax filer(s); and (c) A copy of IRS Form W–2 [2] for each source of 2020 employment income received or an equivalent document.[2] (2) For an individual who is required to file a 2020 IRS income tax return and has been granted a filing extension by the IRS beyond the automatic six-month extension for tax year 2020— (a) A copy of the IRS's approval of an extension beyond the automatic six-month extension for tax year 2020; [3] (b) Verification of nonfiling [4] from the IRS dated on or after October 1, 2021; (c) A copy of IRS Form W–2 [2] for each source of 2020 employment income received or an equivalent document; [2] and (d) If self-employed, a signed statement certifying the amount of AGI and U.S. income tax paid for tax year 2020. **Note:** An institution may require that, after the income tax return is filed, an individual granted a filing extension beyond the automatic six-month extension submit tax information using the IRS Data Retrieval Tool, by obtaining a transcript from the IRS, or by submitting a copy of the income tax return and the applicable schedules that were filed with the IRS that lists 2020 tax account information. When an institution receives such information, it must be used to reverify the income and tax information reported on the FAFSA. (3) For an individual who was the victim of IRS tax-related identity theft— (a) A Tax Return DataBase View (TRDBV) transcript [1] obtained from the IRS; and (b) A statement signed and dated by the tax filer indicating that he or she was a victim of IRS tax-related identity theft and that the IRS has been made aware of the tax-related identity theft. **Note:** Tax filers may inform the IRS of the tax-related identity theft and obtain a TRDBV transcript by calling the IRS's Identity Protection Specialized Unit (IPSU) at 1–800–908–4490. Unless the institution has reason to suspect the authenticity of the TRDBV transcript provided by the IRS, a signature or stamp or any other validation from the IRS is not needed. (4) For an individual who filed an amended income tax return with the IRS, a signed copy of the IRS Form 1040X that was filed with the IRS for tax year 2020 or documentation from the IRS that include the change(s) made to the tax filer's 2020 tax information, in addition to one of the following— (a) IRS Data Retrieval Tool information on an ISIR record with all tax information from the original 2020 income tax return; (b) A transcript obtained from the IRS that lists 2020 tax account information of the tax filer(s); or (c) A signed copy of the 2020 IRS Form 1040 and the applicable schedules that were filed with the IRS.
Income information for nontax filers: Income earned from work	For an individual who has not filed and, under IRS or other relevant tax authority rules (e.g., the Republic of the Marshall Islands, the Republic of Palau, the Federated States of Micronesia, a U.S. territory or commonwealth or a foreign government), is not required to file a 2020 income tax return—

FAFSA information	Acceptable documentation
	(1) A signed statement certifying— (a) That the individual has not filed and is not required to file a 2020 income tax return; and (b) The sources of 2020 income earned from work and the amount of income from each source; (2) A copy of IRS Form W–2[2] for each source of 2020 employment income received or an equivalent document[2]; and (3) Except for dependent students, verification of nonfiling[4] from the IRS or other relevant tax authority dated on or after October 1, 2021.
Number of Household Members	A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents, that lists the name and age of each household member for the 2022–2023 award year and the relationship of that household member to the applicant. **Note:** Verification of number of household members is not required if— • For a dependent student, the household size indicated on the ISIR is two and the parent is single, separated, divorced, or widowed, or the household size indicated on the ISIR is three if the parents are married or unmarried and living together; or • For an independent student, the household size indicated on the ISIR is one and the applicant is single, separated, divorced, or widowed, or the household size indicated on the ISIR is two if the applicant is married.
Number in College	(1) A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents listing the name and age of each household member, excluding the parents, who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the 2022–2023 award year in a program that leads to a degree or certificate and the name of that educational institution. (2) If an institution has reason to believe that the signed statement provided by the applicant regarding the number of household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain documentation from each institution named by the applicant that the household member in question is, or will be, attending on at least a half-time basis unless— (a) The applicant's institution determines that such documentation is not available because the household member in question has not yet registered at the institution the household member plans to attend; or (b) The institution has documentation indicating that the household member in question will be attending the same institution as the applicant. **Note:** Verification of the number of household members in college is not required if the number in college indicated on the ISIR is "1."
Identity/Statement of Educational Purpose	(1) An applicant must appear in person and present the following documentation to an institutionally authorized individual to verify the applicant's identity: (a) An unexpired valid government-issued photo identification[5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport. The institution must maintain an annotated copy of the unexpired valid government-issued photo identification that includes— i. The date the identification was presented; and ii. The name of the institutionally authorized individual who reviewed the identification; and (b) A signed statement using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I _____ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending _____ for 2022–2023. (Name of Postsecondary Educational Institution) _____ _____ (Student's Signature) (Date) _____ (Student's ID Number) (2) If an institution determines that an applicant is unable to appear in person to present an unexpired valid government-issued photo identification and execute the Statement of Educational Purpose, the applicant must provide the institution with— (a) A copy of an unexpired valid government-issued photo identification[5] such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or U.S. passport that is acknowledged in a notary statement or that is presented to a notary; and (b) An original notarized statement signed by the applicant using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I _____ am (Print Student's Name)

FAFSA information	Acceptable documentation
	the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending _____ for 2022–2023. (Name of Postsecondary Educational Institution) _____ _____ (Student's Signature) (Date) _____ (Student's ID Number)

[1] This footnote applies, where applicable, whenever an income tax return, the applicable schedules, or transcript is mentioned in the above chart.

The copy of the 2020 income tax return must include the signature of the tax filer, or one of the filers of a joint income tax return, or the signed, stamped, typed, or printed name and address of the preparer of the income tax return and the preparer's Social Security Number, Employer Identification Number, or Preparer Tax Identification Number.

For a tax filer who filed an income tax return other than an IRS form, such as a foreign or Puerto Rican tax form, the institution must use the income information (converted to U.S. dollars) from the lines of that form that correspond most closely to the income information reported on a U.S. income tax return.

An individual who did not retain a copy of his or her 2020 tax account information, and for whom that information cannot be located by the IRS or other relevant tax authority, must submit to the institution—

(a) Copies of all IRS Form W–2s for each source of 2020 employment income or equivalent documents; or

(b) If the individual is self-employed or filed an income tax return with a government of a U.S. territory or commonwealth or a foreign government, a signed statement certifying the amount of AGI and income taxes paid for tax year 2020; and

(c) Documentation from the IRS or other relevant tax authority that indicates the individual's 2020 tax account information cannot be located; and

(d) A signed statement that indicates that the individual did not retain a copy of his or her 2020 tax account information.

If an individual who was the victim of IRS tax-related identity theft is unable to obtain a TRDBV, the institution may accept an equivalent document provided by the IRS or a copy of the signed 2020 income tax return the individual filed with the IRS.

[2] An individual who is required to submit an IRS Form W–2 or an equivalent document but did not maintain a copy should request a duplicate from the employer who issued the original or from the government agency that issued the equivalent document. If the individual is unable to obtain a duplicate W–2 or an equivalent document in a timely manner, the institution may permit that individual to provide a signed statement, in accordance with 34 CFR 668.57(a)(6), that includes—

(a) The amount of income earned from work;

(b) The source of that income; and

(c) The reason why the IRS Form W–2, or an equivalent document, is not available in a timely manner.

[3] For an individual who was called up for active duty or for qualifying National Guard duty during a war or other military operation or national emergency, an institution must accept a statement from the individual certifying that he or she has not filed an income tax return or a request for a filing extension because of that service.

[4] If an individual is unable to obtain verification of nonfiling from the IRS or other relevant tax authority and, based upon the institution's determination, it has no reason to question the student's or family's good-faith effort to obtain the required documentation, the institution may accept a signed statement certifying that the individual attempted to obtain the verification of nonfiling from the IRS or other relevant tax authority and was unable to obtain the required documentation.

For IRS extension filers, the signed statement must also indicate that the individual has not filed a 2020 income tax return and list the sources of any 2020 income, and the amount of income from each source.

Since individuals without a Social Security Number, an Individual Taxpayer Identification Number, or an Employer Identification Number are unable to obtain a verification of nonfiling from the IRS, these individuals whose income is below the IRS filing threshold must submit to the institution a signed and dated statement—

(a) Certifying that the individual(s) does not have a Social Security Number, an Individual Taxpayer Identification Number, or an Employer Identification Number; and

(b) Listing the sources and amounts of earnings, other income, and resources that supported the individual(s) for the 2020 tax year.

[5] An unexpired valid government-issued photo identification is one issued by the U.S. government, any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized American Indian and Alaska Native Tribe, American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

Verification Requirements for Individuals Who Are Eligible for an Auto Zero Expected Family Contribution (EFC)

Only the following FAFSA/ISIR information must be verified:

For dependent students—

- The parents' AGI if the parents were tax filers;
- The parents' income earned from work if the parents were nontax filers; and
- The student's identity/statement of educational purpose, if selected.

For independent students—

- The student's and spouse's AGI if they were tax filers;
- The student's and spouse's income earned from work if they were nontax filers;
- The student's identity/statement of educational purpose, if selected; and
- The number of household members to determine if the independent student has one or more dependents other than a spouse.

Note: Verification of nonfiling[4] from the IRS (or other relevant tax authority, if applicable) dated on or after October 1, 2021, must be provided for (1) independent students (and spouses, if applicable) and parents of dependent students who did not file and are not required to file a 2020 income tax return, and (2) individuals who are required to file a 2020 IRS income tax return but have not filed because they have been granted a tax filing extension by the IRS beyond the automatic six-month extension for the 2020 tax year.

The individual FAFSA items that an applicant must verify are based upon the Verification Tracking Group to which the applicant is assigned as outlined in the following chart.

Verification tracking flag	Verification tracking group name	FAFSA information required to be verified
V1	Standard Verification Group	*Tax Filers:* • Adjusted Gross Income. • U.S. Income Tax Paid. • Untaxed Portions of IRA Distributions and Pensions. • IRA Deductions and Payments. • Tax Exempt Interest Income. • Education Tax Credits. *Nontax Filers:* • Income Earned from Work. *Tax Filers and Nontax Filers:* • Number of Household Members. • Number in College.
V2	Reserved	N/A.
V3	Reserved	N/A.
V4	Custom Verification Group	• Identity/Statement of Educational Purpose.
V5	Aggregate Verification Group	*Tax Filers:* • Adjusted Gross Income. • U.S. Income Tax Paid. • Untaxed Portions of IRA Distributions and Pensions. • IRA Deductions and Payments. • Tax Exempt Interest Income. • Education Tax Credits. *Nontax Filers* • Income Earned from Work. *Tax Filers and Nontax Filers:* • Number of Household Members. • Number in College. • Identity/Statement of Educational Purpose.
V6	Reserved	N/A.

Other Sources for Detailed Information

We provide a more detailed discussion on the verification process in the following resources:

• *2022–2023 Application and Verification Guide.*

• *2022–2023 ISIR Guide.*

• *2022–2023 SAR Comment Codes and Text.*

• *2022–2023 COD Technical Reference.*

• Program Integrity Information—Questions and Answers on Verification at *www2.ed.gov/policy/highered/reg/hearulemaking/2009/verification.html.*

These publications are on the Information for Financial Aid Professionals website at www.*ifap.ed.gov.*

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070b—1070b–4, 1087a–1087j, and 20 U.S.C. 1087–51—1087–58.

Michelle Asha Cooper,

Acting Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2021–18864 Filed 8–31–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, OMB Control Number 1910–5160. This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces DOE's intent to submit this collection to the Office of Management and Budget (OMB) for approval and solicits comments on specific aspects of the proposed information collection.

DATES: Comments regarding this collection must be received on or before October 1, 2021. 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

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: Yohanna Freeman, Paperwork Reduction Act Officer, PRA Officer, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–1615, by telephone at 301–903–1151, or by email at *DOEPRA@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1910–5160;

(2) *Information Collection Request Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery;

(3) *Type of Request:* Extension;

(4) *Purpose:* The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management;

(5) *Annual Estimated Number of Respondents:* 200,000;

(6) *Annual Estimated Number of Total Responses:* 200,000;

(7) *Annual Estimated Number of Burden Hours:* 74,000;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $3,796,200.

Statutory Authority: Executive Order (E.O.) 13571, Streamlining Service Delivery and Improving Customer Service.

Signing Authority

This document of the Department of Energy was signed on August 27, 2021, by Ann Dunkin, Chief Information Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 27, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–18894 Filed 8–31–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP21–1047–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing: 2021 Operational Entitlements Filing to be effective N/A.
Filed Date: 8/25/21.
Accession Number: 20210825–5068.
Comment Date: 5 p.m. ET 9/7/21.

Docket Numbers: RP21–1048–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer Oct–Dec 2021) to be effective 10/1/2021.
Filed Date: 8/25/21.
Accession Number: 20210825–5083.
Comment Date: 5 p.m. ET 9/7/21.

Docket Numbers: RP21–1049–000.
Applicants: International Paper Company.
Description: Petition for Temporary Waiver of Capacity Release Regulations, et al. of International Paper Company under RP21–1049.
Filed Date: 8/25/21.
Accession Number: 20210825–5141.
Comment Date: 5 p.m. ET 9/2/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–18909 Filed 8–31–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–97–000]

Blue Ridge Power Agency; Notice of Petition for Declaratory Order

Take notice that on August 10, 2021, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[1] Blue Ridge Power Agency (Blue Ridge or Petitioner), filed a petition for declaratory order (Petition) requesting that the Commission issue a declaratory order concerning the rights of four of Blue Ridge's members to utilize battery-based storage technology for load management purposes under four existing full requirements agreements for electric service entered into with American Electric Power Service Corporation; the petition also seeks (a) confidential treatment for some of the materials in the petition and attachments, and (b) waiver of otherwise applicable filing fees.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

[1] 18 CFR 385.207 (2020).

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

In addition to publishing the full text of the filed public version of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern time on September 20, 2021.

Dated: August 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–18903 Filed 8–31–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–484–000]

Diversified Midstream, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on August 16, 2021, Diversified Midstream, LLC (Diversified), 414 Summers Street Charleston, WV 25301, filed in Docket No. CP21–484–000 an abbreviated application under Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, requesting that the Commission issue a certificate of limited jurisdiction authorizing Diversified to provide jurisdictional transportation service on its Floyd County, Kentucky, gathering system (the Gathering System), pursuant to a firm transportation agreement with Columbia Gas Transmission, LLC (Columbia). Diversified also seeks a determination by the Commission that the interstate transportation service proposed herein will not change the status of the Gathering System as being exempt from the Commission's jurisdiction under Section 1(b) of the NGA, nor affect the jurisdictional status of any other non-jurisdictional operation or service in which Diversified is currently engaged, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this filing may be directed to Michelle Matthews, Associate General Counsel, Diversified Gas & Oil Corp., 414 Summers Street, Charleston, WV 25301, by phone at (214) 364–6782, or by email at *mmatthews@dgoc.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on September 16, 2021.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before September 16, 2021.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number CP21–484–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the

[1] 18 CFR (Code of Federal Regulations) 157.9.

Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You may file a paper copy of your comments by mailing them to the address below.[2] Your written comments must reference the project docket number (CP21–484–000). Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.* Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[4] and the regulations under the NGA[5] by the intervention deadline for the project, which is September 16, 2021. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP21–484–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You may file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the project docket number CP21–484–000. Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail at: Gulf States Transmission LLC, 1300 Main Street, Houston, Texas 77002; or or by email at *blair.lichtenwalter@energytransfer.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed[7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on Thursday, September 16, 2021.

Dated: August 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–18897 Filed 8–31–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–225–000.

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

Applicants: Bat Cave Energy Storage, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Bat Cave Energy Storage, LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5255.
Comment Date: 5 p.m. ET 9/10/21.

Docket Numbers: EG21–226–000.
Applicants: BRP Dickinson BESS LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Dickinson BESS LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5256.
Comment Date: 5 p.m. ET 9/10/21.

Docket Numbers: EG21–227–000.
Applicants: BRP Pueblo I BESS, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Pueblo I BESS, LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5257.
Comment Date: 5 p.m. ET 9/10/21.

Docket Numbers: EG21–228–000.
Applicants: BRP Pueblo II BESS, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Pueblo II BESS, LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5258.
Comment Date: 5 p.m. ET 9/10/21.

Docket Numbers: EG21–229–000.
Applicants: BRP Zapata I BESS, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Zapata I BESS, LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5259.
Comment Date: 5 p.m. ET 9/10/21.

Docket Numbers: EG21–230–000.
Applicants: BRP Zapata II BESS, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Zapata II BESS, LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5260.
Comment Date: 5 p.m. ET 9/10/21.

Docket Numbers: EG21–231–000.
Applicants: BRP Loop 463 BESS LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of BRP Loop 463 BESS LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5262.
Comment Date: 5 p.m. ET 9/10/21.

Docket Numbers: EG21–232–000.
Applicants: BRP Lopeno BESS LLC.
Description: Notice of Self-certification of Exempt Wholesale Generator Status of BRP Lopeno BESS LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5261.
Comment Date: 5 p.m. ET 9/10/21.

Docket Numbers: EG21–233–000.
Applicants: North Fork Energy Storage, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of North Fork Energy Storage, LLC.
Filed Date: 8/20/21.
Accession Number: 20210820–5263.
Comment Date: 5 p.m. ET 9/10/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2609–001.
Applicants: NSTAR Electric Company.
Description: Compliance filing: Order No. 864 Compliance Filing, RM19–5 to be effective 1/27/2020.
Filed Date: 8/26/21.
Accession Number: 20210826–5107.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER20–2610–001.
Applicants: The Connecticut Light and Power Company.
Description: Compliance filing: Order No. 864 Compliance Filing, RM19–5 to be effective 1/27/2020.
Filed Date: 8/26/21.
Accession Number: 20210826–5056.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER21–283–001.
Applicants: Hillcrest Solar I, LLC.
Description: Compliance filing: Compliance to 2 Zero rate filing to be effective 2/27/2021.
Filed Date: 8/26/21.
Accession Number: 20210826–5088.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER21–283–002.
Applicants: Hillcrest Solar I, LLC.
Description: Compliance filing: Compliance to 2 Rate filing July Effective to be effective 7/29/2021.
Filed Date: 8/26/21.
Accession Number: 20210826–5089.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER21–922–000.
Applicants: Entergy Mississippi, LLC.
Description: Refund Report: EML–TVA WDS Refund Report to be effective N/A.
Filed Date: 8/26/21.
Accession Number: 20210826–5014.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER21–2771–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT, Att. P re: Interconnection Construction Service Agreement to be effective 10/26/2021.
Filed Date: 8/26/21.
Accession Number: 20210826–5034.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER21–2772–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original NSA, SA No. 6127; Queue No. AC1–073 to be effective 7/27/2021.
Filed Date: 8/26/21.
Accession Number: 20210826–5054.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER21–2773–000.
Applicants: Alabama Power Company.
Description: Tariff Amendment: RES America Developments (Durant Bend Solar) LGIA Termination Filing to be effective 8/26/2021.
Filed Date: 8/26/21.
Accession Number: 20210826–5055.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER21–2774–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Sch. 12-Appx A: July 2021 RTEP, 30-Day Comment Period Requested to be effective 11/24/2021.
Filed Date: 8/26/21.
Accession Number: 20210826–5071.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER21–2775–000.
Applicants: Spartacus Energy Services, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Tariff Application to be effective 8/27/2021.
Filed Date: 8/26/21.
Accession Number: 20210826–5073.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER21–2776–000.
Applicants: Ameren Illinois Company.
Description: § 205(d) Rate Filing: Reimbursement Agreement, RS 155, Prairie Power West Griggsville to be effective 10/26/2021.
Filed Date: 8/26/21.
Accession Number: 20210826–5075.
Comment Date: 5 p.m. ET 9/16/21.

Docket Numbers: ER21–2777–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 932—Forecast Data Agreement with Cycle Horseshoe Bend Wind LLC to be effective 9/1/2021.
Filed Date: 8/26/21.
Accession Number: 20210826–5082.
Comment Date: 5 p.m. ET 9/16/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number. Any person desiring to intervene or protest in any of the above

proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–18900 Filed 8–31–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–78–000]

ANR Pipeline Company; Notice of Intent To Prepare an Environmental Impact Statement for The Proposed Wisconsin Access Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Wisconsin Access Project (Project) involving construction and operation of facilities by ANR Pipeline Company (ANR) in Oconto, Oneida, Manitowoc, and Marathon Counties, Wisconsin. The Commission will use this EIS in its decision-making process to determine whether the Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' By notice issued on April 23, 2021, in Docket No. CP21–78–000, the Commission opened a scoping period; and staff intends to prepare an EIS that will address the concerns raised during that scoping period as well as comments received in response to this notice. Therefore, the Commission requests comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on September 25, 2021. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

As mentioned above, the Commission previously opened a scoping period which expired on May 24, 2021. All substantive written and oral comments provided during scoping will be addressed in the EIS. Therefore, if you submitted comments on this Project to the Commission during the previous scoping process, you do not need to file those comments again.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

ANR provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (CP21–78–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts

ANR proposes to facilitate an increase in the firm capacity on its natural gas pipeline by approximately 50,707 dekatherms per day into Wisconsin, through software modifications and minor modifications to its existing Coleman, Lena, Meeme, Mosinee, Rhinelander, Suring, and Two Rivers Meter Stations. The modifications

include the replacement of some metering and filtering equipment, installation of additional metering equipment, and replacement of two meter station buildings.

The general location of the project facilities is shown in appendix 1.[1]

Construction of the proposed facilities would disturb about 4.1 acres of land, 2.4 acres of which are within the existing facility fencelines. Following construction, ANR would convert less than 0.1 acre of the area outside the existing facilities for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

Based on an initial review of ANR's proposal, Commission staff have identified a couple of expected impacts that deserve attention in the EIS. These include noise impacts and an increase in greenhouse gas emissions.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- socioeconomics and environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[3] Alternatives currently under consideration include:

- The no-action alternative, meaning the Project is not implemented.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission initiated section 106 consultation for the Project in the notice issued on April 23, 2021, with the applicable State Historic Preservation Officer(s), and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[4] This notice is a continuation of section 106 consultation for the Project. The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On March 25, 2021, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in December 2021.

Issuance of Notice of Availability of the final EIS: March 18, 2022

90-day Federal Authorization Decision Deadline: June 16, 2022

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

ENVIRONMENTAL PERMITS, APPROVALS, AND CONSULTATIONS

Agency	Permit/approval/consultation
Federal Energy Regulatory Commission.	Certificate of Public Convenience and Necessity under Section 7(c) of the Natural Gas Act.
U.S. Fish and Wildlife Service	Endangered Species Act—Section 7 Consultation, Migratory Bird Treaty Act, Bald Eagle and Golden Eagle Protection Act.

[1] The appendices referenced in this notice will not appear in the **Federal Register.** Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] 40 CFR 1508.1(z).

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

ENVIRONMENTAL PERMITS, APPROVALS, AND CONSULTATIONS—Continued

Agency	Permit/approval/consultation
Wisconsin State Historic Preservation Officer (SHPO).	Section 106 of the National Historic Preservation Act.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; federally recognized Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP21–78–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

Or

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP21–78). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: August 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–18898 Filed 8–31–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2767–000]

Skipjack Solar Center, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Skipjack Solar Center, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 15, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–18906 Filed 8–31–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER21–2764–000]

Highest Power Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Highest Power Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 15, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–18904 Filed 8–31–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–45–000]

Florida Gas Transmission Company, LLC; Notice of Intent To Prepare an Environmental Impact Statement for The Proposed Big Bend Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Big Bend Project (Project) involving construction and operation of facilities by Florida Gas Transmission Company, LLC (FGT) in Calhoun, Jefferson, Gadsden, Gilchrist, Santa Rosa, and Taylor Counties, Florida. The Commission will use this EIS in its decision-making process to determine whether FGT's proposed Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' By notice issued on March 15, 2021, in Docket No. CP21–45–000, the Commission opened a scoping period; and staff intends to prepare an EIS that will address the concerns raised during that scoping period as well as comments received in response to this notice. Therefore, the Commission requests comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on September 27, 2021. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

As mentioned above, the Commission previously opened a scoping period which expired on April 14, 2021. All substantive written and oral comments provided during scoping will be addressed in the EIS. Therefore, if you submitted comments on this Project to the Commission during the previous scoping process, you do not need to file those comments again.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

FGT provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the

Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the Project docket number (CP21–45–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts

FGT proposes to construct and operate the Big Bend Project to provide about 29 million standard cubic feet of natural gas per day to serve the need for additional firm transportation service in Hillsborough and Pinellas Counties, Florida for current and future electricity generation. The project facilities would consist of:

- West Loop: Approximately 1.7 miles of 36-inch-diameter pipeline loop [1] extension in Calhoun County, Florida;
- East Loop: Approximately 1.5 miles of 36-inch-diameter pipeline loop extension in Jefferson County, Florida;
- Relocation of associated pig receiver stations in Calhoun and Jefferson Counties, Florida; and
- Upgrade existing natural gas-fired compressor turbines at four existing compressor stations:
  - Compressor Station 12—upgrade Unit 1207 from 15,000 horsepower (HP) to 16,000 HP in Santa Rosa County, Florida;
  - Compressor Station 14—upgrade Unit 1409 from 20,500 HP to 23,500 HP in Gadsden County, Florida;
  - Compressor Station 15—upgrade Unit 1507 from 15,000 HP to 16,000 HP in Taylor County, Florida; and
  - Compressor Station 24—upgrade Unit 2403 from 20,500 HP to 23,500 HP in Gilchrist County, Florida.

The general location of the project facilities is shown in appendix 1.[2]

Construction of the proposed facilities would disturb about 269.3 acres of land for the aboveground facilities and the pipeline. Following construction, FGT would maintain about 210.4 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. All of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way. The modifications at Compressor Stations 12, 14, 15 and 24 would occur within the existing station boundaries without the need for ground disturbance.

Based on an initial review of FGT's proposal and public comments received during scoping, Commission staff have identified potential impacts that deserve attention in the EIS. The Project may affect wildlife, invasive species, conservation easements, cultural resources, and greenhouse gas emissions.

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity. A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary [3] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission initiated section 106 consultation for the Project in the notice issued on March 15, 2021, with the applicable State Historic Preservation Officer(s), and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[4] This notice is a

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

continuation of section 106 consultation for the Project. The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[5] Alternatives currently under consideration include:

- The no-action alternative, meaning the Project is not implemented;
- system alternatives evaluating whether the Project purpose could be met by use of the existing system facilities; and
- route alternatives.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

Schedule for Environmental Review

On February 12, 2021, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in November 2021.

Issuance of Notice of Availability of the final EIS: March 11, 2022.

90-day Federal Authorization Decision Deadline: June 9, 2022.

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Agency	Permit/approval/consultation
Federal Energy Regulatory Commission.	Certificate of Public Convenience and Necessity under Section 7(c) of the Natural Gas Act.
United States Army Corps of Engineers.	Section 404 and 408 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbor Act—Authority delegated to the Florida Department of Environmental Protection (FDEP) on December 17, 2020.
United States Fish and Wildlife Service.	Consultations under Section 7 of the Endangered Species Act, the Migratory Bird Treaty Act, and the Fish and Wildlife Coordination Act.
Florida Department of Environmental Protection (FDEP).	Application for Individual and Conceptual Approval Environmental Resource Permit (ERP), State 404 Program Permit, and Authorization to Use State-Owned Submerged Lands.
	Section 401 CWA Water Quality Certification.
FDEP, Florida Coastal Office	Section 40.061 of the Florida Administrative Code and Coastal Zone Consistency Determination—Included with FDEP ERP/State 404 Application.
FDEP, Division of Water Resource Management, NPDES Stormwater Program.	National Pollutant Discharge Elimination System (NPDES) Hydrostatic Test Discharge Permit—Verification of Exemption.
	NPDES General Permit, Stormwater Discharges.
FDEP, Division of Air Resource Management.	Clean Air Act.
	State Air Construction Permit Applications for all 4 Compressor Stations.
	Clean Air Act.
	Title V Permit Modifications for all 4 Compressor Stations.
Florida Division of Historical Resources, State Historic Preservation Officer.	Consultation under Section 106 of the National Historic Preservation Act.
Florida Fish and Wildlife Conservation Commission.	Consultations under Chapter 379.2291 of Florida Statues and Endangered and Threatened Species Act.
	Gopher Tortoise Temporary Exclusion Permit for Major Linear Utility Corridors.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; federally recognized Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to

[5] 40 CFR 1508.1(z).

remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP21–45–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

or

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP21–45). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: August 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–18896 Filed 8–31–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–197–000]

Kern River Gas Transmission Company; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Delta Lateral Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Delta Lateral Project (Project) involving construction and operation of facilities by Kern River Gas Transmission Company (Kern River) in Millard County, Utah. The Commission will use the EIS in its decision-making process to determine whether Kern River's proposed Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' By notice issued on January 4, 2021 in Docket No. PF20–4–000, the Commission opened a scoping period during Kern River's planning process for the Project and prior to filing a formal application with the Commission, a process referred to as ''pre-filing.'' Kern River has now filed an application with the Commission, and staff intends to prepare an EIS that will address the concerns raised during the pre-filing scoping process and comments received in response to this notice. Therefore, the Commission requests comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on September 27, 2021. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

As mentioned above, during the pre-filing process, the Commission opened a scoping period which expired on February 3, 2021; however, Commission staff continued to accept comments during the entire pre-filing process. All substantive written and oral comments provided during pre-filing will be addressed in the EIS. Therefore, if you submitted comments on this Project to the Commission during the pre-filing process in Docket No. PF20–4–000 you do not need to file those comments again.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Kern River provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP21–197–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

Kern River requests authorization to construct, own, operate, and maintain 35.84 miles of 24-inch-diameter pipeline, a new delivery meter station, and related appurtenances in Millard County, Utah. The Project will provide natural gas to Intermountain Power Agency's (IPA) Intermountain Power Project (IPP), which is being converted from coal-fired electrical generation to natural gas-fired electrical generation.

The Project would include construction of the following facilities in Millard County, Utah:

- A 35.84-mile, 24-inch-diameter natural gas pipeline;
- two mainline taps with automated lateral inlet valve assemblies;
- one in-line inspection device launcher;
- one in-line inspection device receiver;
- one automated lateral block valve assembly;
- one delivery meter station; and
- ancillary facilities.

The general location of the project facilities is shown in appendix 1.[1]

Based on environmental information provided by the Company, construction of the proposed facilities would disturb about 543.5 acres of land for the pipeline and the aboveground facilities. Following construction, Kern River would maintain about 222.7 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

Based on an initial review of Kern River's proposal and public comments received during the pre-filing process, Commission staff have identified several expected impacts that deserve attention in the EIS. These include: Impacts on public lands managed by the Bureau of Land Management and the Utah School and Institutional Trust Lands Administration; procedures for reclamation and restoration of lands disturbed during construction; effects of construction on mule deer and its habitat, protected bird species, and plants; impacts on grazing allotments and recreation, and greenhouse gas emissions.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- greenhouse gas and climate;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. The Bureau of Land Management is a cooperating agency in the preparation of the EIS.[2] Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary[3] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[4] Alternatives currently under consideration include:

- The no-action alternative, meaning the Project is not implemented; and
- a system alternative evaluating whether the Project purpose could be met by use of an existing pipeline system.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission initiated section 106 consultation for the Project in the notice issued on January 4, 2021, with the Utah State Historic Preservation Office, and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the project's potential effects on historic properties.[5] This notice is a continuation of section 106 consultation for the Project. The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On May 5, 2021, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40 Code of Federal Regulations, Section 1501.8.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] 40 CFR 1508.1(z).

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of a final EIS for the Project, which is based on an issuance of the draft EIS in November 2021.

Issuance of Notice of Availability of the final EIS—February 23, 2022

90-day Federal Authorization Decision Deadline [6]—May 24, 2022

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Permit	Agency
Right-of-Way Grant Temporary Use Permit	Bureau of Land Management.
CWA Section 404 Discharges to Waters of the United States	U.S. Army Corps of Engineers.
CWA Section 402 Stormwater and Construction Dewatering Permits	Utah Department of Environmental Quality.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project which includes the Bureau of Land Management, U.S. Environmental Protection Agency, Utah School and Institutional Trust Lands Administration, federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP21–197–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

or

(2) *Return the attached ''Mailing List Update Form'' (appendix 2).*

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP21–197). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: August 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–18899 Filed 8–31–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–486–000]

Northern States Power Company; Notice of Petition for Declaratory Order

Take notice that on August 19, 2021, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, Northern States Power Company, a Minnesota corporation (NSPM), filed a petition for declaratory order requesting the Commission issue an order stating that NSPM's acquisition of certain natural gas supply assets currently owned by Northern Natural Gas Company (Northern) will not change NSPM's jurisdictional status as a natural gas local distribution company (LDC), exempt from the Commission's jurisdiction under the Natural Gas Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

[6] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on September 16, 2021.

Dated: August 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–18902 Filed 8–31–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2006–0361; FRL–8914–01–OLEM]

Proposed Information Collection Request; Comment Request: Information Collection Request Submitted to OMB for Review and Approval; Trade Secrets Claims for Community Right-To-Know and Emergency Planning (EPCRA Section 322), EPA ICR Number 1428.12, OMB Control Number 2050–0078

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Trade Secrets Claims for Community Right-To-Know and Emergency Planning (EPCRA section 322)'' (EPA ICR No. 1428.12, OMB Control No. 2050–0078) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through April 30, 2022. 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.

DATES: Comments must be submitted on or before November 1, 2021.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2006–0361, to: (1) EPA online using *www.regulations.gov* (our preferred method), by email to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Wendy Hoffman, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–8794; email address: *hoffman.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *http://www.regulations.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room is closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information about the EPA's public docket, Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This information collection request pertains to trade secrecy claims submitted under section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPCRA contains provisions requiring facilities to report to state and local authorities, and EPA, the presence of extremely hazardous substances (section 302), inventory of hazardous chemicals (sections 311 and 312) and manufacture, process and use of toxic chemicals (section 313). Section 322 of EPCRA allows a facility to withhold the specific chemical identity from these EPCRA reports if the facility asserts a trade secret claim for that chemical identity. The provisions in section 322 establish the requirements and procedures that facilities must follow to request trade secret treatment of chemical identities, as well as the procedures for submitting public petitions to the Agency for review of the ''sufficiency'' of trade secret claims.

Trade secret protection is provided for specific chemical identities contained in reports submitted under each of the

following sections of EPCRA: (1) Section 303(d)(2)—Facility notification of changes that have or are about to occur; (2) section 303(d)(3)—Local Emergency Planning Committee (LEPC) requests for facility information to develop or implement emergency plans; (3) section 311—Material Safety Data Sheets (MSDSs) submitted by facilities, or lists of those chemicals submitted in place of the MSDSs; (4) section 312—Emergency and Hazardous Chemical Inventory forms (Tier I and Tier II); and (5) section 313—Toxic chemical release inventory form.

The burden estimates, numbers and types of respondents, wage rates and unit and total costs for this ICR renewal will be revised and updated if needed during the 60-day comment period while the ICR Supporting Statement is undergoing review at OMB.

Form Numbers: EPA Form 9510–1.

Respondents/affected entities: Entities potentially affected by this action are manufacturer and non-manufacturer facilities subject to reporting under sections 303, 311, 312 or 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Respondent's obligation to respond: Mandatory if a respondent decides to make a trade secret claim for the chemical identity for any of the chemicals in any of the reports the respondent is required to submit under EPCRA sections 303, 311, 312 or 313.

Estimated number of respondents: 283 trade secret claims.

Frequency of response: Annual, with reports submitted under sections 312 and 313.

Total estimated burden: 2,689 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $164,989 (per year). There are no capital or operation and maintenance costs associated with this ICR.

Changes in Estimates: The small increase in estimated burden from the previous ICR is because the actual number of claims submitted was slightly higher than what EPA estimated it would receive in the previous ICR. Changes in estimated costs are attributable to updated wage rates and an increase in EPA O&M costs. Any additional change in burden or cost resulting from the 60-day OMB review period will be described and explained in this section when the updated ICR Supporting Statement is completed.

Dated: August 25, 2021.

Donna Salyer,

Director, Office of Emergency Management.

[FR Doc. 2021–18857 Filed 8–31–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8758–01–OA]

Request for Nominations to the Science Advisory Board Biosolids Chemical Risk Assessment Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office requests public nominations of scientific experts to form a panel to review the EPA White Paper: A Standardized Approach to Biosolids Chemical Risk Assessment and a Biosolids Screening Tool with an accompanying User Guide. The White Paper, which includes a prioritization method, deterministic screening model, and a probabilistic risk assessment modeling framework will be used to modernize, standardize, and streamline the risk assessment process to efficiently and thoroughly assess risk to chemical pollutants found in biosolids.

DATES: Nominations should be submitted by September 22, 2021 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. Shaunta Hill-Hammond, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office by telephone/voice mail (202) 564–3343, or email at *hill-hammond.shaunta@epa.gov.* General information concerning the EPA SAB can be found at the EPA SAB website at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. The SAB Staff Office is forming an expert panel, the Biosolids Chemical Risk Assessment (Biosolids) Panel, under the auspices of the Chartered SAB. The Biosolids Panel will provide advice through the chartered SAB. The SAB and the Biosolids Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The Biosolids Panel will conduct the review of the EPA White Paper: A Standardized Approach to Biosolids Chemical Risk Assessment and a Biosolids Screening Tool (BST) with an accompanying User Guide prepared by the EPA's Office of Water. The White Paper, BST and User Guide present the EPA's proposed screening process to identify pollutants, pathways and receptors of greatest interest and inform decisions regarding the need for refined risk assessment of land-applied biosolids.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists with demonstrated expertise in the following disciplines: Biosolids management, risk assessment, exposure assessment, probabilistic modeling, and deterministic modeling.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on the SAB Panel. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed,'' provided on the SAB website (see the ''Nomination of Experts'' link under ''Current Activities'' at *http://www.epa.gov/sab*). To be considered, nominations should include the information requested below. EPA values and welcomes diversity. All qualified candidates are encouraged to apply regardless of sex, race, disability, or ethnicity. Nominations should be submitted in time to arrive no later than September 22, 2021.

The following information should be provided on the nomination form: Contact information for the person making the nomination; contact information for the nominee; and the disciplinary and specific areas of expertise of the nominee. Nominees will be contacted by the SAB Staff Office and will be asked to provide a recent curriculum vitae and a narrative biographical summary that includes current position; educational background; research activities; sources of research funding for the last two years; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB website, should contact the DFO at the contact information noted above. The names and biosketches of qualified nominees identified by

respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff Office, will be posted in a List of Candidates for the Panel on the SAB website at *http://www.epa.gov/sab.* Public comments on the List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming the expert panel, the SAB Staff Office will consider public comments on the Lists of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees and advisory panels; and (f) for the panel as a whole, diversity of expertise and scientific points of view.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees'' (EPA Form 3110–48). This confidential form is required and allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which include membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the SAB website at *http://www.epa.gov/sab.* This form should not be submitted as part of a nomination.

The approved policy under which the EPA SAB Office selects members for subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB website at *http://www.epa.gov/sab.*

V Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2021–18807 Filed 8–31–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0315; FRL–8735–01–OCSPP]

Agency Information Collection Activities; Proposed Renewal of an Existing Collection and Request for Comment; Submission of Protocols and Study Reports for Environmental Research Involving Human Subjects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces the availability of and solicits public comment on an Information Collection Request (ICR) that EPA is planning to submit to the Office of Management and Budget (OMB). The ICR, entitled: ''Submission of Protocols and Study Reports for Environmental Research Involving Human Subjects'' and identified by EPA ICR No. 2195.06 and OMB Control No. 2070–0169, represents the renewal of an existing ICR that is scheduled to expire on April 30, 2022. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before November 1, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2021–0315, using *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Carolyn Siu, Mission Support Division (7101M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 34–0159; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Submission of Protocols and Study Reports for Environmental Research Involving Human Subjects.

ICR number: EPA ICR No. 2195.06.

OMB control number: OMB Control No. 2070–0169.

ICR status: This ICR is currently scheduled to expire on April 30, 2022. 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 OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9,

are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). The EPA regulations at 40 CFR part 26 protect subjects of ''third-party'' human research (*i.e.,* research that is not conducted or supported by the EPA). In addition to other protections, the regulations require affected entities to submit information to EPA and an institutional review board (IRB) prior to initiating, and to the EPA upon the completion of, certain studies that involve human research participants. The information collection activity consists of activity-driven reporting and recordkeeping requirements for those who intend to conduct research for submission to EPA under the pesticide laws. If such research involves intentional exposure of human subjects, these individuals (respondents) are required to submit study protocols to the EPA and a cognizant local Human Subjects IRB before such research is initiated so that the scientific design and ethical standards that will be employed during the proposed study may be reviewed and approved. Also, respondents are required to submit information about the ethical conduct of completed research that involved human subjects when such research is submitted to the EPA. This renewal ICR estimates the third-party response burden from complying with the requirements in 40 CFR part 26.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10,242 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are any entities that submits protocols and study reports for environmental research involving human subjects under FIFRA and/or FFDCA.

Respondent's obligation to respond: Mandatory under 40 CFR part 26.

Estimated total number of potential respondents: 5 annually for research involving intentional exposure of human subjects and 5 annually for all other submitted research with human subjects.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 10,242 hours.

Estimated total annual costs: $ 1,051,0896. This includes an estimated burden cost of $ 0 for capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

The estimated respondent burden remains 10,242 hours, which is the same as that approved by OMB for the existing ICR. The anticipated number of responses per year is based on the submissions to the Agency in the recent past and recognition that some of the studies underway will be submitted prior to the start of the renewal period. The annual burden per activity is estimated to be 1,446 hours per response for research involving intentional exposure of human subjects, and 12 hours per response for all other research with human subjects.

In addition, OMB has requested that EPA move towards using the 18-question format for ICR Supporting Statements used by other federal agencies and departments and that is based on the submission instructions established by OMB in 1995, replacing the alternate format developed by EPA and OMB prior to 1995. The Agency does not expect this change in format to result in substantive changes to the information collection activities or related estimated burden and costs.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2021–18836 Filed 8–31–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0015; FRL–8820–01–OCSPP]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before February 28, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2021–0015, through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Submit written withdrawal request by mail to: Registration Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. ATTN: Christopher Green.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited

exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

Christopher Green, Registration Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel certain pesticide products registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
228–564	228	Brazen Herbicide	Clopyralid, monoethanolamine salt & Triclopyr, triethylamine salt.
71368–103	71368	NUP–12060	Flumioxazin.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
228	NuFarm Americas, Inc., 4020 Aerial Center Pkwy., Ste. 101, Morrisville, NC 27560.
71368	NuFarm, Inc., Agent Name: NuFarm Americas, Inc., 4020 Aerial Center Pkwy., Suite 101, Morrisville, NC 27560.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II, EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be

prohibited from selling or distributing the pesticides identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 27, 2021.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2021–18911 Filed 8–31–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–8900–01–ORD]

Board of Scientific Counselors (BOSC) Executive Committee Meeting—September 2021

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), gives notice of a series of virtual meetings of the Board of Scientific Counselors (BOSC) Executive Committee (EC) to review the draft reports of the Homeland Security (HS) and Safe and Sustainable Water Resources (SSWR) subcommittees and discuss Per- and Polyfluoroalkyl Substances (PFAS).

DATES:

1. The meetings will be held over five days via videoconference:

a. Tuesday, September 14, 2021 from 3 p.m. to 6 p.m. (EDT). This meeting will cover the HS and SSWR draft reports;

b. Wednesday, September 29, 2021 from 12 p.m. to 5 p.m. (EDT); and

c. Thursday, September 30, 2021 from 12 p.m. to 5 p.m. (EDT). These meetings will cover PFAS.

Attendees must register by September 13, 2021.

2. A BOSC deliberation on PFAS will be held on October 8, 2021, from 11 a.m. to 2 p.m. (EDT). Attendees must register by October 7, 2021.

3. A final deliberation on PFAS will be held on October 20, 2021, from 11 a.m. to 2 p.m. (EDT). Attendees must register by October 19, 2021.

Meeting times are subject to change. This series of meetings are open to the public. Comments must be received by September 13 to be considered by the Executive Committee. Requests for the draft agenda or making a presentation at the meeting will be accepted until September 13.

ADDRESSES: Instructions on how to connect to the videoconference will be provided upon registration at *https://epa-bosc-ec-mtg.eventbrite.com.*

Submit your comments to Docket ID No. EPA–HQ–ORD–2015–0765 by one of the following methods:

• *www.regulations.gov:* Follow the online instructions for submitting comments.

▪ *Note:* Comments submitted to the *www.regulations.gov* website are anonymous unless identifying information is included in the body of the comment.

• *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0765.

▪ *Note:* Comments submitted via email are not anonymous. The sender's email will be included in the body of the comment and placed in the public docket which is made available on the internet.

Instructions: All comments received, including any personal information provided, will be included in the public docket without change and may be made available online at *www.regulations.gov.* Information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute will not be included in the public docket and should not be submitted through *www.regulations.gov* or email. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Public Docket: Publicly available docket materials may be accessed *Online* at *www.regulations.gov.*

Copyrighted materials in the docket are only available via hard copy. The telephone number for the ORD Docket Center is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO), Tom Tracy, via phone/voicemail at: (202) 564–6518; or via email at: *tracy.tom@epa.gov.*

Any member of the public interested in receiving a draft agenda, attending the meeting, or making a presentation at the meeting should contact Tom Tracy no later than September 13, 2021.

SUPPLEMENTARY INFORMATION: The Board of Scientific Counselors (BOSC) is a federal advisory committee that provides advice and recommendations to EPA's Office of Research and Development on technical and management issues of its research programs. Meeting agendas and materials will be posted to *https://www.epa.gov/bosc.*

Proposed agenda items for the meeting include, but are not limited to, the following: Review the HS and SSWR draft reports and PFAS.

Information on Services Available: For information on translation services, access, or services for individuals with disabilities, please contact Tom Tracy at (202) 564–6518 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy at least ten days prior to the meeting to give the EPA adequate time to process your request.

Authority: Public Law 92–463, 1, Oct. 6, 1972, 86 Stat. 770.

Mary Ross,

Director, Office of Science Advisor, Policy and Engagement.

[FR Doc. 2021–18842 Filed 8–31–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2017–0319; FRL–8770–01–OCSPP]

Agency Information Collection Activities; Proposed Renewal of an Existing Collection and Request for Comment; Asbestos-Containing Materials in Schools and Asbestos Model Accreditation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces the availability of and solicits public comment on an Information Collection Request (ICR) that EPA is planning to submit to the Office of Management and Budget (OMB). The ICR, entitled: ''Asbestos-Containing Materials in Schools and Asbestos Model Accreditation Plans'' and identified by EPA ICR No. 1365.12 and OMB Control No. 2070–0091, represents the renewal of an existing ICR that is scheduled to expire on May 31, 2022. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before November 1, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0319, through *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Putt, Existing Chemicals Risk Management Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–3703; email address: *putt.jeffrey@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Asbestos-Containing Materials in Schools and Asbestos Model Accreditation Plans.

ICR number: EPA ICR No. 1365.12.

OMB control number: OMB Control No. 2070–0091.

ICR status: This ICR is currently scheduled to expire on May 31, 2022. 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 OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request (ICR) addresses reporting and recordkeeping requirements found in the Asbestos-Containing Materials in Schools Rule (''AHERA Rule'' a.k.a. ''Schools Rule'') and the Asbestos Model Accreditation Plan (MAP) Rule.

Section 203 of the Asbestos Hazard Emergency Response Act (AHERA, 15 U.S.C. 2641–2656), authorizes the EPA Administrator to promulgate regulations ''for determining whether asbestos-containing material is present in a school building under the authority of a local education agency (LEA).'' Accordingly, the Agency developed regulations in 40 CFR part 763, subpart E to require LEAs to conduct inspections, develop management plans, and design or conduct response actions. Records must be maintained by all LEAs on inspections and response action activity, and current management plans must be provided upon request to EPA and state reviewers for examination.

Section 206 of AHERA, as amended, authorized the EPA Administrator, in consultation with affected organizations, to develop a model accreditation plan for states. The MAP provides accreditation criteria for persons who inspect for asbestos, develop management plans, and design or conduct response actions. States are required to adopt an accreditation plan at least as stringent as the EPA model plan. The accreditation requirements apply to persons who work in public and commercial buildings as well as schools. Accreditation of laboratories that analyze asbestos bulk samples and asbestos air samples is also required by AHERA.

This ICR estimates the paperwork burden for LEAs to inspect for asbestos and update management plans to protect all school building occupants from exposure to asbestos. This collection also estimates the paperwork burden for the accreditation of persons who inspect for asbestos, develop management plans, and design or conduct response actions and the paperwork burden associated with state accreditation programs.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to annual average 19.7 hours per response for schools, 140 hours per response for states, and 5.5 hours per response for training providers. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: Entities potentially affected by this ICR are elementary and secondary school districts North American Industry Classification System ((NAICS) code 61111) and all states (NAICS code 92311). Additionally, under the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), the Model Accreditation Plan affects training providers (NAICS code 61143) and State Asbestos Accreditation Programs (NAICS code 92312).

Respondent's obligation to respond: Mandatory, as per 40 CFR 763 subpart E.

Estimated total number of potential respondents: 138,945, which represents 137,621 local education agencies (LEAs), 1,268 training providers, and 56 States/Territories.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 2,600,679 hours.

Estimated total annual costs: $106,858,522, which includes an estimated burden cost of $106,858,522 and an estimated cost of $0 for capital

investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is an increase in total annual costs compared with that identified in the ICR currently approved by OMB. This is an increase of 45,766 hours (from 2,554,913 hours to 2,600,679 hours). The increase in the respondent burden and agency costs were caused by an increase in the hourly wages and a change in the methodology to calculate loaded wages (wages plus fringe benefits and overhead). This change is an adjustment.

In addition, OMB has requested that EPA move towards using the 18-question format for ICR Supporting Statements used by other federal agencies and departments and is based on the submission instructions established by OMB in 1995, replacing the alternate format developed by EPA and OMB prior to 1995. The Agency does not expect this change in format to result in substantive changes to the information collection activities or related estimated burden and costs.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: August 26, 2021.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2021–18835 Filed 8–31–21; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

AGENCY: Farm Credit Administration Board, Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the forthcoming regular meeting of the Farm Credit Administration Board.

DATES: The regular meeting of the Board will be held September 9, 2021, from 9:00 a.m. until such time as the Board may conclude its business. *Note: Because of the COVID–19 pandemic, we will conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions below for board meeting visitors.*

ADDRESSES: To observe the open portion of the virtual meeting, go to *FCA.gov*, select ''Newsroom,'' then ''Events.'' There you will find a description of the meeting and a link to ''Instructions for board meeting visitors.'' See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit Administration Board (703) 883–4009. TTY is (703) 883–4056.

SUPPLEMENTARY INFORMATION: Instructions for attending the virtual meeting: This meeting of the Board will be open to the public, and parts will be closed. If you wish to observe, at least 24 hours before the meeting, go to *FCA.gov*, select ''Newsroom,'' then ''Events.'' There you will find a description of the meeting and a link to ''Instructions for board meeting visitors.'' If you need assistance for accessibility reasons or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009.

The matters to be considered at the meeting are as follows:

Open Session

Approval of Minutes

- August 12, 2021

New Business

- Tier 1/Tier 2 Capital Framework—Clarifying Corrections and Revisions: Final Rule

Reports

- Quarterly Report on Economic Conditions and FCS Condition and Performance

Closed Session

- Office of Examination Quarterly Report [1]

Dated: August 30, 2021.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2021–18982 Filed 8–30–21; 4:15 pm]

BILLING CODE 6705–01–P

[1] Closed session is exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 86 FR 47498.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, August 31, 2021 at 10:00 a.m. and its continuation at the conclusion of the open meeting on September 2, 2021.

CHANGES IN THE MEETING: This meeting will also discuss:

Matters relating to internal personnel decisions, or internal rules and practices.

Matters which involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person.

Information of which disclosure would constitute an unwarranted invasion of privacy.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2021–19025 Filed 8–30–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal

Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 1, 2021.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *The Adirondack Trust Company Employee Stock Ownership Trust, Saratoga Springs, New York;* to acquire additional shares of 473 Broadway Holding Corporation and additional shares of The Adirondack Trust Company, both of Saratoga Springs, New York.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Old Second Bancorp, Inc., Aurora, Illinois;* to merge with West Suburban Bancorp, Inc., Lombard, Illinois, and thereby indirectly acquire West Suburban Bank, both of Lombard, Illinois.

2. *Graymont Bancorp, Inc., Graymont, Illinois;* to acquire State Bank of Saunemin, Saunemin, Illinois.

Board of Governors of the Federal Reserve System, August 27, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–18873 Filed 8–31–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the recordkeeping and disclosure requirements associated with the Truth in Lending Act (TILA), implemented by Regulation Z (FR Z; OMB No. 7100–0199). The revisions are applicable immediately.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Report title: Recordkeeping and Disclosure Requirements Associated with Truth in Lending (Regulation Z).[1]

Agency form number: FR Z.

OMB control number: 7100–0199.

Effective Date: The revisions are effective immediately.

Frequency: Annually, on occasion.

Respondents: The FR Z panel comprises state member banks with assets of $10 billion or less that are not affiliated with an insured depository institution with assets over $10 billion (irrespective of the consolidated assets of any holding company); non-depository affiliates of such state member banks; and non-depository affiliates of bank holding companies that are not affiliated with an insured depository institution with assets over $10 billion.[2] However, the Consumer Financial Protection Bureau (Bureau) and the Federal Trade Commission (FTC) also have administrative enforcement authority over nondepository institutions for Regulation Z.[3] Accordingly, the Bureau allocates to itself half of the estimated burden to non-depository institutions, with the other half allocated to the FTC.[4]

The Board's ability to reduce regulatory burden for small entities under Regulation Z is limited because the Dodd-Frank Act transferred rule writing authority for Board-supervised institutions under Regulation Z to the Bureau. Nonetheless, the Board has taken steps to minimize burden on small entities through tailored supervision, including through a risk-focused consumer compliance supervision program and an examination frequency policy that provides for lengthened time between examinations for institutions with a lower risk profile.

The Board allocates to itself all estimated burden to state member banks with assets of $10 billion or less that are not affiliated with an insured depository institution with assets over $10 billion.

Estimated number of respondents: Open-end (not home-secured credit): Applications and solicitations, 161; Account opening disclosures, Periodic statements, and Change-in-terms disclosures, 516; Timely settlement of estate debts policies, Timely settlement of estate debts—account information to estate administrator, and Ability to pay policies, 161; Open-End Credit—Home Equity Plans: Application disclosures, Account opening disclosures, Periodic statements, Change-in-terms disclosures, and Notices to restrict credit, 596; All Open-End Credit: Error resolution—credit cards, 161; Closed-End Credit—Non-Mortgage: Closed-end credit disclosures, 741; Closed-End Credit—Mortgage: Interest rate and payment summary and ''no-guarantee-to-refinance'' statement, 300; and, Loan estimate, Closing disclosure, ARM disclosures, Initial rate adjustment notice, Periodic statements, Periodic statements in bankruptcy (one time), Periodic statements in bankruptcy (ongoing), Post-consummation disclosures for successors in interest (one time), and Post-consummation disclosures for successors in interest (ongoing), 757; Open and Closed-End

[1] The Truth in Lending Act (TILA) is codified at 15 U.S.C. 1601 *et seq.* Regulation Z is published by the Board at 12 CFR part 226 and by the Consumer Financial Protection Bureau (Bureau) at 12 CFR part 1026.

[2] *See, e.g.,* 12 U.S.C. 5515–5516.

[3] *See* 12 U.S.C. 5514–5516.

[4] *See, e.g.,* 78 FR 6408, 6481 (January 30, 2013); 78 FR 11280, 11408 (February 15, 2013); 78 FR 79730, 80100 (December 31, 2013).

Mortgage: Pay off statements and Mortgage transfer disclosure, 757; Certain Home Mortgage Types: Reverse mortgage disclosures, 4; HOEPA disclosures and HOEPA receipt of certification of counseling for high-cost mortgages, 32; and Appraisals for higher-priced mortgage loans: Review and provide copy of initial appraisal, Investigate and verify requirement for additional appraisal, and Review and provide copy of additional appraisal, 674; Private Education Loans: Private student loan disclosures, 24; and Advertising Rules (all credit types): Advertising rules, 758.

Estimated average hours per response: Open-end (not home-secured credit): Applications and solicitations, 0.0014; Account opening disclosures, 0.003; Periodic statements and Change-in-terms disclosures, 0.017; Timely settlement of estate debts policies, 0.75; Timely settlement of estate debts—account information to estate administrator, 0.003; and Ability to pay policies, 0.75; Open-End Credit—Home Equity Plans: Application disclosures, 0.003; Account opening disclosures, Periodic statements, Change-in-terms disclosures, and Notices to restrict credit, 0.017; All Open-End Credit: Error resolution—credit cards, 0.5; Closed-End Credit—Non-Mortgage: Closed-end credit disclosures, 0.017; Closed-End Credit—Mortgage: Interest rate and payment summary and ''no-guarantee-to-refinance'' statement, Loan estimate, and Closing disclosure, 0.017; ARM disclosures and Initial rate adjustment notice, 0.003; Periodic statements, 0.017; Periodic statements in bankruptcy (one time), 16.5; Periodic statements in bankruptcy (ongoing), 0.017; Post-consummation disclosures for successors in interest (one time), 16.5; and Post-consummation disclosures for successors in interest (ongoing), 0.17; Open and Closed-End Mortgage: Pay off statements, 0.017; and Mortgage transfer disclosure, 0.003; Certain Home Mortgage Types: Reverse mortgage disclosures, and HOEPA disclosures, 0.017; HOEPA receipt of certification of counseling for high-cost mortgages, 0.003; and Appraisals for higher-priced mortgage loans: Review and provide copy of initial appraisal, Investigate and verify requirement for additional appraisal, and Review and provide copy of additional appraisal, 0.25; Private Education Loans: Private student loan disclosures, 0.003; and Advertising Rules (all credit types): Advertising rules, 0.417.

Estimated annual burden hours: Open-end (not home-secured credit): Applications and solicitations, 89; Account opening disclosures, 853; Periodic statements, 150,343; Change-in-terms disclosures, 12,526; Timely settlement of estate debts policies, 121; Timely settlement of estate debts—account information to estate administrator, 4; and Ability to pay policies, 121; Open-End Credit—Home Equity Plans: Application disclosures, 885; Account opening disclosures, 3,445; Periodic statements, 54,105; Change-in-terms disclosures, 902; and Notices to restrict credit, 730; All Open-End Credit: Error resolution—credit cards, 1,047; Closed-End Credit—Non-Mortgage: Closed-end credit disclosures, 2,305; Closed-End Credit—Mortgage: Interest rate and payment summary and ''no-guarantee-to-refinance'' statement, 128; Loan estimate, 6,756; Closing disclosure, 4,967; ARM disclosures, 34; Initial rate adjustment notice, 20; Periodic statements, 7,335; Periodic statements in bankruptcy (one time), 12,491; Periodic statements in bankruptcy (ongoing), 77; Post-consummation disclosures for successors in interest (one time), 12,491; and Post-consummation disclosures for successors in interest (ongoing), 129; Open and Closed-End Mortgage: Pay off statements, 373; and Mortgage transfer disclosure, 89; Certain Home Mortgage Types: Reverse mortgage disclosures, 8; HOEPA disclosures, 1; HOEPA receipt of certification of counseling for high-cost mortgages, 0; Appraisals for higher-priced mortgage loans: Review and provide copy of initial appraisal, 4,887; Investigate and verify requirement for additional appraisal, 4,887; and Review and provide copy of additional appraisal, 202; Private Education Loans: Private student loan disclosures, 123; and Advertising Rules (all credit types): Advertising rules, 1,580.

General description of report: The Truth in Lending Act (TILA) and Regulation Z promote the informed use of credit to consumers for personal, family, or household purposes by requiring disclosures about its terms and costs, as well as ensure that consumers are provided with timely information on the nature and costs of the residential real estate settlement process.

Legal authorization and confidentiality: The disclosure, recordkeeping, and other requirements of Regulation Z are authorized by TILA, which directs the Bureau and, for certain lenders, the Board to issue regulations implementing the statute. The obligation to respond is mandatory.

The disclosures, records, policies and procedures required by Regulation Z are not required to be submitted to the Board. To the extent such information is obtained by the Board through the examination process, they may be kept confidential under exemption 8 of the Freedom of Information Act, which protects information contained in or related to an examination of a financial institution.[5]

Current actions: On April 16, 2021, the Board published an initial notice in the **Federal Register** (86 FR 20156) requesting public comment for 60 days on the extension, with revision, of the FR Z. The Board proposed to revise FR Z to: (1) Add burden related to disclosure requirements in rules issued by the Bureau since the Board's last Paperwork Reduction Act (PRA) submission, as well as for one information collection for which the Bureau estimates burden but the Board previously did not; (2) break out and clarify burden estimates that were previously consolidated; and (3) eliminate burden associated with certain requirements because the Bureau accounts for burden for the entire industry, or because the burden is now deemed de minimis or a part of an institution's usual and customary business practices. The comment period for this notice expired on June 15, 2021. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, August 26, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–18833 Filed 8–31–21; 8:45 am]

BILLING CODE 6210–01–P

[5] 5 U.S.C. 552(b)(8).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Registration of a Securities Holding Company (FR 2082; OMB No. 7100–0347).

DATES: Comments must be submitted on or before November 1, 2021.

ADDRESSES: You may submit comments, identified by FR 2082, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at

https://www.federalreserve.gov/apps/foia/proposedregs.aspx.

• *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Registration of a Securities Holding Company.

Agency form number: FR 2082.

OMB control number: 7100–0347.

Frequency: On occasion.

Respondents: Certain nonbank companies that own at least one registered securities broker or dealer which elect to become a supervised securities holding company (SHC).

Estimated number of respondents: 1.

Estimated average hours per response: 8.

Estimated annual burden hours: 8.

General description of report: The FR 2082 registration form is used whenever an SHC elects to register to become subject to supervision by the Board pursuant to section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[1]

The FR 2082 requests the following from the registering SHC: An organization chart (including all subsidiaries); information regarding certain of the SHC's subsidiaries; shareholder reports and financial statements; information regarding the SHC's shareholders, senior officers and directors; information regarding the methods used by the SHC to monitor and control its operations; information regarding the SHC's foreign subsidiaries that are subject to comprehensive consolidated supervision and the regulatory system in which these foreign subsidiaries operate; and information regarding any other regulatory capital framework to which the SHC is subject. The information collected by the FR 2082 registration form is used by the Federal Reserve System to determine whether the registrant meets the requirements to become a supervised SHC and to complete the registration.

Legal authorization and confidentiality: The FR 2082 is authorized by section 618(b)(2)(A) of the Dodd-Frank Act, which requires companies that elect SHC status to register by filing with the Board such information and documents as the Board, by regulation, may prescribe. Submission of the FR 2082 is required to obtain a benefit.

The information provided on the FR 2082 form and in connection with an SHC's registration is generally considered public. Firms may request certain information provided in connection with the FR 2082 be kept confidential under exemptions of the Freedom of Information Act (FOIA) in accordance with the Board's Rules Regarding Availability of Information.[2] Confidential commercial or financial information that is both customarily and actually treated as private may be kept confidential under the FOIA exemption 4.[3] Personal and biographical information of individuals required as part of the registration may be treated as confidential under the FOIA exemption 6 if its disclosure ''would constitute a

[1] *See* Dodd-Frank Act, Public Law 111–203, 124 STAT. 1376 (2010).

[2] 12 CFR 261.17.

[3] 12 U.S.C. 552(b)(4).

clearly unwarranted invasion of personal privacy.''[4]

Board of Governors of the Federal Reserve System, August 26, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–18830 Filed 8–31–21; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Census of Finance Companies and Other Lenders and the Survey of Finance Companies (FR 3033p and FR 3033s; OMB No. 7100–0277). The revisions are effective immediately.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

[4] 12 U.S.C. 552(b)(6).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collections

Report title: Census of Finance Companies and Other Lenders.

Agency form number: FR 3033p.

OMB control number: 7100–0227.

Effective Date: The revisions are effective immediately.

Frequency: Quinquennially.

Respondents: Finance Companies.

Estimated number of respondents: 12,800.

Estimated average hours per response: 0.33.

Estimated annual burden hours: 4,224.

General description of report: The FR 3033p is a census survey designed to identify the universe of finance companies eligible for potential inclusion in the FR 3033s and to enable the stratification of the sample for more statistically efficient estimation. The FR 3033p is currently composed of seven questions to assess the company's asset size, level of loan and lease activity, company structure, and licensing authority.

Report title: Survey of Finance Companies.

Agency form number: FR 3033s.

OMB control number: 7100–0227.

Effective Date: The revisions are effective immediately.

Frequency: Quinquennially.

Respondents: Finance Companies.

Estimated number of respondents: 900.

Estimated average hours per response: 1.

Estimated annual burden hours: 900.

General description of report: From the universe of finance companies identified by the Census of Finance Companies and Other Lenders (FR 3033p), a sample of finance companies will be invited to fill out FR 3033s. From these finance companies, the FR 3033s collects balance sheet data on major categories of consumer and business credit receivables and major liabilities. In addition, the survey may be used to gather information on topics that are pertinent to increasing the Federal Reserve's understanding of the finance companies.

Legal authorization and confidentiality: The FR 3033p and FR 3033s are authorized pursuant to sections 2A and 12A of the Federal Reserve Act (FRA). Section 2A of the FRA requires that the Board and the Federal Open Market Committee maintain long-run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.[1] Under section 12A of the FRA, the Federal Open Market Committee is required to implement regulations relating to the open market operations conducted by Federal Reserve Banks with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country.[2] Information collected from the FR 3033p and FR 3033s is used to fulfill these obligations.

The FR 3033p and FR 3033s are voluntary. The information collected pursuant to the FR 3033p and FR 3033s may be treated as confidential pursuant to exemption 4 of the Freedom of Information Act,[3] which protects information that is both customarily and actually treated as private by the respondent.

Current actions: On May 25, 2021, the Board published a notice in the **Federal Register** (86 FR 28105) requesting public comment for 60 days on the extension, with revision, of the Census of Finance Companies and Survey of Finance Companies. Board staff proposed revising the FR 3033s to improve clarity, simplify the form overall, and collect additional information on the COVID–19 impacts on lending activities. The Board did not propose any revisions to the FR 3033p. The FR 3033s revisions are effective for the proposed September 2021 survey date. The comment period for this notice expired on July 26, 2021. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, August 26, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–18831 Filed 8–31–21; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites

[1] 12 U.S.C. 225a.

[2] 12 U.S.C. 263.

[3] 5 U.S.C. 552(b)(4).

comment on a proposal to extend for three years, with revision, the Reporting and Recordkeeping Requirements Associated with Regulation W (FR W; OMB No. 7100–0304).

DATES: Comments must be submitted on or before November 1, 2021.

ADDRESSES: You may submit comments, identified by FR W, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Report title: Reporting and Recordkeeping Requirements Associated with Regulation W.

Agency form number: FR W.

OMB control number: 7100–0304.

Frequency: Event generated.

Respondents: Insured depository institutions and uninsured member banks.

Estimated number of respondents: 1.

Estimated average hours per response: Section 223.15(b)(4), 2; Section 223.31(d)(4), 6; Section 223.41(d)(2), 6; Section 223.43(b), 10; Section 223.42(f), 2; Section 223.42(g)(3), 2.

Estimated annual burden hours: 28.

General description of report: The FR W information collection comprises the reporting requirements of Regulation W that are found in sections 223.15(b)(4), 223.31(d)(4), 223.41(d)(2), and 223.43(b). This information is used to demonstrate compliance with sections 23A and 23B of the Federal Reserve Act (FRA) and to request certain exemptions from the Board. Sections 23A and 23B of the FRA are designed to protect a depository institution from exposure arising from certain transactions with affiliates. They also limit the ability of an insured depository institution to transfer the subsidy arising from access to the federal safety net to such affiliates. Regulation W implements sections 23A and 23B by defining terms used in the statute, explaining the statute's requirements, and exempting certain transactions. The regulation includes provisions requiring the reporting of information to the Board under certain circumstances, including a provision permitting a bank to request from the Board a discretionary exemption from the requirements of section 23A as long as the Board finds the exemption to be in the public interest and consistent with the purposes of section 23A.

Proposed revisions: The Board proposes to revise the FR W information collection to account for two recordkeeping provisions in section 223.42 of Regulation W that have not been previously cleared by the Board under the PRA. The Board is not proposing to create any forms associated with the FR W to address these provisions.

Certain transactions with affiliates are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition of Regulation W. Section 12 CFR 223.42(f) exempts from those provisions certain purchases by a

depository institution of securities from a securities affiliate if, among other requirements, the depository institution maintains, for a period of two years, records and supporting information that are sufficient to enable the appropriate Federal banking agency to ensure the depository institution's compliance with the terms of the exemption.[1] Separately, section 12 CFR 223.42(g)(3) exempts purchases by a depository institution of municipal securities from a securities affiliate if, among other requirements, the price of the security is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks and the price paid for the security can be verified by reference to the written summary provided by the syndicate manager to syndicate members that discloses the aggregate par values and prices of all bonds sold from the syndicate account, so long as the depository institution obtains a copy of the summary from its securities affiliate and retains the summary for three years.[2]

Legal authorization and confidentiality: Sections 23A and 23B of the FRA authorize the Board to issue these requirements. Compliance with the FR W requirements is required to obtain a benefit.

Information provided on the Loan Participation Renewal notice (Section 223.15(b)(4)) may be considered confidential under exemption 4 of the Freedom of Information Act (''FOIA'') as confidential commercial or financial information that is both customarily and actually treated as private. Information provided on the Acquisition notice (Section 223.31(d)(4)), the Internal Corporate Reorganization Transaction notice (Section 223.41(d)(2)), and the Section 23A Additional Information request (Section 223.43(b)) generally is not considered confidential, but respondents may request confidential treatment under exemption 4 of the FOIA if the information is confidential commercial or financial information that is both customarily and actually treated as private. Information collected under the FR W may also be considered confidential under FOIA exemption 8 if it is obtained as part of an examination or supervision of a financial institution.

Board of Governors of the Federal Reserve System, August 26, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–18832 Filed 8–31–21; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 CFR 223.42(f)(6).

[2] 12 CFR 223.42(g)(3)(iii).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping Provisions Associated with the Guidance on Sound Incentive Compensation Policies (FR 4027; OMB No. 7100–0327).

DATES: Comments must be submitted on or before November 1, 2021.

ADDRESSES: You may submit comments, identified by FR 4027, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance,

and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Report title: Recordkeeping Provisions Associated with the Guidance on Sound Incentive Compensation Policies.

Agency form number: FR 4027.

OMB control number: 7100–0327.

Frequency: As needed.

Respondents: U.S. bank holding companies, savings and loan holding companies, state member banks, Edge Act and agreement corporations, and the U.S. operations of foreign banks with a branch, agency, or commercial lending company subsidiary in the United States (collectively, banking organizations).

Estimated number of respondents: One-time implementation, large institutions: 1; one-time implementation, small institutions: 1; ongoing maintenance: 5,259.

Estimated average hours per response: One-time implementation, large institutions: 480; one-time implementation, small institutions: 80; ongoing maintenance: 40.

Estimated annual burden hours: One-time implementation, large institutions: 480; one-time implementation, small institutions: 80; ongoing maintenance: 210,360.

General description of report: The Guidance on Sound Incentive Compensation Policies (the Guidance) is an interagency publication promulgated by the Board, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) that is intended to assist banking organizations in designing and implementing incentive compensation arrangements that do not encourage imprudent risk-taking and that are consistent with the safety and soundness of the organization. The Guidance contains voluntary recordkeeping activities.

The Guidance is based on three key principles. These principles provide that incentive compensation arrangements at a banking organization should:

1. Provide employees incentives that appropriately balance risk and reward;

2. Be compatible with effective controls and risk-management; and

3. Be supported by strong corporate governance, including active and effective oversight by the organization's board of directors.

The recordkeeping provisions of the Guidance are contained within principles 2 and 3.

Principle 2—Compatibility With Effective Controls and Risk Management

Pursuant to Principle 2 of the Guidance, a banking organization's risk-management processes and internal controls should reinforce and support the development and maintenance of balanced incentive compensation arrangements. Principle 2 states that banking organizations should create and maintain sufficient documentation to permit an audit of the organization's processes for establishing, modifying, and monitoring incentive compensation arrangements.

Additionally, global systemically important bank holding companies and banking organizations subject to Category II–IV enhanced prudential standards under Regulation YY and foreign banking organizations required to form an intermediate holding company under Regulation YY should maintain policies and procedures that (1) identify and describe the role(s) of the personnel, business units, and control units authorized to be involved in the design, implementation, and monitoring of incentive compensation arrangements, (2) identify the source of significant risk-related inputs into these processes and establish appropriate controls governing the development and approval of these inputs to help ensure their integrity, and (3) identify the individual(s) and control unit(s) whose approval is necessary for the establishment of new incentive compensation arrangements or modification of existing arrangements.

Principle 3—Strong Corporate Governance

Pursuant to Principle 3 of the Guidance, banking organizations should have strong and effective corporate governance to help ensure sound compensation practices. Principle 3 states that a banking organization's board of directors should approve and document any material exceptions or adjustments to the organization's incentive compensation arrangements established for senior executives.

Legal authorization and confidentiality: The recordkeeping provisions of the Guidance are authorized pursuant to the Board's examination and reporting authorities, located in sections 9, 11(a), 25, and 25A of the Federal Reserve Act, section 5 of the Bank Holding Company Act, section 10(b) of the Home Owners' Loan Act, and section 7(c) of the International Banking Act, and by section 39 of the Federal Deposit Insurance Act, which authorizes the Board to prescribe compensation standards.

Because the recordkeeping provisions are contained within guidance, which is nonbinding, they are voluntary. There are no reporting forms associated with this information collection.

Because the incentive compensation records would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a banking organization, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in ''examination, operating, or condition reports'' obtained in the bank supervisory process. In addition, the information may also constitute nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, and thus may be kept confidential by the Board pursuant to exemption 4 of the FOIA.

Consultation outside the agency: The Board has consulted with the FDIC and OCC and confirmed that there will be no revisions to the guidance.

Board of Governors of the Federal Reserve System, August 26, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–18834 Filed 8–31–21; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Head Start REACH: Strengthening Outreach, Recruitment, and Engagement Approaches With Families (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) is proposing to collect data on different approaches that Head Start programs use for the recruitment, selection, enrollment, and retention (RSER) of families facing adversities and the community organizations with

which it partners to support these activities. This study aims to present an internally valid description of RSER approaches used by six purposively selected programs, not to promote statistical generalization to different sites or service populations.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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

SUPPLEMENTARY INFORMATION:

Description: The Head Start REACH: Strengthening Outreach, Recruitment and Engagement Approaches with Families project is proposing to conduct qualitative case studies to examine the approaches used by Head Start programs to recruit, select, enroll, and retain families experiencing adversities and the implementation of these approaches, including supporting factors and barriers. Adversities is a broad term that refers to a wide range of circumstances or events that pose a threat to a child or caregiver's physical or psychological well-being. The adversities that families experience are often intertwined with poverty, may co-occur, and are affected by systematic factors, such as structural racism. Common examples include (but are not limited to) families experiencing homelessness; involvement in child welfare, including foster care; and affected by substance use, mental health issues, and domestic violence.

We will collect information from six sites; each site will include (1) a Head Start program that has demonstrated success in the RSER of families experiencing adversities and (2) up to four of its community partner organizations that serve families experiencing adversities.

We will collect information on how programs determine which adversities to focus on for their RSER efforts; RSER approaches programs use, focusing specifically on families experiencing adversities; RSER-related training and support that Head Start staff receive; partnerships that programs form with organizations in the community to support these activities; and supporting factors and barriers to participation of enrolled and non-enrolled families who face adversities.

Respondents: Head Start program directors, Head Start staff conducting eligibility, recruitment, selection, enrollment, attendance (ERSEA) activities, staff from community organizations with which Head Start programs partner for ERSEA activities, Head Start-eligible parents enrolled in Head Start, and those not enrolled in Head Start.

Annual Burden Estimates

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/annual burden (in hours)
Program director recruitment call protocol (Instrument 1)	6	1	0.50	3.0
Program staff interview protocol: Program director (Instrument 2) [a]	6	1	1.0	6.0
Program staff interview protocol ERSEA staff (Instrument 2) [a]	24	1	1.5	36
Head Start program study activities and focus group coordination [b]	6	1	8.0	48
Head Start enrolled families focus group guide (Instrument 3)	60	1	1.5	90
Community partner recruitment call protocol (Instrument 4)	24	1	0.17	4.0
Community partner staff interview protocol (Instrument 5)	24	1	0.75	18
Community partner focus group coordination [b]	6	1	3.0	18
Families not enrolled in Head Start focus group guide (Instrument 6) [c]	60	1	1.5	90

[a] There is one interview protocol for both the program director and the ERSEA staff and the interviewer will tailor it to the respondent(s).
[b] There is no instrument, only a document of duties associated with this activity.
[c] If needed, we will offer the option of a 45-minute one-on-one interview; however, as we do not expect to have to use the interview option often, the table reflects a 90-minute burden for all families not enrolled in Head Start.

Estimated Total Annual Burden Hours: 313.

Authority: Head Start Act Section 640 [42 U.S.C. 9835]

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–18917 Filed 8–31–21; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0860]

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Psychopharmacologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on November 4, 2021, from 10 a.m. to 4 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings

may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2021–N–0860. The docket will close on November 3, 2021. Submit either electronic or written comments on this public meeting by November 3, 2021. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 3, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 3, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before October 21, 2021, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–N–0860 for ''Psychopharmacologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT:

Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–7973, Fax: 301–847–8533, email: *PDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss new drug application (NDA) 214812, for carbetocin nasal spray, submitted by Levo Therapeutics, Inc., for the proposed treatment of hyperphagia, anxiety, and distress behaviors associated with Prader-Willi syndrome.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before October 21, 2021, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 13, 2021. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 14, 2021.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Joyce Frimpong (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 26, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–18892 Filed 8–31–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–new]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 1, 2021.

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

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990-New-30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Components Study of REAL Essential Curriculum.

Type of Collection: New.

OMB No. 0990–NEW—Office of Population Affairs—OASH—OS.

Abstract: The Office of Population Affairs (OPA), U.S. Department of Health and Human Services (HHS) is requesting 3 years of approval by OMB on a new collection. The Components Study of REAL Essential Curriculum will identify the components that matter the most for promoting positive health behaviors and outcomes among adolescents. The study will examine program components (for example, content and dosage), implementation components (for example, attendance and engagement), and contextual components (for example, participant characteristics) to determine which components influence participant outcomes the most. In addition, the study will measure youth engagement in programming from various perspectives and examine the role of engagement as a mediating factor to achieving youth outcomes. Sites participating in the study will use the REAL Essentials Advance (REA) relationship curriculum, a popular program among federal pregnancy prevention grantees. The study will enroll schools from spring to fall 2022 (and possibly spring 2023, if necessary). The study will collect youth surveys at baseline, at program exit, and 6 months following the completion of the program. The study will also collect extensive implementation data, which includes youth engagement exit ticket surveys after REA sessions, focus groups with youth, program facilitator logs, and attendance records. Study staff will also interview facilitators and site leadership.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Youth outcome survey	498	3	40/60	996
Youth-focus groups	133	1	90/60	200
Youth-engagement exit ticket	533	12	2/60	213
Program Facilitators—Fidelity log	13	24	10/60	52
Program Facilitators—interview topic guide	5	2	1	10
District/School/CBO leadership- interview topic guide	11	2	45/60	17
Total	1193	44		1488

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021–18886 Filed 8–31–21; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a virtual meeting. The meeting will be open to the public and public comment will be heard during the meeting.

DATES: The meeting will be held September 14–15, 2021. The confirmed meeting times and agenda will be posted on the NVAC website at *http://www.hhs.gov/nvpo/nvac/meetings/index.html* as soon as they become available.

ADDRESSES: Instructions regarding attending this meeting will be posted online at: *http://www.hhs.gov/nvpo/nvac/meetings/index.html* at least one week prior to the meeting. Pre-registration is required for those who wish to attend the meeting or participate in public comment. Please register at *http://www.hhs.gov/nvpo/nvac/meetings/index.html.*

FOR FURTHER INFORMATION CONTACT: Ann Aikin, Acting Designated Federal Officer, at the Office of Infectious Disease and HIV/AIDS Policy, U.S. Department of Health and Human Services, Mary E. Switzer Building, Room L618, 330 C Street SW, Washington, DC 20024. Email: *nvac@hhs.gov.* Phone: 202–494–1719.

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of HHS was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

During this NVAC meeting, NVAC will hear presentations on vaccine safety, vaccine development, and communication activities. Please note that agenda items are subject to change, as priorities dictate. Information on the final meeting agenda will be posted prior to the meeting on the NVAC website: *http://www.hhs.gov/nvpo/nvac/index.html.*

Members of the public will have the opportunity to provide comment at the NVAC meeting during the public comment period designated on the agenda. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Individuals are also welcome to submit written comments in advance. Written comments should not exceed three pages in length. Individuals submitting comments should email their written comments or their request to provide a comment during the meeting to *nvac@hhs.gov* at least five business days prior to the meeting.

Dated: August 19, 2021.

Ann Aikin,

Acting Designated Federal Official, Office of the Assistant Secretary for Health.

[FR Doc. 2021–18809 Filed 8–31–21; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0018]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 1, 2021.

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: Sagal Musa, *sagal.musa@hhs.gov* or (202) 205–2634. When submitting comments or requesting information, please include the document identifier 4040–0018–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collections: SF–428 Tangible Personal Property Report.

Type of Collection: Extension.

OMB No.: 4040–0018.

Abstract: Reporting on the status of Federally owned property, including disposition, is necessitated in 2 CFR part 215, the ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'', and the ''Uniform Administrative Requirements for Grants and Agreements with State and Local Governments'', Additionally, Public Law 106–107, the Federal Financial Assistance Management Improvement Act requires that agencies ''simplify Federal financial assistance application and reporting requirements.'' 31 U.S.C. 6101, Section 3.

Agencies are currently using a variety of forms to account for both federally owned and grantee owned equipment and property. During the public consultation process mandated by Public Law 106–107, grant recipients requested a standard form to help them submit appropriate property information when required. The Public Law 106–107 Post Awards Subgroup developed a new standard form, the Tangible Personal Property Report, for submission of the required data. The form consists of the cover sheet (SF–428), three attachments to be used as required: Annual Report, SF–428–A; Final Report, SF–428–B; Disposition Request/Report, SF–428–C and a Supplemental Sheet, SF–428S to provide detailed individual item information when required. The IC expired on 6/30/2020. We are seeking

an extension on this information collection request and a three-year clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Grant Applicants	1	2,000	1	2,000
Total	1	2,000	1	2,000

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021–18871 Filed 8–31–21; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Small Grant Program Grants for NHLBI K Recipients (R03).

Date: October 19, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Carol (Chang-Sook) Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–B, Bethesda, MD 20817, (301) 827–7940, *carolko@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Transplant Consortium Clinical Centers.

Date: October 21, 2021.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Shelley Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Suite 208–T, Bethesda, MD 20817, (301) 827–7984, *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Program Project Applications (P01).

Date: October 28, 2021.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kristen Page, MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive Room 209–B, Bethesda, MD 20817, 301–435–0725, *kristen.page@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 26, 2021.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–18841 Filed 8–31–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Training Grant Application Review.

Date: September 29, 2021.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Boulevard, Room 8351, Bethesda, MD 20892, (301) 451–6339, *kellya2@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Research Center Review.

Date: October 18, 2021.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; R25 Applications Review.

Date: October 19, 2021.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; P50 Clinical Research Center Grant Review.

Date: November 4, 2021.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Boulevard, Room 8351, Bethesda, MD 20892, (301) 451–6339, *kellya2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 27, 2021.

Miguelina Perez,

Program Analyst, Office Federal Advisory Committee Policy.

[FR Doc. 2021–18854 Filed 8–31–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Electronic Nicotine Delivery Systems (ENDS): Population, Clinical and Applied Prevention Research.

Date: October 1, 2021.

Time: 11:30 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: Pamela Jeter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 10J08, Bethesda, MD 20892, (301) 435–2591, *pamela.jeter@nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Biobehavioral Medicine and Health Outcomes Study Section.

Date: October 4–5, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark A. Vosvick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, Bethesda, MD 20892, (301) 402–4128, *mark.vosvick@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review; Group Motor Function, Speech and Rehabilitation Study Section.

Date: October 4–5, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Biao Tian, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, *tianbi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 27, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–18859 Filed 8–31–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Study Section.

Date: October 29, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892 (Video-Assisted Meeting).

Contact Person: Luis E. Dettin, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892, (301) 827–8231, *Luis.Dettin@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 26, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–18845 Filed 8–31–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Electronic Individual Development Plan (eIDP) (National Eye Institute); Correction

AGENCY: National Institutes of Health, HHS.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services, National Institutes of Health published a Notice in the **Federal Register** on August 26, 2021. That Notice requires a correction in the **SUPPLEMENTARY INFORMATION** section.

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: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Cesar E. Perez-Gonzalez, Training Director, Office of the Scientific Director, National Eye Institute, NIH, Building 31, Room 6A22, MSC 0250, Bethesda, Maryland 20892 or call non-toll-free number (301) 451–6763 or Email your request, including your address to: *cesarp@nei.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 26, 2021, in FR Doc. 2021–18393, on page 47652, as found within the **SUPPLEMENTARY INFORMATION** section, within the Estimated Annualized Burden Hours table for the Number of Responses per Respondent column total currently reads ''150'' and is corrected to read: ''450''.

Daniel R. Hernandez,

NIH Federal Register Certifying Official, National Institutes of Health.

[FR Doc. 2021–18812 Filed 8–31–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases, Special Emphasis Panel; Time Sensitive Obesity.

Date: September 28, 2021.

Time: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 27, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–18860 Filed 8–31–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–0361.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Treatment Episode Data Set (TEDS) (OMB No. 0930–0335)—Extension

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting an extension to collect the Treatment Episode Data Set (TEDS) data collection (OMB No. 0930–0335), which expires on April 30, 2022. TEDS is a compilation of client-level substance use treatment admission and discharge data submitted by states on clients treated in facilities that receive state funds. SAMHSA is also requesting an extension to collect the client-level mental health admission and update/discharge data (MH–TEDS/MH–CLD) submitted by states on clients treated in facilities that receive state funds (also OMB No. 0930–0335).

TEDS/MH–TEDS/MH–CLD data are collected to obtain information on the number of admissions and updates/discharges at publicly funded substance use treatment and mental health services facilities and on the characteristics of clients receiving services at those facilities.

TEDS/MH–TEDS/MH–CLD also monitor trends in the demographic, substance use, and mental health characteristics of admissions. In addition, several of the data elements used to calculate performance measures for the Substance Abuse Block Grant (SABG) and Mental Health Block Grant (MHBG) applications are collected through the TEDS/MH–TEDS/MH–CLD.

Most states collect the TEDS/MH–TEDS/MH–CLD data elements from their treatment providers for their own administrative purposes and are able to submit a cross-walked extract of their data to TEDS/MH–TEDS/MH–CLD. No changes are expected in the TEDS/MH–TEDS/MH–CLD data elements that are collected.

Estimated annual burden for the separate TEDS/MH–TEDS/MH–CLD activities is as follows:

Type of activity	Number of respondents (states/jurisdictions)	Responses per respondent	Total responses	Hours per response	Total burden hours
TEDS Admission Data	52	4	208	6.25	1,300

Type of activity	Number of respondents (states/jurisdictions)	Responses per respondent	Total responses	Hours per response	Total burden hours
TEDS Discharge Data	52	4	208	8.25	1,716
TEDS Crosswalks	5	1	5	10	50
MH–CLD BCI Data	30	1	30	30	900
MH–CLD SHR Data	30	1	30	5	150
MH–TEDS Admissions Data	29	4	116	6.25	725
MH–TEDS Update/Discharge Data	29	4	116	8.25	957
MH–TEDS Crosswalks	10	1	10	10	100
Total	59		723		5,898

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57A, Rockville, MD 20857 *OR* email a copy at *carlos.graham@samhsa.hhs.gov.* Written comments should be received by November 1, 2021.

Carlos Graham,

Social Science Analyst.

[FR Doc. 2021–18915 Filed 8–31–21; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Training and Technical Assistance (TTA) Programs Monitoring

The Substance Abuse and Mental Health Administration's (SAMHSA) will monitor program performance of its Training and Technical Assistance (TTA) Programs. The TTAs disseminate current behavioral health services research from the National Institute on Drug Abuse, National Institute on Alcohol Abuse and Alcoholism, National Institute of Mental Health, National Institute of Justice, and other sources, as well as other SAMHSA programs. To accomplish this, the TTAs develop and update state-of-the-art, research-based curricula and professional development training.

The TTAs hold a variety of events: Technical assistance events, meetings, trainings, presentations and learning collaboratives. A TTA technical assistance event is defined as a jointly planned consultation generally involving a series of contacts between the TTA and an outside organization/institution during which the TTA program provides expertise and gives direction toward resolving a problem or improving conditions. Technical assistance events can be categorized into universal, targeted, and intensive. Other TTA events such as meetings, training, strategic planning and learning collaboratives are utilized to support technical assistance. These events are TTA-sponsored or co-sponsored events in which a group of people representing one or more agencies other than the TTA program work cooperatively on a project, problem, and/or policy.

SAMHSA intends to use three (3) instruments for program monitoring of TTA events as well as ongoing quality improvement, which are described below.

1. *Event Description Form (EDF):* The EDF collects event information. This instrument asks approximately 10 questions of TTA faculty/staff relating to the event focus and format. It allows the TTCs and SAMHSA to track the number of events held (See Attachment 1).

2. *TTA Post Event Form:* The Post Event Form will be administered immediately following the event. It asks approximately 15 questions of each individual that participated in the event (Attachment 2). The instrument asks the participants to report on general demographic information (gender, sexual orientation, race, level of education, primary profession), principal employment setting, employment zip code, satisfaction with the event, if they expect the event to benefit them professionally, if they expect the event to change their practice and if they would recommend the event to a colleague.

3. *TTA Follow-up Form:* The Follow-up Form will be administered 60-days after all events that last a minimum of three (3) hours. The form will be administered to a minimum of 25% of participants who consent to participate in the follow-up process. The form asks about 14 questions (Attachment 3). The instrument asks the participants to report if the information provided in at the event benefited their professional development, will change their practice, if they will use the information in their future work, if information will be shared with colleagues, how the event supported their work responsibilities, how the TTA program can improve the events, what other topics would participants like to see TTCs address and in what format.

The information collected on the TTA program forms will assist SAMHSA in documenting the numbers and types of participants in TTA events, describing the extent to which participants report improvement in their professional development, and which method is most effective in disseminating knowledge to various audiences. This type of information is crucial to support SAMHSA in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

The chart below summarizes the annualized burden for this project.

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total annual burden hours	Hourly wage cost	Total hour cost
TTA Faculty/Staff							
Event Description Form	2,000	1	2,000	.16	320	$24.78	$7,930
Meeting and presentations respondents							
Post-Event Form	50,000	1	50,000	.16	8,000	$24.78	$198,240
Follow-up Form	Meetings and presentations are usually less than 3 hours. Follow up forms will be used only for events longer than 3 hours						
Technical Assistance and Training respondents							
Post-Event Form	100,000	1	100,000	.16	16,000	$24.78	$396,480
Follow-up Form	25,000	1	25,000	.16	4,000	$24.78	$99,120
Total	177,000	1	177,000	.16	28,320	$24.78	$701,770

Summary Table

Instruments	# Respondents	Responses per respondents	Burden hours
TTA Event Description Form	2,000	1	320
TTA Post Event Form	150,000	1	24,000
TTA Follow up Form	25,000	1	4,000
Total	177,000	1	28,320

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57A, Rockville, MD 20857 *OR* email a copy at *carlos.graham@samhsa.hhs.gov.* Written comments should be received by November 1, 2021.

Carlos Graham,

Social Science Analyst.

[FR Doc. 2021–18916 Filed 8–31–21; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0144]

Agency Information Collection Activities; Revision of a Currently Approved Collection: H–1B Registration Tool

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment on this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 1, 2021.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0144 in the body of the letter, the agency name and Docket ID USCIS–2008–0014. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0014.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

USCIS is requesting public comments on this revision of the H–1B Registration Tool. The information collection instrument posted with this 60-day **Federal Register** Notice includes changes associated with the final rule USCIS published on January 8, 2021 titled, *Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H–1B Petitions* (86 FR 1676) (H–1B Selection Final Rule). The hour and cost time burden estimates

provided in this **Federal Register** Notice also include the time and cost burden estimates that are associated with the H–1B Selection Final Rule. On February 8, 2021, USCIS published a rule delaying the effective date of the H–1B Selection Final Rule to December 31, 2021, titled, *Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H–1B Petitions; Delay of Effective Date* (86 FR 8543). The H–1B Selection Final Rule related changes to the information collection instrument will not be implemented before that rule's new effective date, December 31, 2021.

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2008–0014 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* H–1B Registration Tool.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* OMB–64; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. USCIS will use the data collected through the H–1B Registration Tool to select a sufficient number of registrations projected to meet the applicable H–1B cap allocations and to notify registrants whether their registration was selected.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of business or other for-profit respondents for the information collection H–1B Registration Tool is 35,500 with an estimated 3 responses per respondents and an estimated hour burden per response of 1.083 hours. The estimated total number of attorney respondents for the information collection H–1B Registration Tool is 4,500 with an estimated 38 responses per respondents and an estimated hour burden per response of 1.083 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 300,533 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. Any costs to respondents are captured in the Form I–129 information collection (OMB control number 1615–009).

Dated: August 27, 2021.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–18850 Filed 8–31–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7036–N–09]

Notice of Proposed Information Collection: CDBG Urban County Qualification/New York Towns Qualification/Requalification Process; OMB Control No: 2506–0170

AGENCY: Office of Community Planning and Development, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 1, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Gloria Coates, Senior Community Planning and Development Specialist, Entitlement Communities Division, Office of Block Grant Assistance, 451 7th Street SW, Room 7282, Washington, DC 20410; email Gloria Coates at *Gloria.L.Coates@hud.gov* or telephone (202) 708–1577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval form OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Community Development Block Grant (CDBG) Urban County Qualification/New York Towns Qualification/Requalification Processes.

OMB Approval Number: 2506–0170.

Type of Request: Extension.

Form numbers: N/A.

Description of the need for the information and proposed use: The Housing and Community Development Act of 1974, as amended (the Act), at sections 102(a)(6) and 102(e) requires that any county seeking qualification as an urban county notify each unit of general local government within the county that such unit may elect to have its population excluded from that of the urban county. Section 102(d) of the Act specifies that the period of qualification will be three years. Based on these statutory provisions, counties seeking qualification or requalification as urban counties under the CDBG program must provide information to HUD every three years identifying the units of general local governments (UGLGs) within the county participating as a part of the county for purposes of receiving CDBG funds. The population of UGLGs for each eligible urban county is used in HUD's allocation of CDBG funds for all entitlement and State CDBG grantees.

New York Towns may qualify as metropolitan cities if they are able to secure the participation of all of the villages located within their boundaries. Any New York Town that is located in an urban county may choose to leave that urban county when that county is requalifying. That New York Town will be required to notify the urban county in advance of its decision to decline participation in the urban county's CDBG program and complete the metropolitan city qualification process.

Respondents: (*i.e.,* affected public): Urban counties that are eligible as entitlement grantees of the CDBG program.

Estimation Number of Respondents: There are currently 192 qualified urban counties participating in the CDBG program that must requalify every three years.

Frequency of Response: On average, two new counties qualify each year. The burden on new counties is greater than for existing counties that requalify. The Department estimates new grantees use, on average, 115 hours to review instructions, contact communities in the county, prepare and review agreements, obtain legal opinions, have agreements executed at the local and county level, and prepare and transmit copies of required documents to HUD. The Department estimates that counties that are requalifying use, on average, 67 hours to complete these actions. The time savings on requalification is primarily a result of a grantee's ability to use agreements with no specified end date. Use of such ''renewable'' agreements enables the grantee to merely notify affected participating UGLGs in writing that their agreement will automatically be renewed unless the UGLG terminates the agreement in writing, rather than executing a new agreement every three years.

Average of 2 new urban counties qualify per year: 2×115 hrs = 230 hrs.

192 grantees requalify on triennial basis; average annual number of respondents = 63: 63×67 hrs. = 4,221 hrs.

Total combined burden hours: 4,451 hours.

This total number of combined burden hours can be expected to increase annually by 1,200 hours, given the average of two new urban counties becoming eligible entitlement grantees each year.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Principal Deputy Assistant Secretary for Community Planning and Development, James Arthur Jemison II, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Aaron Santa Anna, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Aaron Santa Anna,

Federal Liaison for the Department of Housing and Urban Development.

[FR Doc. 2021–18840 Filed 8–31–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2021–N013; FXES11130100000–212–FF01E00000]

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for Umtanum Desert Buckwheat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for review and public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Draft Recovery Plan for Umtanum Desert buckwheat (*Eriogonum codium*), listed as threatened under the Endangered Species Act, and endemic to Benton County, Washington. We request review and comment on this draft recovery plan from Federal, State, and local agencies; Native American Tribes; and the public.

DATES: To ensure consideration, comments on the draft recovery plan must be received on or before November 1, 2021. However, we will accept information about any species at any time.

ADDRESSES:

Document availability: Obtain the recovery plan on the internet at *http://www.fws.gov/endangered/species/recovery-plans.html* or *http://www.fws.gov/pacific/ecoservices/endangered/recovery/plans.html.*

Comment submission: You may submit written comments and materials by one of the following methods:

- *U.S. Mail:* Jeff Krupka, Central Washington Fish and Wildlife Office, 215 Melody Lane, Suite 103, Wenatchee, WA 98801–8122.
- *Email: WFWO_LR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brad Thompson, State Supervisor, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE, Suite 101, Lacey, WA 98502; telephone 360–753–9440. If you use a telecommunications device for the deaf, call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Draft Recovery Plan for Umtanum Desert Buckwheat (*Eriogonum codium*). The species, listed as threatened under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), is a plant endemic to Umtanum Ridge of Benton County, Washington. The draft recovery plan includes specific

goals, objectives, and criteria that should be met prior to our consideration of removing the species from the Federal List of Endangered and Threatened Plants. We request review and comment on this draft recovery plan from Federal, State, and local agencies; Native American Tribes; and the public.

Background

The Umtanum desert buckwheat is a long-lived perennial that occurs in a narrow, discontinuous band on Umtanum Ridge at least 1.6 kilometers (1 mile) long. This plant is closely associated with Lolo Flow lithosol soils in the Lower Columbia River Basin in the State of Washington. In April 2013 and as reaffirmed in December 2013, the Umtanum desert buckwheat found along sparsely vegetated, north-facing basalt cliff of Umtanum Ridge in central Washington State, was listed as a threatened species pursuant to the Act (78 FR 23983; April 23, 2013; 78 FR 76995; December 20, 2013).

Recovery Planning Process

Recovery of endangered and threatened animals and plants is a primary goal of our endangered species program. To help guide the recovery effort, we prepare recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

Recovery Planning and Implementation

The Service has recently revised its approach to recovery planning and is now using a new process termed recovery planning and implementation (RPI) (see *https://www.fws.gov/endangered/esa-library/pdf/RPI.pdf*). The RPI approach is intended to reduce the time needed to develop and implement recovery plans, increase recovery plan relevancy over a longer timeframe, and add flexibility to recovery plans so they can be adjusted to address new information or circumstances. Under RPI, a recovery plan includes the statutorily required elements under section 4(f) of the Act (*i.e.,* objective and measurable recovery criteria, site-specific management actions, and estimates of time and costs), along with a concise introduction and our strategy for how we plan to achieve species recovery. The RPI recovery plan is supported by two supplementary documents: A species status assessment or biological species report, which describes the best available scientific information related to the biological needs of the species and assessment of threats; and the recovery implementation strategy, which details the particular near-term activities needed to implement the recovery actions identified in the recovery plan. Under this approach, we can incorporate new information on species biology or details of recovery implementation by updating these supplementary documents without concurrent revision of the entire recovery plan, unless changes to statutorily required elements are necessary.

Recovery Plan Components

The primary recovery strategy for the Umtanum desert buckwheat is to increase the capability of the single population to withstand stochastic events, establish new populations to provide a safety margin against catastrophic events, and to increase the ecological and/or genetic diversity of the species. Recovery will hinge on establishing self-sustaining populations, improving habitat, reducing threats, and preserving or enhancing the ability of individuals to survive and reproduce in the range of conditions they are likely to experience.

We may initiate an assessment of whether recovery has been achieved and delisting is warranted when the recovery criteria have been met, including once a sixth population has been discovered or established on conserved lands and is managed in a way that is compatible with Umtanum desert buckwheat conservation.

Request for Public Comments

Section 4(f) of the Act requires us to provide public notice and an opportunity for public review and comment during recovery plan development. It is also our policy to request peer review of recovery plans (59 FR 34270; July 1, 1994). In an appendix to the approved final recovery plan, we will summarize and respond to the substantive comments raised during public comment and peer review. Substantive comments may or may not result in changes to the recovery plan. Comments regarding recovery plan implementation will be forwarded as appropriate to Federal or other entities so that they can be taken into account during the course of implementing recovery actions.

We will consider all comments we receive by the date specified in **DATES** prior to final approval of the plan.

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 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 authority for this action is section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–18806 Filed 8–31–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of Third Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Spokane Tribe (Tribe) and the State of Washington (State).

DATES: The amendment takes effect on September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and

incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18818 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of Title XVII Pueblo of Jemez Residential Leasing Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Title XVII Pueblo of Jemez Residential Leasing Code under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into residential leases without further BIA approval.

DATES: BIA issued the approval on August 25, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Pueblo of Jemez, New Mexico.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also

retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pueblo of Jemez, New Mexico.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18824 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of Title XVI Pueblo of Jemez Tribal Leasing Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Title XVI Pueblo of Jemez Tribal Leasing Code under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter agricultural, business, and wind and solar leases without further BIA approval.

DATES: BIA issued the approval on August 25, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharelene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Pueblo of Jemez, New Mexico.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72,440, 72,447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72,447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes

greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pueblo of Jemez, New Mexico.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18825 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of Third Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Cowlitz Indian Tribe (Tribe) and the State of Washington (State).

DATES: The amendment takes effect on September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18820 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact Amendments in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Fourth Amendment to the Tribal-State Compact (Fourth Amendment) for Class III Gaming between the Suquamish Tribe (Tribe) and the State of Washington (State), and the Fifth Amendment to the Tribal-State Compact (Fifth Amendment) for Class III Gaming between the Suquamish Tribe and the State of Washington.

DATES: The amendment takes effect on September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior must publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Fourth Amendment authorizes the Tribe to operate sports wagering at the Tribe's class III gaming facilities, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Fifth Amendment revises the definition section, allows for a second gaming facility, updates licensing and registration requirements, and adopts Appendix E, Limitation on Wagers, Credit Facilities, Problem Gambling Resources and Contributions. The Fourth and Fifth Amendments are approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18823 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Fifth Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Snoqualmie Indian Tribe (Tribe) and the State of Washington (State).

DATES: The amendment takes effect on November 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are

subject to review and approval by the Secretary. The Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18819 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of Pascua Yaqui Tribe of Arizona Business Site Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Pascua Yaqui Tribe of Arizona Business Site Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into Business leases without further BIA approval.

DATES: BIA issued the approval on August 25, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Pascua Yaqui Tribe of Arizona.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415 (h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving

the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Pascua Yaqui Tribe of Arizona.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18827 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact Amendments in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of Third Amendment to the Tribal-State Compact (Third Amendment) for Class III Gaming between the Stillaguamish Tribe of Indians (Tribe) and the State of Washington (State), and the Fourth Amendment to the Tribal-State Compact (Fourth Amendment) for Class III Gaming between the Stillaguamish Tribe of Indians and the State of Washington.

DATES: The amendment takes effect on September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior must publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Third Amendment amends and restates the Tribe's Compact, adopts Appendix D, Gaming Station Transfers, and Appendix E, Limitation on Wagers, Credit, Facilities, Problem Gambling Resources and Contributions. The Fourth Amendment authorizes the Tribe to operate sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendments are approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18822 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of Sixth Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Squaxin Island Tribe (Tribe) and the State of Washington (State).

DATES: The amendment takes effect on September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18815 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900]

HEARTH Act Approval of Match-E-Be-Nash-She-Wish-Band of Pottawatomi Indians Business, Agriculture, and Residential Lease Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Match-E-Be-Nash-She-Wish-Band of Pottawatomi Indians (Tribe) Lease Regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business, agriculture, and residential leases without further BIA approval.

DATES: BIA issued the approval on August 25, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without

the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Match-E-Be-Nash-She-Wish-Band of Pottawatomi Indians.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self- government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Match-E-Be-Nash-She-Wish-Band of Pottawatomi Indians.

Kathryn Isom-Clause,

Deputy Assistant Secretary for Policy and Economic Development—Indian Affairs.

[FR Doc. 2021–18828 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/ A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of Fifth Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Lummi Nation (Tribe) and the State of Washington (State).

DATES: The amendment takes effect on September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic

Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Compact authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18814 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of Sixth Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Puyallup Tribe of Indians (Tribe) and the State of Washington (State).

DATES: The amendment takes effect on September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18816 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Table Mountain Rancheria Tribal Trust Lands Residential Lease Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Table Mountain Rancheria Tribal Trust Lands Residential Lease Regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into residential leases without further BIA approval.

DATES: BIA issued the approval on August 25, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *sharlene.roundface@bia.gov,* (505) 563–3132.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Table Mountain Rancheria.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of

the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the Part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or Part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Table Mountain Rancheria.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18826 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Tenth Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Tulalip Tribes of Washington (Tribe) and the State of Washington (State).

DATES: The amendment takes effect on September 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and incorporates Appendix S Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–18821 Filed 8–31–21; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1105 (Second Review)]

Lemon Juice From Argentina; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether termination of the suspended antidumping duty investigation on lemon juice from Argentina would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted September 1, 2021. To be assured of consideration, the deadline for responses is October 1, 2021. Comments on the adequacy of responses may be filed with the Commission by November 16, 2021.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Effective September 10, 2007, the Department of Commerce (''Commerce'') suspended an antidumping duty investigation on imports of lemon juice from Argentina (72 FR 53991). On August 1, 2012, Commerce initiated and the Commission instituted its first five-year review of the suspended investigation (77 FR 45589 and 77 FR 45653). On August 1, 2013, pursuant to section 751(c) of the Act, the Commission determined that termination of the suspended investigation on lemon juice from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (78 FR 46610). As a result, on August 7, 2013, Commerce published notice of the continuation of the suspended investigation on lemon juice from Argentina. Following the first five-year reviews by Commerce and the Commission, effective October 20, 2016, Commerce signed a new suspension agreement with substantially all growers/exporters of lemon juice from Argentina and issued a continuation of the suspended investigation on imports of lemon juice from Argentina (81 FR 74395). The Commission is now conducting a second review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Argentina.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original preliminary determination, the Commission defined a single *Domestic Like Product* consisting of all lemon juice for further manufacturing, coextensive with the scope of the investigation. In its five-year review determination of the suspended antidumping duty investigation, the Commission defined the *Domestic Like Product* as consisting of certain lemon juice, coextensive with the scope of the review.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original preliminary determination, the Commission defined a single *Domestic Industry* consisting of all domestic producers of lemon juice for further manufacture, corresponding to the subject merchandise in the investigation. The Commission found that the lemon growers did not meet the criteria for inclusion in the Domestic Industry pursuant to the statutory grower/processor provision. In its five-year review determination, the Commission defined the *Domestic Industry* as consisting of all domestic producers of lemon juice for further manufacture, and again did not include lemon growers as part of the domestic industry.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Proceeding and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in

internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 1, 2021. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 16, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 21–5–497, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigation on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2020, except as noted (report quantity data in 1,000 gallons @ 400 GPL and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in 1,000 gallons @ 400 GPL and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in 1,000 gallons @ 400 GPL and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2016 and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 26, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–18787 Filed 8–31–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–545–546 and 731–TA–1291–1297 (Review), and 731–TA–808 (Fourth Review)]

Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, Korea, the Netherlands, Russia, Turkey, and the United Kingdom; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty orders on imports of hot-rolled steel flat products (''hot-rolled steel'') from Brazil and Korea and revocation of the antidumping duty orders on hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Russia, Turkey, and the United Kingdom would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted September 1, 2021. To be assured of consideration, the deadline for responses is October 1, 2021. Comments on the adequacy of responses may be filed with the Commission by November 16, 2021.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Effective July 12, 1999, the Department of Commerce (''Commerce'') suspended the antidumping duty investigation on hot-rolled steel imports from Russia (64 FR 38642, July 19,

1999). Following first five-year reviews by Commerce and the Commission, effective May 12, 2005, Commerce issued a continuation of the suspended investigation on imports of hot-rolled steel from Russia (70 FR 32571, June 3, 2005). Following second five-year reviews by Commerce and the Commission, effective June 17, 2011, Commerce issued a continuation of the suspended investigation on imports of hot-rolled steel from Russia (76 FR 35400, June 17, 2011). Effective December 19, 2014, Commerce terminated the agreement suspending the antidumping duty investigation on hot-rolled steel from Russia and issued an antidumping duty order (79 FR 77455, December 24, 2014). Following the expedited, third five-year reviews by Commerce and the Commission, effective October 20, 2016, Commerce issued a continuation of the antidumping duty order on imports of hot-rolled steel from Russia (81 FR 72569, October 20, 2016).

On October 3, 2016, Commerce issued countervailing duty orders on imports of hot-rolled steel from Brazil and Korea and antidumping duty orders on imports of hot-rolled steel from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom (81 FR 67960 and 81 FR 67962).

The Commission is conducting first five-year reviews of the orders concerning Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom and a fourth five-year review of the order concerning Russia pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of these five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Australia, Brazil, Japan, Korea, the Netherlands, Russia, Turkey, and the United Kingdom.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its first, second, and third five-year review determinations (Russia), and in its original determinations (Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom), the Commission defined a single *Domestic Like Product* consisting of all hot-rolled steel, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its first, second, and third five-year review determinations (Russia), and in its original determinations (Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom), the Commission defined the *Domestic Industry* as all domestic producers of hot-rolled steel.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Proceeding and Public Service List

Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of

the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 1, 2021. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 16, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 21–5–498, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after October 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2020, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2020 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after October 2016 and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 25, 2021.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2021–18785 Filed 8–31–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration Fee (COIF)

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: This Notice publishes the Fiscal Year (FY) 2019 and 2020 Cost of Incarceration Fee (COIF) for Federal inmates.

DATES: September 1, 2021.

ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First St. NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, (202) 353–8248.

SUPPLEMENTARY INFORMATION: Title 28 of the Code of Federal Regulations, part 505, allows for assessment of a fee to cover the average cost of incarceration for Federal inmates. We calculate the cost of incarceration fee (COIF) by dividing the number representing the Bureau of Prisons (Bureau) facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the fiscal year, and then by multiplying the quotient by the number of days in the fiscal year.

Based on FY 2019 data, the average annual COIF for a Federal inmate in a Federal facility in FY 2019 was $35,347 ($107.85 per day). The average annual COIF for a Federal inmate in a Residential Reentry Center for FY 2019 was $39,924 ($109.38 per day). (Please note: There were 365 days in FY 2019.)

Based on FY 2020 data, the average annual COIF for a Federal inmate in a Federal facility in FY 2020 was $39,158 ($120.59 per day). The average annual COIF for a Federal inmate in a Residential Reentry Center for FY 2020 was $35,663 ($97.44 per day). (Please note: There were 365 days in FY 2020.)

Ken Hyle,

Assistant Director/General Counsel, Federal Bureau of Prisons.

[FR Doc. 2021–18800 Filed 8–31–21; 8:45 am]

BILLING CODE 4410–05–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board (NSB), pursuant to the National Science Foundation Act and the Government in the Sunshine Act hereby gives notice of the scheduling of a teleconference of the Committee on Strategy (CS) for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the CS, to be held Thursday, September 9, 2021, at 2:00–2:30 p.m. EDT.

PLACE: This meeting will be held by videoconference organized through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Chair's remarks; review and discussion of proposed CS recommendation to the Board for NSF to transmit the National Science Foundation, NSB and Office of the Inspector General FY 2023 budget submissions to the Office of Management and Budget.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, (703) 292–7000, *cblair@nsf.gov.* You may find meeting information and updates at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–19009 Filed 8–30–21; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board (NSB), pursuant to the National Science Foundation Act and the Government in the Sunshine Act hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Closed teleconference of the National Science Board, to be held Thursday, September 9, 2021, at 2:30–3:00 p.m. EDT.

PLACE: This meeting will be held by videoconference organized through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Chair's remarks; vote on transmittal to the Office of Management and Budget the FY 2023 budget submissions for the National Science Foundation, NSB, and the Office of the Inspector General.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, (703) 292–7000, *cblair@nsf.gov.* You may find meeting information and updates at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–19007 Filed 8–30–21; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's Committee on Oversight hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Friday, September 3, 2021, from 1:00–1:30 p.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Chair's remarks: review and discussion of proposed Office of the Inspector General (OIG) budget request for FY 2023; recommendation of approval to the National Science Board.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. Meeting information and updates may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for general information.

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–18939 Filed 8–30–21; 11:15 am]

BILLING CODE 7555–01–P

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of modified system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 the Pension Benefit Guaranty Corporation (PBGC) is proposing a change to one of its systems of records notices (SORNs). PBGC is adding a new routine use to allow disclosure of information to other government agencies to allow PBGC to fulfill its statutory responsibilities.

DATES: The modification of the system of records described herein will become effective October 1, 2021, without further notice, unless comments result in a contrary determination and a notice is published to that effect. Comments must be received on or before October 1, 2021 to be assured of consideration.

ADDRESSES: You may submit written comments to PBGC by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.* Refer to SORN in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and reference this notice. Comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, or calling 202–326–4040 during normal business hours. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Shawn Hartley, Chief Privacy Officer, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005, 202–229–6321. For access to any of the PBGC's systems of records, contact D. Camilla Perry, Disclosure Officer, Office of the General Counsel, Disclosure Division, 1200 K Street NW,

Washington, DC 20005, or by calling 202–229–4040, or go to *https://www.pbgc.gov/about/policies/pg/privacy-at-pbgc/system-of-records-notices.*

SUPPLEMENTARY INFORMATION: PBGC is proposing to add a routine use to the system PBGC–19: Office of General Counsel Case Management System (SORN last published at 83 FR 6270 (February 13, 2018)). This routine use would allow disclosure of records to other government agencies to ensure facilitation of responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA), including the special financial assistance program created by the American Rescue Plan (ARP) Act of 2021 (Pub. L. 117–2). PBGC's responsibilities include coordination and information sharing with the U.S. Department of the Treasury and the U.S. Department of Labor's Employee Benefits Security Administration for proper administration and enforcement of the provisions of ERISA and the Internal Revenue Code applicable to multiemployer plans.

Also, PBGC is proposing to amend the name of the system of records and update the owner of the system PBGC–19. PBGC is proposing to amend the name of the system of records to more accurately reflect the records maintained in the system. The new name of the system will be PBGC–19: Office of Negotiations and Restructuring/Office of General Counsel Case Management System. PBGC also proposes updating the system owner to reflect that the Office of Negotiations and Restructuring co-owns the system with the Office of General Counsel.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written comments on the proposed change described in this notice. A report has been sent to Congress and the Office of Management and Budget for their evaluation.

For the convenience of the public, the amended SORN is published in full below with changes italicized.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

SYSTEM NAME AND NUMBER:

PBGC–19: *Office of Negotiations and Restructuring/*Office of General Counsel Case Management System—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 and 1275 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel *(OGC),* PBGC, 1200 K Street NW, Washington, DC 20005.

Office of Negotiations and Restructuring (ONR), PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1303, 1310, 1321, 1322a, 1341, 1342, 1343, 1350; 1431, and 1432; 5 U.S.C. app. 105; 5 U.S.C. 301, 552(a), 552a(d), 7101; 42 U.S.C. 2000e, *et seq.;* 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to catalog, litigate, review or otherwise resolve any case or matter handled by the *ONR or the* OGC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are participants, beneficiaries, and alternate payees in pension plans covered by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1301, *et seq.;* pension plan sponsors, administrators, control group members and third parties, who are responsible for, manage, or have control over ERISA pension plans; other individuals who are identified in connection with investigations conducted pursuant to 29 U.S.C. 1303 or litigation conducted with regard to ERISA pension plans; individuals (including PBGC employees) who are parties or witnesses in civil litigation or administrative proceedings involving or concerning PBGC or its officers or employees; individuals who are the subject of a breach of personally identifiable information; individuals who are potential contractors or contractors with PBGC or are otherwise personally associated with a contract or procurement matter; individuals who receive legal advice from OGC; and other individuals (including current, former, and potential PBGC employees, contract employees, interns, and externs) who are the subject of or are otherwise connected to an inquiry, investigation, other matter handled by the OGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Draft and final versions of notes, reports, memoranda; settlements; legal opinions; agreements; correspondence; contracts; contract proposals and other procurement documents; plan documents; participant, alternate payee, and beneficiary files; initial and final PBGC determinations of ERISA matters; Freedom of Information Act (FOIA) and the Privacy Act of 1974 disclosures, determinations, appeals and decisions of those appeals; records and information obtained from other Federal, state, tribal, and local agencies and departments, including, but not limited to: Office of Personnel Management, Social Security Administration, Department of Treasury and Department of Justice; drafts and legal reviews of proposed personnel actions; ethics inquiries; personnel records; financial records; individual tax returns; litigation files; labor relations files; information provided by labor unions or other organizations; witness statements; summonses, subpoenas, discovery requests and responses; and breach reports and supporting documentation.

RECORD SOURCE CATEGORIES:

Subject individuals; pension plan participants, sponsors, administrators and third parties; Federal government records; current and former employees, contractors, interns, and externs; PBGC debt and disbursement records; insurers; the Social Security Administration; labor organizations; court records; articles from publications; and other individuals, organizations, and corporate entities with relevant knowledge/information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through *G15* apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed, in furtherance of proceedings under Title IV of ERISA, to a contributing sponsor (or other employer who maintained the plan), including any predecessor or successor, and any member of the same control group.

3. Names, addresses, and telephone numbers of employees, former employees, participants, and beneficiaries and information pertaining to debts to PBGC may be disclosed to the Department of Treasury, the Department of Justice, a credit agency, and a debt collection to collect the debt. Disclosure to a debt collection may be made only under a contract that binds

any such contractor or employee of such contractor to criminal penalties of the Privacy Act.

4. Information may be disclosed to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a court order or in connection with criminal law proceedings.

5. Information may be provided to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

6. Information may be provided to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

7. Relevant and necessary information may be disclosed to a former employee of PBGC for the purposes of: (1) Responding to an official inquiry by Federal, state, tribal or local government entity or professional licensing authority; or (2) facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where PBGC requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

8. A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement.

9. A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest.

10. A record from this system of records may be disclosed to the National Archives and Records Administration (NARA), Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the FOIA, and to facilitate use of OGIS' mediation services.

11. A record from this system may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

12. A record from this system of records may be disclosed under a Memorandum of Understanding or an Interagency Agreement to: (1) The Department of Treasury (USDT) or (2) the Department of Labor's Employee Benefits Security Administration (EBSA) to facilitate an investigation or inquiry relating to a multiemployer plan's compliance with appliable provisions under ERISA or the Internal Revenue Code, including the special financial assistance program created by the American Rescue Plan (ARP) Act of 2021 (Pub. L. 117–2).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed by assigned case number and sequential record identifier. Records are full-text indexed and information from this system may be retrieved using any free-form key, which may include names, social security number, address, representative or any other personal identifiers. For certain systems, only individuals assigned to the particular matter may retrieve associated records.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals. Paper records are kept in file folders in areas of restricted access that are locked after office hours.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with Personal Identity Verification (PIV) cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically. Further, for certain systems covered by this notice, heightened security access is required. Such access is granted by the specific permissions group assigned to monitor that particular system and only authorized employees of the agency may retrieve, review or modify those records.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request, *in accordance with 29 CFR 4902.5,* identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material will be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

HISTORY:

PBGC–19, Office of General Counsel Case Management System (last published at *83 FR 6270* (*February 13, 2018*)).

[FR Doc. 2021–18918 Filed 8–31–21; 8:45 am]

BILLING CODE 7709–02–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Submission for Renewal of a Previously Approved Information Collection: Questionnaire for Non-Sensitive Positions (SF 85)

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Suitability Executive Agent Programs, is notifying the general public and other federal agencies that OPM proposes to request the Office of Management and Budget (OMB) to renew a previously-approved information collection, Questionnaire for Non-Sensitive Positions (SF 85).

DATES: Comments are encouraged and will be accepted until October 1, 2021.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget by the following method: *http://www.regulations.gov.* Follow the instructions for submitting comments. All submissions received must include the agency name and docket number for this document. The general policy for comments and other submissions from member of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Christine Bilunka, 724–738–1190, ext. 7400, or the U.S. Office of Personnel Management, Suitability Executive Agent Programs, P.O. Box 699, Slippery Rock, PA 16057, or sent by email to *SuitEA@opm.gov.*

SUPPLEMENTARY INFORMATION: This notice announces that OPM has submitted to OMB a request for renewal of a previously-approved information collection, control number 3206–0261, Questionnaire for Non-Sensitive Positions (SF 85). The public has an additional 30-day opportunity to comment.

The Questionnaire for Non-Sensitive Positions, SF 85 is an information collection completed by applicants for, or incumbents of, Federal Government civilian positions, or positions in private entities performing work for the Federal Government under contract. The collection is used as the basis of information for background investigations to establish that such persons are:

Suitable for employment or retention in Federal employment in a low risk, non-sensitive position, or fit for employment or retention in Federal employment in the excepted service when the duties to be performed are equivalent to a low risk, non-sensitive position;

Fit to perform work on behalf of the Federal Government pursuant to the Government contract, when the duties to be performed are equivalent to a low risk, non-sensitive position;

Eligible for physical and logical access to federally controlled facilities or information systems, when the duties to be performed by the individual are equivalent to the duties performed by an employee in a low risk, non-sensitive position.

For applicants, the SF 85 is to be used only after a conditional offer of employment has been made. e-QIP (Electronic Questionnaires for Investigations Processing) is a web-based system application that houses the SF 85. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent is reduced when the respondent's personal history is not relevant to particular question, since the question branches, or expands for additional details, only for those persons who have pertinent information to provide regarding that line of questioning. Accordingly, the burden on the respondent will vary depending on whether the information collection relates to the respondent's personal history.

OPM recommends renewal of the form without any proposed changes, except to underlying authorities, which have been revised in the period since the last renewal; the Privacy Act Information Statement, to acknowledge the transfer of background investigations files from OPM to the Defense Counterintelligence and Security Agency; and the Purpose Statement, to make more clear that the form may be used for investigations for fitness for appointment to a position in the excepted service. No other changes are recommended at this time.

Ongoing assessments will occur to ensure the SF 85 reflects and collects pertinent information for the investigative process and aligns with governing policies, rules, and regulations requiring use of this form.

The 60 day **Federal Register** Notice was published on June 25, 2021 (86 FR 13524). No comments were received.

Analysis

Agency: Office of Personnel Management, Suitability Executive Agent Programs.

Title: Questionnaire for Non-Sensitive Positions (SF 85).

OMB Number: 3206–0261.

Affected Public: Individuals.

Number of Respondents: 55,040.

Estimated Time per Respondent: 120 minutes.

Total Burden Hours: 110,080.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2021–18930 Filed 8–30–21; 11:15 am]

BILLING CODE 6325–66–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92770; File No. SR–NYSE–2021–43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Term "Related Party Transactions" Under Section 314.00 of the NYSE Listed Company Manual

August 26, 2021.

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 August 19, 2021, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the provisions of Section 314.00 of the NYSE Listed Company Manual (''Manual'') in relation to the review and approval of related party transactions. 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

Section 314.00 of the Manual provides that a company's audit committee or another independent body of the board of directors, shall conduct a reasonable prior review and oversight of all related party transactions for potential conflicts of interest and will prohibit such a transaction if it determines it to be inconsistent with the interests of the company and its shareholders. For purposes of this rule, the term ''related party transaction'' refers to transactions required to be disclosed pursuant to Item 404 of Regulation S–K under the Act (but without applying the transaction value threshold of that provision). In the case of foreign private issuers, the term ''related party transactions'' refers to transactions required to be disclosed pursuant to Item 7.B of Form 20–F (but without regard to the materiality threshold of that provision).

Item 404 of Regulation S–K and Item 7.B of Form 20–F set forth the SEC's requirements for the disclosure of related party transactions by domestic issuers and foreign private issuers respectively. Related party transaction disclosures are required in a number of SEC filings, including annual reports and, in the case of domestic issuers, annual meeting proxy statements. Item 404 of Regulation S–K requires disclosure of a related party transaction when the amount involved in such transaction exceeds $120,000.[4] Item 7.B of Form 20–F requires disclosure of transactions that are ''material to the company or the related party, or any transactions that are unusual in their nature or conditions'' and also of the amount of outstanding loans (including guarantees of any kind) made by the company, its parent or any of its subsidiaries to or for the benefit of a related party. The Exchange proposes to amend Section 314.00 to provide that the review and approval requirement of that rule will be applicable only to transactions that are required to be disclosed after taking into account the transaction value and materiality thresholds set forth in Item 404 of Regulation S–K or Item 7.B of Form 20–F, respectively, as applicable.

The Exchange recently amended Section 314.00 to provide greater clarity as to the types of transactions that were specifically subject to review and approval under the rule.[5] In adopting that amendment to Section 314.00, the Exchange sought to create greater clarity and certainty for issuers by specifying that the transactions subject to review would be those that were required to be disclosed pursuant to Item 404 of Regulation S–K or Form 20–F, Item 7.B, as applicable. However, the Exchange also specified in that amendment that related party transactions would be subject to review without regard to the transaction value or materiality thresholds included in the SEC's disclosure rules.

In the period since the adoption of that amendment, it has become clear to the Exchange that the amended rule's exclusion of the applicable transaction value and materiality thresholds is inconsistent with the historical practice of many listed companies, and has had unintended consequences. The Exchange has learned that many listed companies have had a longstanding understanding that they were required to subject related party transactions to the review process required by Section 314.00 only if such transactions exceeded any applicable transaction value or materiality thresholds in the applicable SEC rules and therefore were required to be disclosed. This approach is embodied in the written related party transaction policies of many listed companies and is typically a part of the annual questionnaire completed by directors and officers in connection with the company's annual meeting. By not permitting the use of transaction value and materiality thresholds, the amendment to Section 314.00 has had the unintended effect of disrupting the normal course transactions of listed companies. Because of the amendment, many companies have been required to adopt for the first time two separate standards for related party transactions—one for disclosure and another for review and approval of transactions. This has created a significant compliance burden for issuers with respect to small transactions that are considered immaterial for purposes of other regulatory requirements. Furthermore, the Exchange believes that the review and approval of large numbers of immaterial transactions is not an effective use of the time of independent directors who have many other time-consuming oversight obligations with respect to matters that are higher risk and more material to the company.

The Exchange notes that domestic listed companies are also required to comply with the requirements of Section 303A of the Manual with respect to director independence, including the bright line independence tests set forth in Section 303A.02(b). This proposal does not seek in any way to modify listed companies' obligation to comply with the independence requirements of Section 303A or listed companies' obligations to make disclosures to the Exchange with respect to their compliance with those obligations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is consistent with the protection of

[4] Item 404(c) separately sets forth the application of Item 404 to promoters and certain control persons. Item 404(d) separately sets forth the application of Item 404 to smaller reporting companies.

[5] *See* Securities Exchange Act Release No. 91471 (April 2, 2021); 86 FR 18362 (April 8, 2021) (SR–NYSE–2020–85).

[6] 15 U.S.C. 78f(b)(5).

investors to amend Section 314.00 to conform the related party transactions that are subject to the review and approval requirements of Section 314.00 to those transactions that are subject to the applicable requirements of Item 404 of Regulation S–K and Item 7.B of Form 20–F. In adopting the applicable provisions of Regulation S–K and Form 20–F, the SEC determined which related party transactions must be publicly disclosed. The Exchange believes it is therefore consistent with the protection of investors to apply the same standards in determining which transactions should be subject to review and approval under Section 314.00. The Exchange notes that the Nasdaq Stock Market takes such an approach in its rule with respect to the review of related party transactions, which requires the review of transactions subject to disclosure under Item 404 of Regulation S–K and Item 7.B of Form 20–F, including the transaction value and materiality thresholds of those regulations.[7]

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.

Intramarket Competition

All companies listed on the NYSE will be subject to the amended form of Section 314.00. Therefore, the Exchange does not believe that the proposed amendment will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition

The purpose of the proposed amendment is to provide for an efficient and transparent framework for the review and approval of related party transactions at all listed companies. As such, it is focused solely on corporate governance and is not intended to confer any commercial or competitive benefit on NYSE listed companies. In addition, the proposal substantively conforms Section 314.00 to the related party transaction approval rule of Nasdaq, the other primary listing venue for operating companies in the United States. For the foregoing reasons, the Exchange does not believe that the proposed amendment will have any meaningful effect on intermarket competition for the listing of operating companies.

[7] *See* Nasdaq Marketplace Rule 5630.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] 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) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[12] 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:

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 15 U.S.C. 78s(b)(2)(B).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2021–43 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–NYSE–2021–43. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2021–43 and should be submitted on or before September 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–18802 Filed 8–31–21; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10968, 34–92783; File No. 265–28]

Investor Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Thursday, September 9, 2021 from 10:00 a.m. until 3:30 p.m. (ET). Written statements should be received on or before September 8, 2021.

ADDRESSES: The meeting will be conducted by remote means and/or at the Commission's headquarters, 100 F St. NE, Washington, DC 20549. The meeting will be webcast on the Commission's website at *www.sec.gov*. Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov*. Please include File No. 265–28 on the subject line; or

Paper Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Marc Oorloff Sharma, Chief Counsel, Office of the Investor Advocate, at (202) 551–3302, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, except during that portion of the meeting reserved for an administrative work session during lunch. Persons needing special accommodations to take part because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**. The agenda for the meeting includes: Welcome remarks; approval of previous meeting minutes; a panel discussion entitled ''Reimagining Investor Protection in a Digital World: the Behavioral Design of Online Trading Platforms''; a panel discussion regarding competition and regulatory reform at the PCAOB; a discussion of a recommendation regarding 10b5–1 plans; a discussion of a recommendation regarding SPACs; subcommittee reports; and a non-public administrative session.

Dated: August 27, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–18908 Filed 8–31–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 34–92766; IA–5833; File No. S7–10–21]

RIN 3235–AN00

Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology To Develop and Provide Investment Advice

AGENCY: Securities and Exchange Commission.

ACTION: Request for information and comment.

SUMMARY: The Securities and Exchange Commission (the ''Commission'' or the ''SEC'') is requesting information and public comment (''Request'') on matters related to: Broker-dealer and investment adviser use of ''digital engagement practices'' or ''DEPs'', including behavioral prompts, differential marketing, game-like features (commonly referred to as ''gamification''), and other design elements or features designed to engage with retail investors on digital platforms (*e.g.,* websites, portals and applications or ''apps''), as well as the analytical and technological tools and methods used in connection with these digital engagement practices; and, investment adviser use of technology to develop and provide investment advice. In addition to or in place of responses to questions in this release, retail investors seeking to comment on their experiences may want to submit a short Feedback Flyer.

DATES: Comments should be received on or before October 1, 2021.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. S7–10–21 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–10–21. 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 of submission. The Commission will post all comments on the Commission's website (*http://www.sec.gov*). Comments are also 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. Operating conditions may limit access to the Commission's public reference room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available. Retail investors seeking to comment on their experiences with online trading and investing platforms may want to submit a short Feedback Flyer, available at Appendix A.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this Request. A notification of the inclusion in the comment file of any such materials will be made available

on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Division of Trading and Markets, Office of Chief Counsel, at (202)-551–5550 or *tradingandmarkets@sec.gov;* Division of Investment Management, Investment Adviser Regulation Office at (202) 551–6787 or *IArules@sec.gov.*

SUPPLEMENTARY INFORMATION: The Commission is requesting information and public comment on matters related to (1) broker-dealer and investment adviser use of digital engagement practices on digital platforms, as well as the analytical and technological tools and methods used in connection with such practices; and (2) investment adviser use of technology to develop and provide investment advice.

I. Introduction

A. Background

With the advent and growth of digital platforms for investing, such as online brokerages and robo-advisers, and more recently, mobile investment apps and portals, broker-dealers and investment advisers (referred to collectively as ''firms'') have multiplied the opportunities for retail investors to invest and trade in securities. This increased accessibility has been one of the many factors associated with the increase of retail investor participation in U.S. securities markets in recent years.

As discussed in Section II of this Request, firms employ a variety of digital engagement practices when interacting with retail investors through digital platforms. Examples of digital engagement practices include: Social networking tools; games, streaks and other contests with prizes; points, badges, and leaderboards; notifications; celebrations for trading; visual cues; ideas presented at order placement and other curated lists or features; subscriptions and membership tiers; and chatbots.

Various analytical and technological tools and methods can underpin the creation and use of these practices, such as predictive data analytics and artificial intelligence/machine learning (''AI/ML'') models. Firms may use these tools to analyze the success of specific features and practices at influencing retail investor behavior (*e.g.,* opening new accounts or obtaining additional services, making referrals, increasing engagement with the app, or increasing trading). Based on the results obtained from such AI/ML models and data analytics, firms may tailor the features with which different retail investor segments interact on the firms' digital platforms, or target advertisements to specific investors based on their known behavioral profiles.

As discussed in Section III of this Request, some investment advisers also use these tools to develop and provide investment advice, including through online platforms or as part of more traditional investment advisory services. Investment advisers can use analytical tools to learn more about their clients and develop and provide investment advice based on that information. These developments may provide potential benefits and risks for investment advisers and their clients.

B. Purpose of Request

The Commission is issuing this Request related to the use and development of digital engagement practices by firms on their digital platforms, in order to:

1. Assist the Commission and its staff in better understanding and assessing the market practices associated with the use of DEPs by firms, including: (1) The extent to which firms use DEPs; (2) the types of DEPs most frequently used; (3) the tools and methods used to develop and implement DEPs; and (4) information pertaining to retail investor engagement with DEPs, including any data related to investor demographics, trading behaviors, and investment performance.

2. Provide a forum for market participants (including investors), and other interested parties to share their perspectives on the use of DEPs and the related tools and methods, including potential benefits that DEPs provide to retail investors, as well as potential investor protection concerns.[1]

3. Facilitate an assessment by the Commission and its staff of existing regulations and consideration of whether regulatory action may be needed to further the Commission's mission including protecting investors and maintaining fair, orderly, and efficient markets in connection with firms' use of DEPs and related tools and methods.

In addition to addressing the questions below, the Commission encourages commenters to provide or identify any data and other information in furtherance of the purposes articulated in this Request.

II. Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches

A. DEPS

The Commission is issuing this Request, in part, to develop a better understanding of the market practices associated with firms' use of DEPs, which broadly include behavioral prompts, differential marketing, game-like features, and other design elements or features designed to engage retail investors. The Commission is aware of a variety of DEPs that may be used by firms, including the following:[2]

- *Social Networking Tools.* Digital platforms may be linked to internet content, enabling users to access social sentiment on the platform. Some digital platforms may embed social networking tools into their platforms, or enhance existing tools to allow an investor to create an on-line persona or avatar. Certain digital platforms enable investors to copy the trades of other investors (known as ''copy trading'') in certain types of investments.[3]
- *Games, Streaks and Other Contests with Prizes.* Some digital platforms may employ games that use interactive graphics and offer prizes (*e.g.,* slot-machine style interactive graphics, interactive wheels of fortune, or virtual ''scratch-off'' lottery tickets), for example, in connection with account opening. Some digital platforms may offer prizes to investors for completing certain ''to-do lists'' or tasks frequently within a specified time period (known as ''streaks'') or for other types of contests (including performance-based contests). Prizes may include free stock, cash, gaining access to additional features on the platforms, or a free trial period for a subscription to certain market data or levels of service. Tasks

[1] To further enable retail investors to share their perspectives, the Commission is issuing a user-friendly ''Feedback Flyer.'' The Commission has determined that this usage is in the public interest and will protect investors, and therefore is not subject to the requirements of the Paperwork Reduction Act of 1995. *See* Sections 19(e) and (f) of the Securities Act of 1933 (''Securities Act''), 15 U.S.C. 77s(e) and (f). Additionally, for the purpose of developing and considering any potential rules relating to this rulemaking, the agency may gather from and communicate with investors or other members from the public. *See* Securities Act section 19(e)(1) and (f), 15 U.S.C. 77s(e)(1) and (f).

[2] Broker-dealers' and investment advisers' use of DEPs and the related tools and methods must comply with existing rules and regulations. By identifying observed practices and soliciting comment on them, the Commission is not expressing a view as to the legality or conformity of such practices with the federal securities laws and the rules and regulations thereunder, nor with the rules of self-regulatory organizations (''SROs'').

[3] It is our understanding that copy trading is currently offered in certain investments, such as cryptocurrencies, in the U.S. and may be offered more broadly in other jurisdictions. Copy trading in securities may raise regulatory concerns under the U.S. federal securities laws, including potential broker-dealer and investment adviser status issues.

that may generate awards include referring others to the platform, engaging in community forums, linking a bank account, funding an account, trading, or promoting the app on social media.

• *Points, Badges, and Leaderboards.* Some digital platforms may use points or similar ''scorekeeping'' related to a specific area of activity. For example, some platforms offer ''paper trading'' (*i.e.,* simulated trading) competitions that enable investors to practice trading without real money. Certain platforms also offer badges as visual markers of achievement as well as leaderboards to rank individuals based on performance-based criteria developed by the firm.

• *Notifications.* Some digital platforms may use notifications via email, text, or other means (*e.g.,* push notifications on mobile devices). In some cases, investors can opt-in or opt-out of notifications; in others, notifications may be set by default with no ability to opt-out. Investors may receive notifications indicating a certain stock is up or down, noting a list of stocks qualifying as top ''movers'' (*i.e.,* largest percentage change in price), or reminding them that it has been a certain number of days since they last engaged in a trade. Notifications may also be used to attempt to reassure investors during periods of market volatility.

• *Celebrations for Trading.* Some digital platforms may have embedded animations and graphics, such as digital confetti or crowds applauding, that ''celebrate'' when investors enter orders to purchase stock or options.

• *Visual Cues.* Interface design elements may provide visual cues, including by displaying certain information more prominently than other information. In some cases, visual cues are targeted specifically to the investor. For example, some digital platforms' user interfaces shift the coloration of the entire screen between green and red based on an investor's portfolio performance. Some digital platforms present relevant news or other pieces of information to the user immediately once the portfolio turns negative.

• *Ideas Presented at Order Placement and Other Curated Lists or Features.* Some digital platforms may present ''ideas'' prior to allowing the investor to place an order. These ideas may involve curated lists or features, news headlines, etc.

• *Subscriptions and Membership Tiers.* Some firms may offer subscriptions or tiered memberships. Examples of additional features that may be provided include access to research reports, briefs, webcasts, and newspaper subscriptions; invitations to sports and industry events; credit line access; and an exemption or reduction of fees. In some cases, investors may be upgraded automatically based on balances and holdings reaching certain thresholds. Some firms may offer free subscription trials.

• *Chatbots.* Some digital platforms may offer chatbots, or computer programs that simulate live, human conversation. Chatbots may be offered to respond to investor inquiries relating to stock prices, account information, or customer service matters.

DEPs may be designed to encourage account opening, account funding, and trading, or may be designed solely to increase investor engagement with investing apps, as there may be value in the number of investors interacting with the platform, how often they visit, and how long they stay.

The use of DEPs carries both potential benefits and risks for retail investors. Simplified user interfaces and game-like features have been credited with making investment platforms more accessible to retail investors (in particular, younger retail investors),[4] and assisting in the development and implementation of investor education tools. Others have noted that DEPs can encourage retail investors to increase their contributions to retirement accounts and to engage in other activities that are traditionally viewed as wealth-building exercises.[5]

On the other hand, DEPs can potentially harm retail investors if they prompt them to engage in trading activities that may not be consistent with their investment goals or risk tolerance. Some have expressed concerns that DEPs encourage: (1) Frequent trading;[6] (2) using trading strategies that carry additional risk (*e.g.,* options trading and trading on margin); and (3) trading in complex securities products.[7] DEPs also may employ what some researchers have called ''dark patterns,'' described as user interface design choices that are knowingly designed to ''confuse users, make it

[4] *See, e.g.,* Evie Liu, *The Stock Market is Attracting New Investors. Here Are 3 Trends to Know.,* Barron's (Apr. 13, 2021), *https://www.barrons.com/articles/the-stock-market-is-attracting-new-investors-here-are-3-trends-to-know-51618273799;* Broadridge, *Insights on the U.S. Investor* (2020) (''Zero commission trades, mobile trading applications and the ability to acquire fractional shares are making it more attractive and easier for younger, lower asset investors to trade securities. This is bolstering Millennials' ability to participate more actively in equity investing.''); Maggie Fitzgerald, *Now Teenagers Can Trade Stocks With Fidelity's New Youth Investing Accounts,* CNBC (May 18, 2021), *https://www.cnbc.com/2021/05/18/now-teenagers-can-trade-stocks-with-fidelitys-new-youth-investing-accounts.html?&qsearchterm=margin%20debits* (''Of the 4.1 million new accounts that Fidelity added in the first quarter of 2021, 1.6 million were opened by retail investors 35 and younger, an increase of more than 222% from a year prior.''); Jennifer Sor, *Young Investors Drive Increased Use of Investing Apps,* Los Angeles Business Journal (Aug. 3, 2020), *https://labusinessjournal.com/news/2020/aug/03/young-investors-drive-increased-use-investing-apps/.*

[5] *See, e.g.,* Chris Carosa, *Are You Ready to Play the 401(k) Game? Hint: You Already Are, Forbes* (Apr. 14, 2021), *https://www.forbes.com/sites/chriscarosa/2021/04/14/are-you-ready-to-play-the-401k-game-hint-you-already-are/?sh=4d6e1b8674ab;* Greg Iacurci, *MassMutual Turns to Video Games to Boost Retirement Savings, Investment News* (July 18, 2016), *https://www.investmentnews.com/massmutual-turns-to-video-games-to-boost-retirement-savings-66476.*

[6] Some have argued that certain compensation practices (such as payment for order flow or ''PFOF,'' in combination with zero commissions) create incentives for firms to use DEPs to encourage frequent trading, and that these incentives may not be transparent to retail investors. *See, e.g., Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part II: Hearing Before the H. Comm. on Fin. Servs.,* 113th Cong. (2021) (statement of Vicki L. Bogan, Associate Professor, Cornell University), *https://docs.house.gov/meetings/BA/BA00/20210317/111355/HHRG-117-BA00-Wstate-BoganV-20210317.pdf.* One form of PFOF is a practice wherein wholesale broker-dealers (often referred to as ''principal trading firms'' or ''electronic market makers'') offer payment to retail broker-dealers in exchange for the right to trade principally with (or ''internalize'') their customer order flow. *See* 17 CFR 10b–10(d)(8). Although PFOF is not prohibited, a broker-dealer must not allow PFOF to interfere with its efforts to obtain best execution for its customers' transactions. *See* Payment for Order Flow, Securities Exchange Act of 1934 (''Exchange Act'') Release No. 34902 (Oct. 27, 1994) [59 FR 55006, at 55009 & n.28 (Nov. 2, 1994)]; *see also* Robinhood Financial, LLC, Exchange Act Release No. 90694 (Dec. 17, 2020) (settled order) (the Commission brought an enforcement action against a broker-dealer for willfully violating Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 17(a) of the Exchange Act and Rule 17a–4 thereunder, for, among other things, failing to take appropriate steps to assess whether its higher PFOF rates were adversely affecting customer execution prices).

[7] In congressional hearings related to market events in January 2021, investor protection concerns were identified relating to the use of certain types of DEPs, including advertisements targeted towards specific groups of investors on digital platforms and game-like features on mobile apps. *See Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide: Hearing Before the H. Comm. on Fin. Servs.,* 113th Cong. (2021), *https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407107; Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part II: Hearing Before the H. Comm. on Fin. Servs.,* 113th Cong. (2021), *https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=406268; Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part III: Hearing Before the H. Comm. on Fin. Servs.,* 113th Cong. (2021), *https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407748; Who Wins on Wall Street? GameStop, Robinhood, and the State of Retail Investing: Hearing Before the S. Comm. On Banking, Hous., & Urban Affairs,* 113th Cong. (2021), *https://www.banking.senate.gov/hearings/who-wins-on-wall-street-gamestop-robinhood-and-the-state-of-retail-investing.*

difficult for users to express their actual preferences, or manipulate users into taking certain actions.'' [8]

In the questions below, the Commission's request for comment pertains to all DEPs on brokerage and advisory digital platforms, including, but not limited to, those identified above.

Industry Practices

1.1 What types of DEPs do firms use (or in the future expect to use) on digital platforms and what are the intended purposes of each type of DEP used? For example, are particular DEPs designed to encourage or discourage particular investor actions or behaviors, such as opening of accounts, funding of accounts, trading, or increasing engagement with the app or platform? To what extent and how are firms using DEPs such as notifications (*e.g.,* push notifications or text messages) or other design elements and features (*e.g.,* design aesthetics in the user interface) as a means to alter (or nudge [9]) retail investor behavior or otherwise to encourage or discourage certain behaviors or activities? If so, what types of design elements are used and how are they used? Please explain any such specific design elements, how they intend to encourage specific retail investor behaviors, and whether and to what extent they are achieving their intended purposes.

1.2 To what extent do firms that utilize DEPs provide retail investors the ability to opt in or out of interacting with those DEPs when using the firm's digital platform? To what extent, and how, are firms tailoring or personalizing DEPs to a particular retail investor?

1.3 What types of firms use DEPs on their digital platforms, and on what types of platforms? Are these practices more prevalent among certain types of firms, or on certain types of platforms? How prevalent is the use of DEPs by broker-dealers? How prevalent is the use of DEPs by investment advisers? Which types of DEPs are most prevalent? For firms that have chosen not to use DEPs or certain DEPs, what are their reasons? Are firms that are not currently using DEPs considering adopting such features in the future?

1.4 What market forces are driving the adoption of DEPs on digital platforms and how? For example, to what extent and how is the use of DEPs influenced or driven by market practices related to compensation and revenue (*e.g.,* ''zero commission'' and PFOF)? What types of compensation and revenue arrangements influence or drive market practices related to the use of DEPs? Do such arrangements vary across product types and asset classes (*e.g.,* options, other complex products)? How does the competition for new customers or clients or the retention of existing customers or clients drive firm adoption or use of DEPs?

1.5 Are DEPs used to promote or otherwise direct retail investors to specific securities or certain types of securities, investment strategies, or services? If so, what types of securities, investment strategies, and services, what types of DEPs are used, and how are the DEPs used for these purposes? Do firms use DEPs to promote or otherwise direct retail investors to securities, investment strategies, or services that are more lucrative for the firm or that may be riskier to the retail investor than others—such as: margin services, options trading, proprietary products, products for which the firm receives revenue sharing or other third-party payments, or other higher fee products? Do firms use DEPs that are or can be tailored to the retail investor's investment profile and risk tolerance? If so, how? If not, why not?

1.6 To what extent and how do firms monitor the use and proper functioning of DEPs? For example, to what extent and how do firms monitor notifications that retail investors receive or see from or on the firm's digital platforms?

1.7 To what extent and how do firms use DEPs or alter their use of DEPs in response to changes in the market price volatility and trading volumes in securities, both for specific assets and the market as a whole? For example, to what extent and how do firms use DEPs to notify retail investors of market events? To what extent and how do firms use DEPs to notify retail investors of firm policies and procedures or other actions that may be taken by the firm, such as in response to market events (*e.g.,* imposition of trading restrictions)? What type of DEPs are used, what information is communicated through DEPs in such circumstances, and what is the timing of such communications?

1.8 Are firms seeking to use DEPs specifically to increase investor education? If so, how? What type of investor educational content is provided, how is that content chosen, and what types of DEPs are used? For example, are firms using DEPs to educate investors about the risks of certain activities, such as trading on margin or options trading? Are firms using DEPs to help investors understand how to make investment choices that are consistent with their investment objectives? If so, what types of DEPs are they using for these purposes, and how are they used? Have firms tested or otherwise observed the effectiveness of any such educational efforts at increasing retail investor knowledge and understanding of investing concepts including risks? Please explain and include any relevant data or information.

1.9 Do firms use DEPs to encourage longer-term investment activities, including, but not limited to, increased contributions to or establishment of retirement accounts? If so, how?

1.10 Do firms that utilize DEPs offer live, phone-based customer support or customer support through live, human-directed online support (*i.e.,* online conversations that are not through an automated chatbot)? Does the availability of this type of support depend on the type of account or investments held (*e.g.,* investors holding riskier products) or on account balances or asset thresholds? If firms offer live, phone-based customer support or human-directed online support, what training do firms offer their customer support personnel, and what monitoring and quality assurance programs are used? How do firms interact with investors when the platform is unavailable—for example, when the firm has lost internet service or when the platform is undergoing maintenance? What alternative means of communication are available to investors during those times?

1.11 To what extent and how do firms target certain specific groups of retail investors (including prospective customers or clients) through DEPs? What types of DEPs are used, and how are they targeted to specific retail investors or groups of retail investors? What factors do firms look to when deciding which groups of retail investors to target for each type of DEP?

1.12 What feedback, positive or negative, or complaints do firms receive from retail investors relating to the use of DEPs?

Investor Characteristics and Practices

1.13 What types of retail investors are customers or clients of firms that utilize DEPs? How does this customer or client base differ, if at all, from those firms that do not use such features—including as to age, prior investment experience, education, net worth, risk

[8] *See* Jamie Luguri and Lior Jacob Strahilevitz, *Shining a Light on Dark Patterns,* 13 Journal of Legal Analysis 43 (2021), *https://academic.oup.com/jla/article/13/1/43/6180579.*

[9] Richard Thaler and Cass Sunstein define ''nudge'' as ''any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives.'' *See* Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* 6 (Penguin Books 2009).

tolerance, liquidity needs, investment time horizon, and investment objectives? What types of retail investors engage most frequently with DEPs on platforms that use them? Do firms utilize DEPs for only certain types of customers or clients? If so, which ones and why? To what extent and how have DEPs enabled firms to reach, educate, and provide experience to first-time retail investors? To what extent and how have DEPs enabled retail investors to access specific investments or investment strategies more quickly and/or with less investing experience than under traditional methods? Please provide or identify any relevant data and other information.

1.14 What trading or investment activities are retail investors engaging in through digital platforms that use DEPs? For retail investors who were investing prior to using digital platforms that use DEPs, how have their activities with respect to trading and investing changed since they started using such platforms and/or were first exposed to DEPs? For example, how often do retail investors engage in trading or investing through such platforms, how often did they engage in trading or investing prior to using such platforms, and how has such frequency changed as a result of using such platforms and/or being exposed to DEPs? How often do retail investors engage in other ways with such platforms (*e.g.,* education, social features, and games)? How do retail investors learn of these platforms (*e.g.,* news coverage, social media, internet search, paid advertisements)? Do firms collect data on how retail investors learn about or use the platforms, such as by asking as part of account opening? Please provide or identify any relevant data and other information.

1.15 What customer and client trends have been observed in connection with or as a result of the adoption and implementation of DEPs? Specifically, is data available regarding changes in customer or client behavior, including in accounts opened, amount invested, frequency of deposits, order frequency, order size (including fractional shares), types of securities traded, the risk profiles of securities that are traded, use of margin, volume of customer complaints, and the adoption and use of new features on the firms' digital platforms? Is there data showing how, for customers with a similar investment profile, these changes compare with any changes in the behavior of customers or clients of firms that do not utilize DEPs? Is there data regarding numbers or percentages of new accounts opened by retail investors that received targeted communications from the firm as compared to new accounts opened by retail investors that had received no prior communications from the firm? Please provide or identify any relevant data and other information. What experience did retail investors have in the market prior to interacting with DEPs? What percentage of retail investors invested for the first time after interacting with a DEP? What role did DEPs play in their decision to begin investing?

Public Perspectives and Data

1.16 What are the benefits associated with the use of DEPs from the perspective of firms, retail investors, and other interested parties? How do these benefits differ depending upon the type of feature used? Are there specific types of DEPs or specific uses of DEPs that have the potential to be particularly beneficial to retail investors? Are there significant investor protection benefits that arise from the use of DEPs generally or particular DEPs? Which particular DEPs and why? Are there ways in which DEPs are particularly successful at conveying information to retail investors in a way that they can process and implement effectively? Please provide or identify any relevant data and other information.

1.17 What are the risks and costs associated with the use of DEPs from the perspective of firms, retail investors, and other interested parties? How do these risks or costs differ depending upon the type of feature used? Are there significant investor protection concerns that arise from the use of DEPs generally or particular DEPs? Are there particular DEPs that may pose unique risks or elevated investor protection concerns? Are there characteristics of particular DEPs that may encourage retail investors to engage in more frequent trading or invest in higher risk products or strategies? Please provide or identify any relevant data and other information.

1.18 What experience do retail investors have with DEPs? Do retail investors believe that DEPs have caused a change in their investing behavior or type of investments? If so, how? Do retail investors feel like DEPs help or hurt their overall investment performance? Do retail investors believe DEPs have helped increase their understanding of securities markets and investing? If so, how? Do retail investors believe DEPs have made trading, investing, and monitoring their investments more or less accessible to them? Do retail investors believe DEPs have increased or decreased the benefits or risks of trading or investing in securities products? Do retail investors believe that they would have invested in the markets if only more traditional methods were available? Do retail investors believe that they would trade less frequently, invest in different products, or use different investment strategies if only more traditional methods were available?

1.19 Do retail investors believe they are receiving investment advice or recommendations from DEPs or certain types of DEPs? If so, please explain. What types of DEPs do retail investors believe are most beneficial, and what types of features are most harmful, in meeting their own trading or investment objectives?

1.20 For retail investors who have previously invested with the assistance of a financial professional, how do they believe their investing experience has changed as a result of interacting with a digital platform as opposed to a financial professional?

1.21 How do commenters view the educational services currently provided by digital platforms? How could firms adopt or modify DEPs to facilitate and increase opportunities for investor education and encourage longer-term investment activities, including, but not limited to, through increased contributions to or establishment of retirement accounts?

1.22 What similarities and differences exist between the functionality, and overall user experience, including with respect to DEPs, on a digital trading or investment platform versus similar practices on digital platforms in other contexts (*e.g.,* shopping, fitness, entertainment)? Does a retail investor's experience with these types of features in other contexts affect the retail investor's trading or investment activity, and their engagement with the broker-dealer or investment adviser's digital platform where DEPs are employed? Do commenters believe that certain types of DEPs are more, less, or as appropriate in the investing context than in other contexts? What types of features and why?

1.23 Have researchers (including in the fields of behavioral finance, economics, psychology, marketing, and other related fields) studied the use of DEPs by broker-dealers and investment advisers? In particular, how have these practices been studied or observed to influence or reinforce the behavior of retail investors? To the extent retail investors have shifted from investing through human interaction (with a financial professional) to digital interaction (on a digital platform), how has that shift affected the behavior of retail investors? Please identify any relevant literature or data, including

research related to the use of similar practices in other fields that could assist the Commission in its consideration of these issues.

1.24 Is there research in the fields of experimental psychology and marketing that contains evidence regarding the ability of DEPs to influence retail investors? Are there findings in those fields that suggest retail investors may not be fully aware that they have been influenced by a particular DEP?

1.25 Do studies of gambling or addiction offer evidence regarding whether and to what extent the immediate positive feedback provided by certain DEPs may influence retail investor decision-making?

1.26 How do commenters view the disclosures that firms are providing in connection with or specifically addressing the use of DEPs and the timing of such disclosures? In particular, how effective are disclosures at informing retail investors of any associated conflicts of interest presented by the use of DEPs and how DEPs could influence them and their trading and investing behavior? How accessible are these disclosures to retail investors engaging with DEPs? Please identify any relevant data or other information.

B. DEP-Related Tools and Methods

In order to develop, test, and implement these practices, and thereafter to assess their effectiveness, firms may use numerous analytical and technological tools and methods.[10] From a technological perspective, these tools and methods can employ predictive data analytics and AI/ML models—including deep learning, supervised learning, unsupervised learning, and reinforcement learning processes.[11] These tools and methods can be designed to build and adapt DEPs based on observable investor activities. Such adaptations may be based on the AI/ML models' understanding of the neurological rewards systems of retail investors (obtained in the interactions between each retail investor and the firm's investment platform), and may be utilized to develop investor-specific changes to each retail investor's user experience.

Relatedly, firms that utilize AI/ML models may utilize model risk management to provide a governance framework for these models throughout their life cycle in order to account for AI/ML-specific risks. Technological tools and methods also include the use of natural language processing (''NLP'') and natural language generation (''NLG''). These specific uses of AI/ML may be employed to transform user interfaces and the interactions that retail investors have on digital platforms by developing an understanding of the investor's preferences and adapting the interface and related prompts to appeal to those preferences.[12]

Beyond technological tools, firms may engage in various forms of research in order to help shape the DEPs developed and implemented on their platforms. This may include consultations with behavioral science professionals, and cross-industry research intended to identify those customer engagement practices used in other industries that have proven most effective.

Industry Practices

2.1 To what extent, and how, do firms use (or in the future expect to use) tools based on AI/ML (including deep learning, supervised learning, unsupervised learning, and reinforcement learning) and NLP and NLG, to develop and evolve DEPs? What are the objective functions of AI/ML models (*e.g.* revenue generation)? What are the inputs relied on by those AI/ML models (*e.g.,* visual cues or feedback)? Does the ability to collect individual-specific data impact the effectiveness of the ML model in maximizing its objective functions?

2.2 To what extent, and how, do firms use (or in the future expect to use) behavioral psychology to develop and evolve platforms or DEPs? To what extent, and how, do firms use (or in the future expect to use) predictive data analytics to develop and evolve DEPs? To what extent, and how, do firms use ''dark patterns'' [13] in connection with DEPs? To what extent do firms utilize these types of tools, analytics, and methods to modify DEPs over time, tailored to a specific retail investor's history on the platform? Which types of tools and methods are used for these and other purposes?

2.3 What types of research, information, data, and metrics are firms collecting, acquiring, and using in connection with the tools and methods identified above, or otherwise to design, implement, and modify DEPs and to assess their effectiveness? What are the sources for such information and data (*e.g.,* proprietary research, user data, third-party behavioral research, consultants, other service providers)? Does this research, information, data, and metrics, indicate whether DEPs affect trading frequency, volume, and results? If so, how?

2.4 How are firms using cross-industry research and sources to design, implement, and modify DEPs? Specifically, how are firms using techniques employed, and lessons learned, within industries like retail shopping, video gaming, and video or music streaming services? What features originally adopted in other industries have been utilized and implemented by firms to increase user engagement? How has the use of such features impacted investor activity on digital platforms?

2.5 To what extent, and how, do firms test or otherwise assess how their DEPs affect investor behavior and investing outcomes? What metrics are used for these assessments? What data and other results have such tests and assessments yielded? Have firms found that DEPs can be developed, evolved and implemented in order to affect retail investors' trading or investment behavior, either individually or as a group? Have firms found that those behaviors can be affected in a statistically significant way? If so, how? What controls do firms have in place to monitor the impact of DEPs on investor outcomes? How do firms incorporate any testing and monitoring into their policies and procedures?

2.6 How do firms develop, test, deploy, monitor, and oversee the tools and methods they use, including any AI/ML models (including deep learning, supervised learning, unsupervised learning, and reinforcement learning), NLP, NLG, or other types of artificial intelligence? To what extent are these tools and methods proprietary to firms or offered by third parties? Do relationships with vendors result in conflicts of interest, and if so, what types of conflicts of interest? For example, are broker-dealers or investment advisers affiliated with these providers, or does compensation of the provider vary based upon investor activity? What formal governance

[10] In some cases, firms may rely on in-house and proprietary tools and methods to develop, test and implement DEPs, and in others, firms may use third-party service providers to assist in the DEP development process.

[11] *See, e.g.,* Department of the Treasury et al., *Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning* (Feb. 2021) [86 FR 16837, 16839–40 (Mar. 31, 2021)] (''Treasury RFI''); FINRA, *Artificial Intelligence (AI) in the Securities Industry* 5 (June 2020) (''FINRA AI Report''), *https://www.finra.org/sites/default/files/2020-06/ai-report-061020.pdf;* Financial Stability Board, *Artificial Intelligence and Machine Learning in Financial Services: Market Developments and Financial Stability Implications* (Nov. 1, 2017) (''FSB AI Report''), *https://www.fsb.org/wp-content/uploads/P011117.pdf.*

[12] *See, e.g.,* FSB AI Report, *supra* note 11, at 14–15 (finding that chatbots are being introduced by a range of financial services firms, often in mobile apps or social media, and that chatbots are ''increasingly moving toward giving advice and prompting customers to act'').

[13] *See supra* note 8.

mechanisms do firms have in place for oversight of the vendors they use for these purposes? What model risk management steps do firms undertake? How do firms incorporate these practices and mechanisms into their policies and procedures?

2.7 What type of data concerning retail investors is used to develop, evolve, implement, test and run DEPs? How is this data used? For example, are firms using data on how retail investors—individually and/or when grouped together—have engaged with their digital platform (including trading or investment activity) following exposure to DEPs? If so, how? Are firms tailoring or personalizing DEPs to individual retail investors or groups (or sub-groups) of retail investors? If so, how? Are firms collecting information about specific identifiers attributable to particular retail investors or groups (or sub-groups) of retail investors? If so, what types of specific identifiers are collected? Do firms use such identifiers (or others) in connection with determining the location of retail investors? If so, how do firms use location information? Do firms seek to cause any particular types of engagement with DEPs? If so, how? Are there other ways firms are using data concerning retail investors to develop, evolve, implement, test, and run DEPs?

2.8 To what extent do firms purchase data from third-party vendors, including data concerning retail investors, to develop, evolve, implement, test, and run DEPs? How are firms utilizing data acquired from third-party vendors to develop, evolve, implement, test, and run DEPs? Are firms using data obtained from third-party vendors to tailor or personalize DEPs to individual retail investors? If so, how? To what extent do firms sell or otherwise share data about their own customers' or clients' behavior on their digital platforms, and who are the primary purchasers or recipients of that data?

2.9 To the extent that firms use AI/ML to develop, evolve, implement, test, and run DEPs, are they ensuring that the AI/ML is explainable and reproducible? [14] If so, how?

2.10 Are there any particular challenges or risks that firms face in using AI/ML (including deep learning, supervised learning, unsupervised learning, and reinforcement learning), including AI developed or provided by third parties? If so, what are they and how do firms address such challenges or impediments and any risks associated with them? Have firms found that using AI/ML or retail investor data gathered in connection with DEPs raises unique issues related to financial privacy, information security, or identity theft prevention?

2.11 To what extent and how do firms employ controls to identify and mitigate any biases or disparities that may be perpetuated by the use of AI/ML models [15] in connection with the use of DEPs? For example, do firms evaluate the outputs of their AI/ML models to identify and mitigate biases that would raise investor protection concerns? Do firms utilize human oversight to identify biases that would raise investor protection concerns, in both the initial coding of AI/ML models and the resulting outputs of those models?

Public Perspectives and Data

2.12 What are the benefits associated with the use of the tools and methods identified above (*e.g.,* AI/ML, predictive data analytics, cross-industry research, behavioral science) in connection with the design, implementation, and modification of DEPs from the perspective of firms, retail investors, and other interested parties? How do these benefits differ depending upon the type of tools or methods? Do the tools and methods mitigate, or have the potential to mitigate, biases in the market that may have prevented participation by some retail investors (*e.g.,* by lowering barriers to entry)? Please provide or identify any relevant data and other information.

2.13 What are the risks and costs associated with the use of the tools and methods identified above (*e.g.,* AI/ML, predictive data analytics, cross-industry research, behavioral science) in connection with the design, implementation, and modification of DEPs from the perspective of firms, retail investors, and other interested parties? How do these risks differ depending upon the type of tools or methods used? What are the most significant investor protection concerns arising from or associated with the use of such tools and methods by broker-dealers and investment advisers in the context of DEPs? Please provide or identify any relevant data and other information.

2.14 What are the similarities and differences between the use of the types of tools and methods identified above in the context of DEPs versus other contexts? Do commenters believe that certain types of tools or methods are more, less, or as appropriate in the investing context than in other contexts? Please provide or identify any relevant data and other information.

2.15 Are there any particular challenges or risks associated with the use of AI/ML (including deep learning, supervised learning, unsupervised learning, and reinforcement learning), including AI developed or provided by third parties? If so, what are they and how should firms address such challenges or impediments and any risks associated with them? What model risk management steps should firms undertake? Does the use of AI/ML or retail investor data gathered in connection with DEPs raise unique issues related to financial privacy, information security, or identity theft prevention?

2.16 Have researchers (including in the fields of behavioral finance, economics, psychology, marketing, and other related fields) studied the use of such tools and methods in the context of the use of DEPs by firms, or in related contexts of individual decision-making? Please identify any relevant literature or data, including research related to the use of similar practices in other fields, that could assist the Commission in its consideration of these issues.

2.17 To what extent can the use of the tools and methods identified above (*e.g.,* AI/ML models) in connection with the use of DEPs perpetuate social biases and disparities? How, if at all, have commenters seen this in practice with regard to the development and use of DEPs on digital platforms (*e.g.,* through marketing, asset allocation, fees)? Are there AI/ML models that are more or less likely to perpetuate such biases and disparities?

C. Regulatory Issues Associated With DEPS and the Related Tools and Methods and Potential Approaches

Broker-dealers and investment advisers are currently subject to

[14] *See, e.g.,* Treasury RFI, at 16839–40 (describing explainability as ''how an AI approach uses inputs to produce outputs'' and describing challenges associated with lack of explainability); *see also* FSB AI Report, at 2 (stating that the ''lack of interpretability or 'auditability' of AI and machine learning models could become a macro-level risk''); Gregory Barber, *Artificial Intelligence Confronts a 'Reproducibility' Crisis,* Wired (Sept. 16, 2019), *https://www.wired.com/story/artificial-intelligence-confronts-reproducibility-crisis/.*

[15] *See e.g.,* Joy Buolamwini and Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification,* 81 Proceedings of Machine Learning Research 77 (2018), *https://dam-prod.media.mit.edu/x/2018/02/06/Gender%20Shades%20Intersectional%20Accuracy%20Disparities.pdf;* Ziad Obermeyer et al., *Dissecting Racial Bias in an Algorithm Used to Manage the Health of Populations,* 366 Science 6464, 447–453 (Oct. 25, 2019), *https://science.sciencemag.org/content/366/6464/447;* Executive Office of the President of the United States, *Big Data: A Report on Algorithmic Systems, Opportunity, and Civil Rights* pp. 6–10 (May 2016), *https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/2016_0504_data_discrimination.pdf.*

extensive obligations under federal securities laws and regulations, and in the case of broker-dealers, rules of SROs (in particular, the Financial Industry Regulatory Authority, Inc. (''FINRA'') [16]) that are designed to promote conduct that, among other things, protects investors from abusive practices. Following is an overview of some of the existing statutory provisions, regulations, and rules that are particularly relevant to the use of DEPs and related tools and methods by broker-dealers and investment advisers.[17]

In addition to these specific obligations, federal securities laws and regulations broadly prohibit fraud by broker-dealers and investment advisers as well as fraud by any person in the offer, purchase, or sale of securities, or in connection with the purchase or sale of securities. Generally, these anti-fraud provisions cover manipulative or deceptive conduct, including an affirmative misstatement or the omission of a material fact that a reasonable investor would view as significantly altering the total mix of information made available.[18]

1. Existing Broker-Dealer Obligations [19]

Under the anti-fraud provisions of the federal securities laws and SRO rules, broker-dealers are required to deal fairly with their customers and observe high standards of commercial honor and just and equitable principles of trade.[20] A number of more specific obligations are summarized below:

• *Account Opening and Other Approval Obligations.* Broker-dealers must obtain certain information about their customers at account opening, under anti-money laundering (''AML'') and know your customer requirements,[21] and are required to maintain customer account information, including whether a customer is of legal age.[22]

Additional obligations apply for investors to transact in certain types of securities (*e.g.,* options) or obtain certain services (*e.g.,* margin).[23] For example, broker-dealers must pre-approve a customer's account to trade options on securities.[24] Prior to approving a customer's account for options trading, the broker-dealer must seek to obtain ''essential facts relative to the customer, [their] financial situation and investment objectives.'' [25] Broker-dealers must then verify the background and financial information they obtain regarding each customer, and obtain an executed written agreement from the customer agreeing, among other things, to be bound by all applicable FINRA rules applicable to the trading of option contracts.[26]

With respect to margin, broker-dealers are required to obtain the signature of the account owner with respect to a margin account [27] and to obtain a customer's written consent.[28] These written consents and signatures are

[16] Any person operating as a ''broker'' or ''dealer'' in the U.S. securities markets must register with the Commission, absent an exception or exemption. *See* Exchange Act section 15(a), 15 U.S.C. 78*o*(a); *see also* Exchange Act sections 3(a)(4) and 3(a)(5), 15 U.S.C. 78c(a)(4) and 78c(a)(5) (providing the definitions of ''broker'' and ''dealer,'' respectively). Generally, all registered broker-dealers that deal with the public must become members of FINRA, a registered national securities association, and may choose to become exchange members. *See* Exchange Act section 15(b)(8), 15 U.S.C. 78*o*(b)(8); 17 CFR 240.15b9–1. FINRA is the sole national securities association registered with the SEC under Section 15A of the Exchange Act. Because this Request is focused on broker-dealers that deal with the public and are FINRA member firms, we refer to FINRA rules as broadly applying to ''broker-dealers,'' rather than to ''FINRA member firms.''

[17] Broker-dealers and investment advisers are subject to a host of other obligations that are not summarized in this overview, and that may also be relevant to the use of DEPs and related tools and methods. For example, additional regulatory obligations on broker-dealers include those relating to: Registration; certain prohibited or restricted conflicts of interest; fair prices, commissions and charges; and best execution. As another example, additional regulatory obligations on investment advisers include those relating to registration; certain prohibited transactions; and written codes of ethics.

[18] *See* Securities Act section 17(a), 15 U.S.C. 77q(a); Exchange Act section 10(b), 15 U.S.C. 78j(b); Exchange Act section 15(c), 15 U.S.C. 78*o*(c); Investment Advisers Act of 1940 (''Advisers Act'') section 206, 15 U.S.C. 80b–6; *see also* Exchange Act section 9(a), 15 U.S.C. 78i(a); *see also Basic* v. *Levinson,* 485 U.S. 224, 239 n.17 (1988).

[19] These obligations cannot be waived or contracted away by customers. *See* Exchange Act section 29(a), 15 U.S.C. 78cc(a) (''Any condition, stipulation, or provision binding any person to waive compliance with any provision of [the Exchange Act] or any rule or regulation thereunder, or any rule of a [SRO], shall be void.'').

[20] *See, e.g.,* Duker & Duker, Exchange Act Release No. 2350, 6 SEC. 386, 388 (Dec. 19, 1939) (Commission opinion) (''Inherent in the relationship between a dealer and his customer is the vital representation that the customer be dealt with fairly, and in accordance with the standards of the profession.''); *see also* U.S. Securities and Exchange Commission, Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, at 238 (1st Sess. 1963) (''An obligation of fair dealing, based upon the general antifraud provisions of the Federal securities laws, rests upon the theory that even a dealer at arm's length impliedly represents when he hangs out his shingle that he will deal fairly with the public.''); FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade); NASD Interpretive Material 2310–2 (Fair Dealing with Customers) (''Implicit in all member and registered representative relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of [FINRA's] Rules, with particular emphasis on the requirement to deal fairly with the public.'').

[21] Financial institutions, including broker-dealers, are required to establish written customer identification programs (CIP), which must include, at a minimum, procedures for: Obtaining customer identifying information from each customer prior to account opening; verifying the identity of each customer, to the extent reasonable and practicable, within a reasonable time before or after account opening; making and maintaining a record of information obtained relating to identity verification; determining within a reasonable time after account opening or earlier whether a customer appears on any list of known or suspected terrorist organizations designated by Treasury; and providing each customer with adequate notice, prior to opening an account, that information is being requested to verify the customer's identity. *See* 31 CFR 1023.220 (Customer Identification Program for Broker-Dealers). As part of broker-dealers' AML compliance programs, they must include risk-based procedures for conducting ongoing customer due diligence, to comply with the Customer Due Diligence Requirements for Financial Institutions (''CDD Rule'') of the Financial Crimes Enforcement Network (FinCEN). *See* FINRA Rule 3310 (Anti-Money Laundering Compliance Program); 81 FR 29398 (May 11, 2016) (CDD Rule Release); 82 FR 45182 (Sept. 28, 2017) (correction to CDD Rule amendments). Additionally, pursuant to FINRA Rule 2090 (Know Your Customer), all member broker-dealers must use reasonable diligence, at both the opening of a customer account, and for the duration of the customer relationship to know and retain the ''essential facts'' concerning each customer. Such ''essential facts'' include those that are necessary ''to (a) effectively service the customer's account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules.'' *See* FINRA Regulatory Notice 11–02 (SEC Approves Consolidated FINRA Rules Governing Know-Your-Customer and Suitability Obligations); *see also* 17 CFR 240.17a–3(a)(17).

[22] *See* FINRA Rule 4512 (Customer Account Information). As a general matter, whether any particular individual is able to enter into a contract (such as that associated with opening a brokerage account) is a matter of state law, and not explicitly governed by the federal securities laws. *See also* 17 CFR 240.17a–3(a)(17).

[23] Approval obligations also apply for investors to engage in day-trading. *See* FINRA Rule 2130 (Approval Procedures for Day-Trading Accounts).

[24] *See* FINRA Rule 2360(b)(16) (Options). FINRA has also extended the options account approval requirements of Rule 2360(b)(16), by reference, to customers seeking to place orders to buy or sell warrants. *See* FINRA Rule 2352 (Account Approval). Numerous exchanges that facilitate options trading apply similar standards for customer pre-approval before accepting orders for options contracts on the exchange.

[25] *See* FINRA Rule 2360(b)(16)(B).

[26] *See* FINRA Rule 2360(b)(16)(C) and (D). FINRA has also indicated that in the case of options, broker-dealers should consider whether they should provide limited account approval to a customer, based on this information. For example, customers may be approved to make purchases of puts and calls only, be restricted to covered call writing, or be approved to engage in uncovered put and call writing. *See* FINRA Regulatory Notice 21–15 (FINRA Reminds Members About Options Account Approval, Supervision and Margin Requirements).

[27] *See* 17 CFR 240.17a–3(a)(9).

[28] The written consent is a condition necessary for the broker-dealer to be able to hypothecate (*i.e.,* pledge) securities under circumstances that would permit the commingling of customers' securities. Broker-dealers are also required to give written notice to a pledgee that, among other things, a security pledged is carried for the account of a customer. *See* 17 CFR 240.8c–1 and 240.15c2–1.

generally obtained by broker-dealers when a customer executes a margin agreement.[29]

• *Standard of Conduct.* Regulation Best Interest (''Reg BI'') requires broker-dealers that make recommendations of securities transactions or investment strategies involving securities (including account recommendations) to retail customers to act in their best interest, and not place the broker-dealer's interests ahead of the retail customer's interest.[30] The use of a DEP by a broker-dealer may, depending on the relevant facts and circumstances, constitute a recommendation for purposes of Reg BI. Whether a ''recommendation'' has been made is interpreted consistent with precedent under the federal securities laws and how the term has been applied under FINRA rules.[31] Broker-dealers satisfy their obligations under Reg BI by complying with four specified component obligations: A disclosure obligation;[32] a care obligation;[33] a conflict of interest obligation;[34] and a compliance obligation.[35] Additional suitability obligations are imposed on broker-dealers when recommending transactions in certain types of securities, such as options, to any customer.[36]

• *Disclosure Obligations.* Broker-dealers are subject to a number of customer disclosure obligations, including disclosures at the inception of the customer relationship,[37] disclosures that must be made in conjunction with recommendations of securities transactions or investment strategies involving securities,[38] and certain product- or activity-specific disclosures pertaining to among others, options, margin, and day trading.[39] Additionally, broker-dealers are liable under the anti-fraud provisions for failing to disclose material information to their customers when they have a duty to make such disclosure.[40] Broker-dealers are also required to make disclosures to customers of their order execution and routing practices.[41]

• *Reporting and Other Financial Responsibility Requirements.* Broker-dealers are subject to comprehensive financial responsibility rules, including reporting requirements under Exchange Act Rule 17a–5, minimum net capital requirements under Exchange Act Rule 15c3–1, and customer protection requirements under Exchange Act Rule 15c3–3.[42] Broker-dealers are also subject to various rules relating to margin, including, for example, disclosure and other requirements when extending or arranging credit in certain transactions,[43] disclosure of credit terms in margin transactions,[44] a description of the margin requirements that determine the amount of collateral

[29] *See* 17 CFR 240.8c–1, 240.15c2–1, and 240.17a–3(a)(9). Margin agreements also typically state that a customer must abide by the margin requirements established by the Federal Reserve Board, SROs such as FINRA, any applicable securities exchange, and the firm where the margin account is established. *See also* FINRA Rule 4210(f)(8)(B) (Margin Requirements) regarding special margin requirements for day trading, including special requirements for ''pattern day traders'' (any customer who executes four or more day trades within five business days, provided that the number of day trades represents more than six percent of the customer's total trades in the margin account for that same five business day period).

[30] 17 CFR 240.15*l*–1; Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 34–86031 [84 FR 33318 (July 12, 2019)] (''Reg BI Adopting Release''). Following the adoption of Reg BI, which, among other things, incorporated and enhanced the principles found in FINRA's suitability rule (Rule 2111), FINRA amended Rule 2111 to, among other things, state that the rule does not apply to recommendations subject to Reg BI. *See* Exchange Act Release No. 89091 (June 18, 2020) [85 FR 37970 (June 24, 2020)].

[31] Reg BI Adopting Release, *supra* note 30, at 33337. The determination of whether a recommendation has been made turns on the facts and circumstances of a particular situation. *Id.* at 33335 (''Factors considered in determining whether a recommendation has taken place include whether a communication 'reasonably could be viewed as a ''call to action'' ' and 'reasonably would influence an investor to trade a particular security or group of securities.' The more individually tailored the communication to a specific customer or a targeted group of customers about a security or group of securities, the greater the likelihood that the communication may be viewed as a 'recommendation.' '') (citation omitted); *see also* NASD Notice to Members 01–23 (Apr. 2001) (Online Suitability—Suitability Rules and Online Communications) (providing examples of electronic communications that are considered to be either within or outside the definition of ''recommendation''). To the extent that a broker-dealer makes a recommendation, as that term is interpreted by the Commission under Reg BI, to a retail customer through or in connection with a DEP, Reg BI would apply to the recommendation.

[32] The disclosure obligation requires the broker-dealer to provide certain required disclosure before or at the time of the recommendation, about the recommendation and the relationship between the broker-dealer and the retail customer. 17 CFR 240.15*l*–1(a)(2)(i).

[33] The care obligation requires the broker-dealer to exercise reasonable diligence, care, and skill in making the recommendation. 17 CFR 240.15*l*–1(1)(a)(2)(ii).

[34] The conflict of interest obligation requires the broker-dealer to establish, maintain, and enforce written policies and procedures reasonably designed to address conflicts of interest associated with its recommendations to retail customers. Among other specific requirements, broker-dealers must identify and disclose any material limitations, such as a limited product menu or offering only proprietary products, placed on the securities or investment strategies involving securities that may be recommended to a retail customer and any conflicts of interest associated with such limitations, and prevent such limitations and associated conflicts of interest from causing the broker-dealer or the associated person to place the interest of the broker-dealer or the associated person ahead of the retail customer's interest. 17 CFR 240.15*l*–1(a)(2)(iii).

[35] The compliance obligation requires the broker-dealer to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. 17 CFR 240.15*l*–1(a)(2)(iv).

[36] *See, e.g.,* FINRA Rule 2360(b)(19).

[37] Disclosure obligations include Form CRS relationship summary (describing the broker-dealer's services, fees, costs, conflicts of interest and disciplinary history). *See* 17 CFR 240.17a–14.

[38] *See* 17 CFR 240.15*l*–1 (Reg BI).

[39] *See, e.g.,* FINRA Rule 2360(b)(16)(A) (requiring broker-dealers to provide certain risk disclosures when approving customers for options transactions); FINRA Rule 2264 (Margin Disclosure Statement) (specifying disclosures in advance of opening a margin account for a non-institutional customer); 17 CFR 240.10b–16 (requiring disclosures of all credit terms in connection with any margin transactions at account opening); FINRA Rule 2270 (Day-Trading Risk Disclosure Statement) (requiring that a disclosure statement be provided to any non-institutional customer that opens an account at a broker-dealer that promotes a day-trading strategy).

[40] *See Basic* v. *Levinson, supra* note 18. Generally, under the anti-fraud provisions, a broker-dealer's duty to disclose material information to its customer is based upon the scope of the relationship with the customer, which depends on the relevant facts and circumstances. *See, e.g., Conway* v. *Icahn & Co., Inc.,* 16 F.3d 504, 510 (2d Cir. 1994) (''A broker, as agent, has a duty to use reasonable efforts to give its principal information relevant to the affairs that have been entrusted to it.'').

[41] *See generally* 17 CFR 242.605 and 242.606 (Regulation NMS Rules 605 and 606). For example, under NMS Rule 606, broker-dealers must provide public reports concerning the venues to which they route customer orders for execution and discuss material aspects of their arrangements with these execution venues, including PFOF that broker-dealers receive from the venues. Pursuant to amendments implemented in 2020, these reports require enhanced specificity concerning PFOF and other types of practices that may present broker-dealer conflicts of interest. *See* Exchange Act Release No. 78309 (Nov. 2, 2018) [83 FR 58338, 58373–6 (Nov. 19, 2018)].

[42] Rule 17a–5 has two main elements: (1) A requirement that broker-dealers file periodic unaudited reports about their financial and operational condition using the FOCUS Report form; and (2) a requirement that broker-dealers annually file financial statements and certain reports, as well as reports covering those statements and reports prepared by an independent public accountant registered with the Public Company Accounting Oversight Board (''PCAOB'') in accordance with PCAOB standards. 17 CFR 240.17a–5. The objective of Rule 15c3–1 is to require a broker-dealer to maintain sufficient liquid assets to meet all liabilities, including obligations to customers, counterparties, and other creditors and to have adequate additional resources to wind-down its business in an orderly manner without the need for a formal proceeding if the firm fails financially. *See* 17 CFR 240.15c3–1. Rule 15c3–3 requires a carrying broker-dealer to maintain physical possession or control over customers' fully paid and excess margin securities. The rule also requires a carrying broker-dealer to maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers. 17 CFR 240.15c3–3.

[43] *See* 17 CFR 240.15c2–5 (Disclosure and other requirements when extending or arranging credit in certain transactions).

[44] *See* 17 CFR 240.10b–16 (Disclosure of credit terms in margin transactions).

customers are expected to maintain in their margin accounts,[45] and a requirement to issue a margin disclosure statement prior to opening a margin account.[46]

• *Communications with the Public Rules.* Broker-dealers are subject to a number of rules governing communications with the public, including advertising or marketing communications. These rules apply to broker-dealers' written (including electronic) communications with the public and are subject to obligations pertaining to content, supervision, filing, and recordkeeping.[47] All communications must be based on principles of fair dealing and good faith, be fair and balanced, and comply with a number of other content standards.[48] Through its filings review program, FINRA's Advertising Regulation Department reviews communications submitted either voluntarily or as required by FINRA rules.[49] In the case of communications relating to options, broker-dealers are subject to certain heightened obligations.[50]

• *Supervision Obligations and Insider Trading Procedures.* Broker-dealers must ''establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.'' [51] Among other things, broker-dealers must establish, maintain, and enforce written procedures to supervise the types of business in which they engage and the activities of their associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.[52] Broker-dealers must also establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the broker-dealer or its associated persons.[53]

• *Recordkeeping Obligations.* Section 17(a) of the Exchange Act provides the Commission with authority to issue rules requiring broker-dealers to make and keep for prescribed periods such records as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Rules 17a–3 and 17a–4 prescribe the primary recordkeeping requirements for broker-dealers.[54]

• *Customer Complaints.* Broker-dealers are required to have procedures to document and capture, acknowledge, and respond to all written (including electronic) customer complaints,[55] and report to FINRA certain specified events related to customer complaints, as well as statistical and summary information on customer complaints.[56] Broker-dealers must also make and keep a record indicating that each customer has been provided with a notice with the address and telephone number to which complaints may be directed.[57]

• *Privacy and Cybersecurity.* Regulation S–P requires broker-dealers to disclose certain information about their privacy policies and practices, limits the instances in which broker-dealers may disclose nonpublic personal information about consumers to nonaffiliated third parties without first allowing the consumer to opt out, and requires broker-dealers to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information.[58] Regulation S–P also limits the re-disclosure and re-use of nonpublic personal information, and it limits the sharing of account number information with nonaffiliated third parties for use in telemarketing, direct mail marketing, and email marketing.[59] Broker-dealers are also required, under Regulation S–ID, to develop and implement a written identity theft prevention program designed to detect, prevent, and mitigate identity theft in connection with certain existing accounts or the opening of new accounts.[60]

[45] *See* FINRA Rule 4210 (Margin Requirements). *See also* 12 CFR 220.1 *et seq.* (Federal Reserve Board's Regulation T regulating, among other things, extensions of credit by brokers and dealers);

[46] *See* FINRA Rule 2264 (Margin Disclosure Statement). *See also* FINRA Regulatory Notice 21–15 (FINRA Reminds Members About Options Account Approval, Supervision and Margin Requirements).

[47] *See, e.g.,* FINRA Rule 2210 (Communications with the Public). FINRA has provided guidance regarding the applicability of the communications rules in the context of social media and digital communications. *See* FINRA Regulatory Notice 19–31 (Disclosure Innovations in Advertising and Other Communications with the Public); FINRA Regulatory Notice 17–18 (Social Media and Digital Communications); FINRA Regulatory Notice 11–39 (Social Media websites and the Use of Personal Devices for Business Communications); FINRA Regulatory Notice 10–06 (Social Media websites); *see also* 17 CFR 240.17a–4(b)(4). Paragraph (b)(4) of Rule 17a–4 requires a broker-dealer to preserve originals of all communications received and copies of all communications sent (and any approvals thereof) by the broker-dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to the rules of an SRO of which the broker-dealer is a member regarding communications with the public. The term ''communications,'' as used in paragraph (b)(4) of Rule 17a–4, includes all electronic communications (*e.g.,* emails and instant messages). *See* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, Exchange Act Release No. 87005 (Sept. 19, 2019) [84 FR 68550, 68563–64 (Dec. 16, 2019)].

[48] Among other requirements and prohibitions, firms may not ''make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication;'' firms ''must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits;'' and firms ''must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.'' *See* FINRA Rule 2210 (Communications with the Public).

[49] FINRA reviews communications for compliance with applicable regulations. Broker-dealers must submit certain retail communications to FINRA for its approval at least ten business days prior to first use or publication. In addition to reviewing filed communications, broker-dealer communications can also be subject to spot-check reviews by FINRA. *See* FINRA Rule 2210(c).

[50] *See* FINRA Rule 2220 (Options Communications). For example, when making retail communications concerning the sale of options products, broker-dealers must submit certain of those communications to FINRA for its approval at least ten calendar days prior to use.

[51] *See* FINRA Rule 3110 (Supervision). Under Exchange Act Sections 15(b)(4)(E) and 15(b)(6), the Commission institutes administrative proceedings against broker-dealers and supervisors for failing reasonably to supervise, with a view to preventing violations of the federal securities laws. 15 U.S.C. 78*o*(b)(4)(E) and 78*o*(b)(6).

[52] *See* FINRA Rule 3110(b)(1).

[53] *See* Exchange Act section 15(g), 15 U.S.C. 78*o*(g).

[54] Exchange Act Rule 17a–3 (delineating certain records that broker-dealers must make and keep current, including customer account records, copies of customer confirmations, records of customer complaints, and records related to every recommendation of any securities transaction or investment strategy involving securities made to a retail customer); Exchange Act Rule 17a–4 (specifying the time period and manner in which records made pursuant to Rule 17a–3 must be preserved, and identifying additional records that must be maintained for prescribed time periods.). *See* 17 CFR 240.17a–3 and 240.17a–4.

[55] *See* FINRA Rule 3110(b)(5).

[56] *See* FINRA Rule 4530; *see also* FINRA Rule 4311(g) (addressing certain requirements for carrying agreements relating to customer complaints).

[57] *See* 17 CFR 240.17a–3(a)(18) (requiring broker-dealers to make and maintain a record for each written customer complaint received regarding an associated person, including the disposition of the complaint).

[58] *See* 17 CFR 248. Regulation S–P implements the consumer financial privacy provisions, as well as the customer records and information security provisions, of Title V of the Gramm Leach Bliley Act (''GLBA''). It also implements the consumer report information disposal provisions (Section 628) of the Fair Credit Reporting Act (''FCRA'') as amended by the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'').

[59] *See* 17 CFR 248.11 and 248.12.

[60] *See* 17 CFR 248.201. Regulation S–ID implements the identity theft red flags rules and guidelines provisions (Section 615(e)) of the FCRA as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'').

2. Existing Investment Adviser Obligations

The Investment Advisers Act of 1940 (''Advisers Act'') establishes a federal fiduciary duty for investment advisers, whether or not registered with the Commission, which is made enforceable by the anti-fraud provisions of the Advisers Act. The fiduciary duty is broad and applies to the entire adviser-client relationship, and must be viewed in the context of the agreed-upon scope of that relationship.[61] As a fiduciary, an investment adviser owes its clients a duty of care and a duty of loyalty.[62] Under its duty of loyalty, an adviser must make full and fair disclosure of all material facts relating to the advisory relationship and must eliminate or make full and fair disclosure of all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which is not disinterested such that a client can provide informed consent to the conflict. An adviser's duty of care includes, among other things: (i) A duty to provide investment advice that is in the best interest of the client, based on a reasonable understanding of the client's objectives; [63] (ii) a duty to seek best execution of a client's transactions where the adviser has the responsibility to select broker-dealers to execute client trades (typically in the case of discretionary accounts); and (iii) a duty to provide advice and monitoring at a frequency that is in the best interest of the client, taking into account the scope of the agreed relationship.[64] We discussed the fiduciary duty and these aspects of it in greater detail in a Commission interpretation.[65]

Rules adopted under the Advisers Act also impose various obligations on registered investment advisers (or investment advisers required to be registered with the Commission), including:

• *Disclosure Requirements.* Registered investment advisers are subject to a number of client disclosure obligations, including disclosures before or at the time of entering into an advisory contract, annually thereafter, and when certain changes occur. These disclosures include information about a number of topics, including an adviser's business practices, fees, conflicts of interest, and disciplinary information, and about advisory employees and their other business activities.[66]

• *Reporting Requirements.* Investment advisers register with the Commission by filing Form ADV and are required to file periodic updates.[67] Like all market participants, investment advisers are subject to reporting obligations under the Exchange Act under specified circumstances,[68] as well as trading rules and restrictions under the Exchange Act.[69]

• *Marketing Requirements.* Rule 206(4)–1, as amended in December 2020, governs investment advisers' marketing practices.[70] This rule contains seven general prohibitions on the types of activity that could be false or misleading that apply to all advertisements. The rule also prohibits advertisements that contain testimonials, endorsements, third-party ratings, and performance information, unless certain conditions are met.

• *Compliance Programs.* Under rule 206(4)–7, an investment adviser must adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder by the firm and its supervised persons.[71] Among other things, an adviser's compliance policies and procedures should address portfolio management processes, including allocation of investment opportunities among clients and consistency of portfolios with clients' investment objectives, disclosures by the adviser, and applicable regulatory restrictions. This rule requires review of such policies and procedures at least annually, and the designation of a chief compliance officer responsible for administering such policies and procedures.

• *Supervision Obligations and Insider Trading Procedures.* Investment advisers have a duty to reasonably supervise certain persons with respect to activities performed on the adviser's behalf.[72] In addition, section 204A of the Advisers Act requires investment advisers (registered with the Commission or not) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the investment adviser or any of its associated persons.

• *Recordkeeping Requirements.* Under rule 204–2, investment advisers must make and keep particular books and records, including certain communications relating to advice given (or proposed to be given), the placing or execution of any order to purchase or sell any security, and copies of the advertisements they disseminate.[73]

• *Privacy and Cybersecurity.* Advisers registered or required to be registered with the Commission are also subject to Regulation S–P and Regulation S–ID, which are discussed above in the context of broker-dealers.

Questions: Current Regulatory Compliance Approaches

3.1 How are firms approaching compliance relating to their use of DEPs and the related tools and methods, in order to ensure compliance with their obligations under federal securities laws and regulations, including those identified above? For example, how do firms supervise communications or marketing to retail investors through or in connection with DEPs? Do firms approach compliance relating to the use of DEPs and related tools and methods differently from how they approach compliance relating to other engagement with customers or clients? If so, how do the approaches differ? For example, do such approaches differ based on any unique risks associated with or innate characteristics of DEPs and the related tools and methods?

3.2 What types of policies and procedures and controls do firms establish and maintain to ensure the design, development, and use of DEPs and related tools and methods comply with existing obligations? How do firms

[61] For example, to the extent that an adviser provides investment advice to a client through or in connection with a DEP, then all such investment advice must be consistent with the adviser's fiduciary duty.

[62] This fiduciary duty ''requires an adviser to adopt the principal's goals, objectives, or ends.'' *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Advisers Act Release No. 5248 (June 5, 2019) [84 FR 33669, 33671 (July 12, 2019)] (''IA Fiduciary Duty Interpretation'') (internal quotations omitted). This means the adviser must, at all times, serve the best interest of its client and not subordinate its client's interest to its own. *See id.*

[63] In order to provide such advice, an investment adviser must have a reasonable understanding of the client's objectives. *See id.* at 33672–3.

[64] *See id.* at 33669–78.

[65] *See id.*

[66] *See, e.g.,* 17 CFR 275.204–3 (requiring an adviser to deliver a Form ADV Part 2A brochure to advisory clients); 17 CFR 275.204–5 (requiring an adviser to deliver Form CRS to each retail investor).

[67] *See, e.g.,* 17 CFR 275.204–1.

[68] These include, for example, Schedule 13D or Schedule 13G reporting of ''beneficial ownership'' of more than 5 percent of shares of a voting class of a security registered under Section 12 of the Exchange Act and Form 13F quarterly reports filed by institutional investment managers that manage more than $100 million of specified securities. *See* 17 CFR 240.13d–1(a)–(c) and 240.13f–1.

[69] These include prohibitions and restrictions on market manipulation and insider trading. *See, e.g.,* 17 CFR 240.10b5–1 and 240.10b5–2.

[70] The compliance date for amended rule 206(4)–1 under the Advisers Act is November 4, 2022. Until then, advisers that do not comply with amended 206(4)–1 must comply with existing rule 206(4)–1, which governs adviser's advertisements, and rule 206(4)–3, which governs cash payments for client solicitations.

[71] *See* 17 CFR 275.206(4)–7.

[72] *See* Advisers Act section 203(e)(6), 15 U.S.C. 80b–3(e)(6).

[73] *See* 17 CFR 275.204–2.

supervise the design, development, and use of these features, tools, and methods after implementation and adoption for continued compliance? In what ways do firms' policies and procedures, controls, and supervision differ with respect to their use of DEPs and related tools and methods from other policies and procedures, controls, and supervision that the firms employ?

3.3 Do firms implement registration or certification requirements for personnel primarily responsible for the design, development, and supervision of DEPs? If so, what are the requirements? What type of training do firms offer to their personnel in connection with the design, development, and use of DEPs and related tools and methods? Do firms outsource the design or development of DEPs? Do firms outsource the design and development of DEPs outside the United States?

3.4 What policies, procedures, and controls do firms have in place with respect to the use of DEPs that are designed to promote or that could otherwise direct retail investors to higher-risk products and services, for example, margin services and options trading? What policies, procedures, and controls do firms have in place with respect to the use of DEPs that are designed to promote or that could otherwise direct retail investors to securities or services that are more lucrative for the firm such as: Proprietary products, products for which the firm receives revenue sharing or other third-party payments, or other higher fee products? To what extent do these policies and procedures consider or address the characteristics of retail investors to whom such products and services may be promoted or directed? For example, do the policies and procedures place controls around how DEPs may be utilized to promote or otherwise direct certain products or services to certain types of retail investors?

3.5 What disclosures are firms providing in connection with or specifically addressing DEPs and the related tools and methods (including with respect to any data or information collected from the retail investor)? How are such disclosures presented to retail investors? Does such disclosure address how the use of DEPs or the related tools and methods may affect investors and specifically their trading and investing behavior? Does such disclosure differ from other disclosures that firms provide? How do firms currently disclose information such as risks, fees, costs, conflicts of interest, and standard of conduct to retail investors on their digital platforms? To what extent and how do firms use DEPs to make such disclosures?

3.6 Do broker-dealers consider the observable impacts of DEPs when determining if they are making ''recommendations'' for purposes of Reg BI? How does the fact that a DEP might impact the behavior of a statistically significant number of retail investors affect this determination? What statistical concepts, tools, and quantitative thresholds do broker-dealers use in making this determination?

3.7 Are there particular types of DEPs that broker-dealers avoid using because they would be recommendations? If so, which DEPs and why? What are broker-dealers doing to ensure that the DEPs they adopt comply with Reg BI and other sales practice rules, where applicable?

3.8 Do investment advisers consider the observable impacts of DEPs when determining if they are providing investment advice? How does the fact that a DEP might impact the behavior of a statistically significant number of investors affect this determination? What statistical concepts, tools, and quantitative thresholds do investment advisers use in making this determination?

3.9 Are there particular types of DEPs that investment advisers avoid using because they would constitute providing investment advice? If so, which DEPs and why? How do investment advisers satisfy their fiduciary duty when using DEPs and related tools and methods? How do investment advisers take into account their fiduciary duty when designing and developing DEPs?

3.10 When providing investment advice or recommendations to a retail investor, do firms adjust that investment advice or recommendation to take into account any data they have about how their DEPs affect investor behavior and investing outcomes? If so, how is such investment advice or recommendation adjusted?

3.11 How do firms using DEPs obtain sufficient retail investor information and provide sufficient oversight to satisfy their regulatory obligations, including, for example, applicable anti-fraud provisions and account opening or approval requirements?

3.12 How does the recordkeeping process used by firms in connection with DEPs and the related tools and methods compare to the recordkeeping process used in connection with firms' traditional business? Do firms generate and retain records with respect to the development, implementation, modification, and use of DEPs, including the testing of, or due diligence with respect to, the technology that they use for those purposes? Do firms generate and retain records with respect to retail investor interaction with such DEPs? If so, what types of records?

Questions: Suggestions for Modifications to Existing Regulations or New Regulatory Approaches To Address Investor Protection Concerns, Including

3.13 What additions or modifications to existing regulations, including, but not limited to, those identified above, or new regulations or guidance might be warranted to address investor protection concerns identified in connection with the use by broker-dealers and investment advisers of DEPs, the related tools and methods, and the use of retail investor data gathered in connection with DEPs? What types of requirements, limitations, or prohibitions would be most appropriate to address any such identified investor protection concerns?

3.14 Are there regulations that currently prevent firms from using DEPs and related tools and methods in ways that might be beneficial to retail investors? If so, what additions or modifications to those regulations would make it easier for firms to use DEPs and related tools and methods to benefit investors? Are there regulatory approaches that would facilitate firms' ability to innovate or test the use of new technology consistent with investor protection?

3.15 To the extent commenters recommend any modifications to existing regulations or new regulations, how should DEPs and the scope of tools and methods be defined to capture practices and tools and methods in use today and remain flexible to adapt as technology changes? Should any such modifications or new regulations specifically and uniquely address DEPs or the related tools and methods (*i.e.,* distinct from regulation of interactions with retail investors such as marketing, investment advice, and recommendations)? If so, how? Should any such modifications or additional regulations be targeted specifically to address certain types of DEPs or certain tools or methods? If so, how? For example, should specific DEPs be explicitly prohibited or only permitted subject to limitations or other regulatory requirements (*e.g.,* filing or pre-approval)?

3.16 Should any such modifications or additional regulations be targeted specifically to address particular risks, such as those related to certain types of securities (*e.g.,* options, leveraged and

inverse funds, or other complex securities), services (*e.g.,* margin), or conflicts (*e.g.,* payment and revenue sources)? If so, how? Should any such modifications or additional regulations be targeted specifically to increase protection for certain categories of investors (*e.g.,* seniors or inexperienced investors)? If so, how?

3.17 Are there laws, regulations, or other conduct standards that have been adopted in other contexts, fields, or jurisdictions that could serve as a useful model for any potential regulatory approaches?

3.18 To the extent commenters recommend any modifications to existing regulations or new regulations, what economic costs and benefits do commenters believe would result from their recommendations? Please provide or identify any relevant data and other information.

III. Use of Technology by Investment Advisers To Develop and Provide Investment Advice

The Commission is also issuing the Request to assist the Commission and its staff in better understanding the nature of analytical tools and other technology used by investment advisers to develop and provide investment advice to clients, including (1) oversight of this technology; (2) how investment advisers and clients have benefited from technology; (3) potential risks to investment advisers, clients, and the markets more generally related to this technology; and (4) whether regulatory action may be needed to protect investors while preserving the ability of investors to benefit from investment advisers' use of technology.[74]

A. Issues for Consideration

Financial technology enables investment advisers to develop and provide investment advice in new ways or complements existing methods or tools for developing and providing advice,[75] including by allowing digital platforms to connect clients, their investment advisers, and third-party service providers.[76] We describe below some recent changes in delivery and development of investment advice and the role of analytical tools and other technology in each. These changes are those that we understand may directly affect clients' receipt of investment advice, and some may overlap depending on an adviser's particular business model and services.

While the increased role of technology has presented investment advisers and clients with benefits, it may also present risks. We recognize that some of these risks may be presented, or be presented differently, for advisers providing traditional investment advice that does not rely on technology. We understand as well that investment advisers may weigh differently those potential benefits and risks, including those described below, in determining how to use technology in developing and providing investment advice. We therefore are seeking comment to understand better the tools used by investment advisers to develop and provide investment advice and investment advisers' understanding and oversight of these tools and the related benefits and risks. In addition, we seek comment on other ways in which technology has changed investment advisers' development and provision of investment advice to their clients.

1. Robo-Advisers

Some investment advisers, which we refer to here as robo-advisers, provide asset management services to their clients through online algorithm-based platforms.[77] The number of robo-advisers (also referred to as digital investment advisers, digital advisers, or automated advisers) has increased over the past several years.[78] Robo-advisers operate under a variety of business models and have varying degrees of human interaction with clients as compared to traditional advisers, and some rely exclusively on algorithms to oversee and manage individual client accounts.[79] In some cases, human personnel may have limited ability to override an algorithm, even in stressed market conditions, and there is limited, if any, direct interaction between the client and the adviser's personnel. In other cases, robo-advisers offer hybrid advisory services, which pair algorithm-generated investment options with human personnel who can answer questions, discuss and refine an algorithm-generated investment plan (*e.g.,* clarify information where client questionnaire responses seem conflicting or address risk tolerance levels based on client reaction to stressed market conditions), or provide additional resources to clients. Some robo-advisers offer clients a choice between hybrid and non-hybrid services, at different price points.

In addition to using analytical tools to engage with clients, robo-advisers may use technology (including AI/ML tools) for a variety of other functions. For example, an adviser may use these tools to match clients to individual portfolios based on client inputs or determine how or when to trade for individual client accounts. An adviser also may use these tools to determine asset allocations, determine how to fill allocations, generate trading signals, or make other strategic decisions.[80]

All Commission-registered robo-advisers are subject to all of the requirements of the Advisers Act, including the requirement that they provide advice consistent with the fiduciary duty they owe to clients.[81] Because robo-advisers rely on algorithms, provide advisory services over the internet, and may offer limited, if any, direct human interaction to their clients, they may raise novel issues when seeking to comply with the

[74] While we recognize that broker-dealers similarly use analytical tools and other technology for purposes of developing and providing recommendations, those issues are not the focus of Section III of the Request. However, the Commission welcomes comments on these issues relating to broker-dealers as part of the General Request for Comment as set forth in Section IV below.

[75] The International Organization of Securities Commissions (''IOSCO'') has stated that the terms financial technologies or ''Fintech'' are ''used to describe a variety of innovative business models and emerging technologies that have the potential to transform the financial services industry.'' *IOSCO Research Report on Financial Technologies (Fintech)* at 4 (Feb. 2017), *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD554.pdf.*

[76] Many investment advisers also increasingly use third-party service providers to generate investment models (*e.g.,* model portfolios) or strategies, and may use software based on, or otherwise incorporating, AI/ML models.

[77] An algorithm can be defined as a routine process or sequence of instructions for analyzing data, solving problems, and performing tasks. *See* Dilip Krishna et al., *Managing Algorithmic Risks: Safeguarding the Use of Complex Algorithms and Machine Learning* at 3, Deloitte Development LLC (2017) (''Deloitte Report'').

[78] *See, e.g.,* Investment Adviser Association, *2020 Evolution Revolution* at 8 (2020), *https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/resources/Evolution_Revolution_2020_v8.pdf* (noting that by 2020, ''two of the top five advisers as measured by number of non-high net worth individual clients served [were] digital advice platforms, representing 7.5 million clients, an increase of 2.7 million clients from [the prior year].''); Robo-Advisers, IM Guidance Update No. 2017–02 (Feb. 2017), *https://www.sec.gov/investment/im-guidance-2017-02.pdf.*

[79] A robo-adviser or a third party may develop, manage, or own the algorithm used to manage client accounts. In some business models, a robo-adviser may provide its algorithm or its digital platform to another investment adviser. That investment adviser may then (i) use the robo-adviser's existing investment options (*e.g.,* asset allocation models), (ii) use the algorithm or digital platform as a tool to create its own investment options, or (iii) use a combination of these features.

[80] In addition, FINRA has observed client-facing digital advisers that incorporate trade execution, portfolio rebalancing, and tax-loss harvesting. *See* FINRA, *Report on Digital Investment Advice* at 2 (Mar. 2016), *https://www.finra.org/sites/default/files/digital-investment-advice-report.pdf* (describing digital investment tools as tools within two groups: Financial professional-facing tools and client-facing tools).

[81] *See* IA Fiduciary Duty Interpretation, *supra* note 62, at n.27.

Advisers Act. For example, advisers may need to consider whether and how automation affects the development of digital advice and the potential risks that such automation may present. An automated algorithm may produce investment advice for a particular client that is inconsistent with the client's investment strategy or relies on incomplete information about the client that depends on limited input data. Increased reliance on automated investment advice may result in too much importance being placed on clients' responses to account opening questionnaires and other forms of automated client evaluation, which may not permit nuanced answers or determine when additional clarification or information could be necessary. This reliance may also result in a failure to detect changes in clients' circumstances that may warrant a change in investment strategy.

Robo-advisers also must determine how to effectively understand and oversee use of their algorithms (including those developed by third parties) and the construction of client portfolios, including any potential conflicts of interest. For example, robo-advisers' algorithms may result in clients being invested in assets in which the adviser or its affiliate holds interests or advises separately (*e.g.,* mutual funds and exchange-traded funds). In these circumstances, the adviser would have a conflict of interest that it must eliminate or fully and fairly disclose such that the client can provide informed consent. In addition, any override or material changes to the algorithm must result in investment advice that is consistent with the adviser's disclosures and fiduciary duty.

2. Internet Investment Advisers

Some investment advisers may solely use an interactive website to provide investment advice. These investment advisers, otherwise known as ''internet investment advisers,'' are eligible for SEC registration even if they do not meet the assets-under-management threshold if they satisfy certain criteria, including that they provide advice to all of their clients exclusively through their interactive website (''internet clients''), subject to a *de minimis* exception for other clients.[82] The Commission has stated that the internet investment adviser exemption was designed to balance the burdens of multiple state registration requirements for internet investment advisers with the Advisers Act's allocation of responsibility for regulating smaller advisers to state securities authorities.[83]

For purposes of the exemption, ''interactive website'' means a website in which computer software-based models or applications provide investment advice to clients based on personal information each client supplies through the website. These websites generally require clients to answer questions about personal finances and investment goals, which the adviser's application or algorithm analyzes to develop investment advice that the website transmits to the client. The Commission has stated that the exemption is not available to investment advisers that merely use websites as marketing tools or use internet tools such as email, chat rooms, bulletin boards, and webcasts or other electronic media in communicating with clients.[84] In addition, the Commission distinguished the interactive website described in the exemption from ''other types of websites that aggregate and provide financial information in response to user-provided requests that do not include personal information.''

This exemption is limited in scope. In the Internet Investment Adviser Adopting Release, the Commission stated that internet investment advisers typically are not eligible to register with the Commission because they ''do not manage the assets of their internet clients'' and thus do not meet the statutory threshold for registration with the Commission. Further, the Commission stated that, in order to be eligible for registration under this exemption, an investment adviser ''may not use its advisory personnel to elaborate or expand upon the investment advice provided by its interactive website, or otherwise provide investment advice to its internet clients.'' The exemption generally requires that the investment adviser ''provides investment advice to all of its clients'' through its website, which means that the adviser must operate an interactive website through which advice is given. That is, the exemption is unavailable to investment advisers lacking such a website.

Despite the limited nature of the exemption, we understand that some investment advisers may seek to rely on it and to register with the Commission without meeting the exemption's terms or intended purpose.[85] Examinations of investment advisers relying on the exemption have revealed various reasons for non-compliance with the exemption's requirements, including: (i) Failure to understand the eligibility requirements; (ii) websites that were not interactive; (iii) businesses that became dormant but did not withdraw their registration; and (iv) client access to advisory personnel who could expand upon the investment advice provided by the adviser's interactive website, or otherwise provide investment advice to clients, such as financial planning.

Some robo-advisers may provide a broader array of advisory services than those provided by internet investment advisers but not be eligible for Commission registration unless they can rely on another exemption or until they have met the statutory assets-under-management threshold.[86] Prohibiting these investment advisers from registering with the Commission in these circumstances could impose burdens that the internet investment adviser exemption was intended to alleviate. Finally, because the internet investment adviser exemption was established almost twenty years ago, we seek to understand better how

[82] *See* 17 CFR 275.203A–2(e) (permitting Commission registration by an investment adviser that (i) provides investment advice to all of its clients exclusively through an interactive website, except that the investment adviser may provide investment advice to fewer than 15 clients through other means during the preceding twelve months; (ii) maintains specified records; and (iii) does not control, is not controlled by, and is not under common control with, another adviser that registers with the Commission solely because of its relationship with the internet investment adviser). Internet investment advisers represented only 1.5 percent of registered advisers in 2021, but have more than tripled in number since 2010—from 57 in 2010 (approximately 0.5 percent of total registered investment advisers) to 203 in 2021 (approximately 1.5 percent of total registered investment advisers). Data from Form ADV, Part 1A, Item 2.A.(11) (based on Form ADV filings through July 2021).

[83] *See* Exemption For Certain Investment Advisers Operating through the internet, Advisers Act Release No. 2091 (Dec. 12, 2002) [67 FR 77620, 77621 (Dec. 18, 2002)] (''internet Investment Adviser Adopting Release'') (''Because an internet Investment Adviser uses an interactive website to provide investment advice, the adviser's clients can come from any state, at any time. As a result, internet Investment Advisers must as a practical matter register in every state. This ensures that the adviser's registrations will be in place when it later obtains the requisite number of clients from any particular state'' that requires state registration.).

[84] *Id.* at n.15 and accompanying text. Effective September 19, 2011, Rule 203A–2(f) was renumbered as Rule 203A–2(e). *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Advisers Act Release No. 3221 (June 22, 2011) [76 FR 42950, 42963 (July 19, 2011)].

[85] The Commission has cancelled the registrations of advisers where the Commission found that those advisers did not meet the terms of the exemption. *See, e.g.,* Order Cancelling Registration Pursuant to Section 203(h) of the Investment Advisers Act of 1940, Advisers Act Release No. 5110 (Feb. 12, 2019).

[86] Some of these advisers also may be eligible for the ''multi-state adviser exemption'' under 17 CFR 275.203A–2(d). The multi-state adviser exemption permits an adviser who is required to register as an investment adviser with fifteen or more states to register with the Commission.

investment advisers are relying on it and whether we should consider amending the exemption or creating another exemption that reflects investment advisers' current use of technology in providing investment advice.

3. AI/ML in Developing and Providing Investment Advice [87]

Investment advisers may use, or be considering the use of, software or models based on, or otherwise incorporating, AI/ML (including deep learning, supervised learning, unsupervised learning, and reinforcement learning) in developing and providing investment advice, including by supporting human personnel's decision-making.[88] Investment advisers may use such models or software to devise trading and investment strategies or develop investment advice, including to assess large amounts of data or to provide clients with more customized service.[89] In addition, investment advisers may use these tools to monitor client accounts or track the performance of specific securities or other investments.[90]

Because ML models learn and develop over time, advisory personnel may face challenges in monitoring and tracking them, including reviewing both a model's input to assess whether it is appropriate and its output to assess accuracy or relevance.[91] For example, advisory personnel may lack sufficient knowledge or experience, or rely heavily on limited personnel, to challenge models' results. In addition, there may be systemic risks associated with the use of these technologies, including potential interconnectedness across the financial system and an emerging dependency on certain concentrated infrastructure and widely used models, which could propagate risks across the financial system. Further, different market participants may use technologies of varying or inadequate quality that could prompt investment advisers to provide unsuitable advice to their clients.

4. Potential Benefits

The use of technology in developing and providing investment advice has provided certain benefits to investment advisers and, in turn, their clients. For example, digital advisers and internet investment advisers may offer lower cost advisory services. They also may provide attractive, user-friendly design features that clients appreciate, and may offer advisory services and online access at all hours of the day.[92] Digital investment advice may be more accessible than human advisory personnel to a wider range of clients, including clients who have greater confidence in digital investment advice; may facilitate access to a wider range of investment advisers, including through increased competition and a potential for lower fees; and may permit clients to easily access information about their account and investments.[93] In addition, digital advisers may be less prone to ''behavioral biases, mistakes, and illegal practices'' than human personnel.[94] By using AI-based software and methods, advisers may provide clients more customized advice or advice that benefits from analysis of more information (or types of information) on a more cost-effective basis than could be provided using traditional tools. In addition, investment advisers may use AI/ML to enhance and expand their services, generate investment strategies, and expand access to investment advice.[95] Clients may benefit from investment advisers' ability to use this this technology to improve trade execution, as well. In addition, AI-based tools may substantially enhance efficiencies in information processing, reducing information asymmetries, and contributing to the efficiency and stability of markets.

5. Potential Risks

At the same time, these developments may pose new or different risks to clients, including risks presented by investment advisers' reliance on technology and any third parties that provide or service such technology. For example, digital advisers may limit clients' access to human personnel, including when clients are considering major life changes such as retirement or when clients have questions that are highly fact-specific. Clients of internet investment advisers may have issues accessing the interactive websites, which can present unique challenges when the website is the sole means for advice delivery. The quality of the investment advice may depend on an algorithm that human personnel may monitor infrequently, incorrectly or face challenges overseeing.[96] The use of

[87] Investment advisers' use of AI/ML and other technological tools must comply with existing rules and regulations. The Commission is not expressing a view as to the legality or conformity of such practices with the federal securities laws and the rules and regulations thereunder, nor with the rules of self-regulatory organizations.

[88] Advisers may also use AI as part of their internal operations, including by reviewing and classifying information (*e.g.,* in regulatory filings and fund prospectuses), by assisting with trade matching or custodian reconciliation, for risk measurement (in part through earlier and more accurate estimation of risks) and stress testing purposes, and by facilitating regulatory compliance.

[89] *See, e.g.,* Treasury RFI, *supra* note 11, at 16839 (describing potential benefits of financial institutions' use of AI); *see also* FINRA AI Report, *supra* note 11 (highlighting three broad areas where broker-dealers are evaluating or using AI: Communications with customers, investment processes, and operational functions); FSB AI Report, *supra* note 11, at 27.

[90] Advisers may obtain these AI/ML tools in connection with contracting for cloud services. They may use other types of Fintech, as well, such as financial aggregator platforms that allow advisers to access information about clients' financial accounts, which can inform investment advice. Clients may allow such platforms to access information about their investment accounts and performance to enable a more fulsome analysis of their financial resources and investment experience.

[91] *See, e.g.,* IOSCO, *The Use of Artificial Intelligence and Machine Learning by Market Intermediaries and Asset Managers* at 11 (June 2020) (consultation report), *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD658.pdf* (''Unlike traditional algorithms, ML algorithms continually learn and develop over time. It is important that they are monitored to ensure that they continue to perform as originally intended.'').

[92] *See, e.g.,* Coryanne Hicks, *What Is a Robo Advisor and When to Use One,* U.S. News & World Report (Feb. 18, 2021), *https://money.usnews.com/financial-advisors/articles/what-is-a-robo-advisor-and-when-to-use-one.*

[93] See, *e.g.,* European Securities and Markets Authority (''ESMA'') et al., *Joint Committee Discussion Paper on Automation in Financial Advice* at 16–17 (Dec. 4, 2015) (''ESMA Discussion Paper''), *https://esas-joint-committee.europa.eu/Publications/Discussion%20Paper/20151204_JC_2015_080_discussion_paper_on_Automation_in_Financial_Advice.pdf; see also* ESMA et al., *Report on Automation in Financial Advice* at 8–9 (2016) (''ESMA Report''), *https://esas-joint-committee.europa.eu/Publications/Reports/EBA%20BS%202016%20422%20(JC%20SC%20CPFI%20Final%20Report%20on%20automated%20advice%20tools).pdf* (discussing views on the benefits and risks of automated advice from respondents to the ESMA Discussion Paper).

[94] Söhnke M. Bartram, Jürgen Branke, and Mehrshad Motahari, *Artificial Intelligence in Asset Management,* CFA Institute Research Foundation Literature Review 25 (2020) (''CFA Literature Review''), *https://www.cfainstitute.org/-/media/documents/book/rf-lit-review/2020/rflr-artificial-intelligence-in-asset-management.ashx; see also* ESMA Discussion Paper, *supra* note 93, at 17 (''A well-developed algorithm may be more consistently accurate than the human brain at complex repeatable regular processes, and in making predictions. Automated advice tools therefore could reduce some elements of behavioural biases, human error, or poor judgement that may exist when advice is provided by a human. A well-developed algorithm could ensure equal and similar advice to all consumers with similar characteristics.''). *But see* ESMA Report, *supra* note 93, at 9 (stating that several respondents ''stated that whether or not automated advice is more consistent and accurate depends on both the underlying logic of the algorithm and the quality and completeness of the information inputted''); text accompanying *infra* note 97.

[95] *See, e.g.,* World Economic Forum, *The New Physics of Financial Services: Understanding How Artificial Intelligence is Transforming the Financial Ecosystem* 114–123 (Aug. 2018), *http://www3.weforum.org/docs/WEF_New_Physics_of_Financial_Services.pdf.*

[96] *See, e.g.,* In the Matter of AXA Rosenberg Group LLC et al., Advisers Act Release No. 3149

Continued

algorithms may be subject to their own risks, including risks related to the input data (such as a mismatch between data used for training the algorithm and the actual input data used during operations), algorithm design (such as flawed assumptions or judgments), and output decisions (such as disregard of underlying assumptions).[97] Digital advisers may encourage clients to trade more to the extent that the adviser integrates trade execution services, which may benefit the adviser at the expense of the client.[98] Depending on the quality, recency, and thoroughness of a client's information incorporated into an algorithm, as well as how broadly client risk tolerances or investment goals are generalized by the algorithm, the use of algorithms may cause some clients to receive investment advice that is less individualized than they reasonably expect. Similarly, clients may face risks when AI/ML models use poor quality, inaccurate, or biased data that produces outputs that are or lead to poor or biased advice. In this respect, biased data may be incorporated unintentionally through use of data sets that include irrelevant or outdated information, including information that exists due to historical practices or outcomes, or through the selection by human personnel of the data or types of data to be incorporated into a particular algorithm.[99]

To the extent that a third party, rather than the investment adviser, develops the analytical tools, the adviser may face challenges in understanding or overseeing those third parties or the technology. For example, there may be challenges in cases where software or a model is based on an approach or technology that is proprietary to the third party or is hosted by a third party, or where the investment adviser's personnel do not have the knowledge or experience necessary to understand the technology or to challenge its results. These circumstances may exacerbate exposure of investment advisers and their clients to cybersecurity and data privacy risks. Further, these risks may affect more clients than those posed by investment advisers using traditional methods because of the scale at which investment advisers are able to reach clients through digital platforms.

Clients' ability to understand these and other risks rests on the quality and sufficiency of their investment advisers' disclosures, which may be particularly important to the extent that these developments reflect the use of underlying technology that is complex or otherwise requires technical expertise. Disclosure can put clients in a position to understand the different roles played by technology and advisory personnel in developing the investment advice that clients receive. Investment advisers may face challenges in disclosing sufficiently these types of risks where any such disclosure might be necessarily technical.

There may also be systemic risks associated with widespread use of AI/ML, including deep learning, supervised learning, unsupervised learning, and reinforcement learning, which may affect the maintenance of fair, orderly, and efficient markets. For example, the Financial Stability Board has stated that ''applications of AI and machine learning could result in new and unexpected forms of interconnectedness between financial markets, for instance based on the use by various institutions of previously unrelated data sources.'' [100] In addition, there could be systemic risk to the extent that digital advisers employ models (including models from third-party model providers) that rely on past performance and volatility, which could constitute input data that is inappropriate for the current market. These and other risks may continue to grow as the use of AI continues to increase among investment advisers.

We request comment on all aspects of investment advisers' use of technology, particularly with respect to developing and providing investment advice, and the potential effect on investor protection and regulatory compliance. We specifically request comment on the following:

4.1 How do investment advisers currently use technology in developing and providing investment advice? What types of technology do advisers use for these purposes? How do investment advisers use technology in any quantitative investment processes that they employ?

4.2 Are our descriptions of the potential benefits and risks of investment advisers' use of technology in developing and providing investment advice accurate and comprehensive? If not, what additional benefits or risks to advisory clients are there from such use? What additional benefits or risks does using these types of technology provide to investment advisers? How do investment advisers weigh these benefits and risks in using technology to develop and provide investment advice? Does technology enable investment advisers to develop investment advice in a more cost-effective way and are clients able to receive less expensive advice as a result? Does technology increase access to investment advice for some clients who would otherwise not afford it or mitigate (or have the potential to mitigate) biases in the market that may have prevented access to some clients or prospective clients? Are there risks associated with the quality of services clients ultimately receive? If so, what are they and how do investment advisers address such risks? What factors do advisory clients consider in choosing to engage a robo-adviser rather than a traditional investment adviser? In what ways does investment advice developed or provided by a robo-adviser differ from investment advice developed or provided by a traditional investment adviser?

4.3 To the extent investment advisers use technology in developing and providing investment advice, do advisers assess whether the technology or its underlying models are explainable to advisory personnel or to clients? Is the technology or underlying model explainable? To what extent do investment advisers assess whether the results are reproducible? If so, are the results reproducible? To what extent do investment advisers rely on third parties to make these assessments?

4.4 How do investment advisers develop, test, deploy, monitor, and oversee the technology they use to develop and provide investment advice? Do investment advisers develop, test, and monitor AI/ML models differently from how they develop, test, and monitor traditional algorithms? How do investment advisers assess the effect on client accounts of any material change to advisers' technology, algorithm, or

(Feb. 3, 2011) (settled action); *see also* In the Matter of Barr M. Rosenberg, Advisers Act Release No. 3285 (Sept. 22, 2011) (settled action) (finding, in part, that an adviser breached his fiduciary duty by directing others to keep quiet about, and delay fixing, a material error in computer code underlying his company's automated model).

[97] *See* Deloitte Report, *supra* note 77, at 4.

[98] *See* CFA Literature Review, *supra* note 94, at 25 (''At the same time, because robo-advisors have trade execution services integrated into them, they often encourage investors to trade more. This increased trading can be both a benefit, in terms of encouraging investors to rebalance positions more often, and a pitfall, because it can lead to excessive trading that benefits robo-advising systems through commissions at the expense of investors.'').

[99] *See* FINRA AI Report, *supra* note 11, at 14; *see also* Treasury RFI, *supra* note 11, at 16840 (''Because the AI algorithm is dependent upon the training data, an AI system generally reflects any limitations of that dataset. As a result, as with other systems, AI may perpetuate or even amplify bias or inaccuracies in the training data, or make incorrect predictions if that data set is incomplete or non-representative.''); Jessica Fjeld et al., *Principled Artificial Intelligence: Mapping Consensus in Ethical and Rights-based Approaches to Principles for AI* 47–49 (Berkman Klein Center for internet & Society at Harvard University, Research Publication, 2020).

[100] FSB AI Report, *supra* note 11, at 1.

model prior to implementation? Do investment advisers communicate with clients about such material changes? If so, how?

4.5 What, if anything, do investment advisers do to understand how AI/ML models will operate during periods of unusual or volatile market activity or other periods where such models may have less, or less relevant, input data with which to operate? How does the use of these models by investment advisers affect the market more generally? What formal governance mechanisms do investment advisers have in place for oversight of the vendors that create or manage these models?

4.6 How do investment advisers disclose the use of algorithms or models to their clients, including the role of advisory personnel or third parties in creating and managing these algorithms or models? Do these disclosures address any effects that such use may have on client outcomes? When investment advice is developed and provided through an automated algorithm, how do advisers disclose the use of that automated algorithm? Do investment advisers assess how effective these disclosures are in informing clients about such use? If so, how effective are such disclosures? Please provide any available data to show how effective such disclosures are. What are clients' expectations for investment advice produced by an investment adviser's automated algorithm, and how are those expectations shaped by investment advisers' disclosures?

4.7 How do investment advisers account for the use of any poor quality, inaccurate, or biased data that are used by AI/ML models, and how do investment advisers determine the effect of this kind of data on the algorithms' output or seek to reduce the use of this kind of data? To what extent can the use of AI/ML models in developing investment advice perpetuate social biases and disparities? How have commenters seen this in practice with regard to the use of AI/ML models (*e.g.,* through marketing, asset allocation, fees, etc.)? To what extent and how do investment advisers employ controls to identify and mitigate any such biases or disparities? For example, do investment advisers evaluate the output of their models to identify and mitigate biases that would raise investor protection concerns? Do investment advisers utilize human oversight to identify biases that would raise investor protection concerns, in both the initial coding of their models or in the resulting output of those models?

4.8 Are there any particular challenges or impediments that investment advisers face in using AI/ML to develop and provide investment advice? If so, what are they and how do investment advisers address such challenges or impediments and any risks associated with them?

4.9 When relying on AI/ML models to develop investment advice, how do advisers determine whether those models are behaving as expected? How do advisers verify the quality of the assumptions and methodologies incorporated into such models? How frequently do advisers test these models? For example, do advisers test a model each time it is updated? What model risk management steps should advisers undertake? What is advisers' understanding of their responsibility to monitor, test, and verify model outputs? How do advisers' approaches with respect to AI/ML models differ from other models that advisers may use in developing investment advice?

4.10 In the context of developing and providing investment advice, what is the objective function of AI/ML models (*e.g.,* revenue generation)? What are the inputs relied on by AI/ML models used in developing and providing investment advice (*e.g.,* visual cues or feedback)? Does the ability to collect individual-specific data impact the effectiveness of the AI/ML model in maximizing its objective functions?

4.11 What cybersecurity and data security risks result from investment advisers' use of technology in developing and providing investment advice? How do investment advisers address or otherwise manage those risks and how do investment advisers disclose these risks to clients? Do investment advisers believe that delivering investment advice through email, which may be encrypted, is more secure than delivery through online client portals? Conversely, do investment advisers believe that delivery through online client portals is more secure? How do investment advisers address these concerns when clients are using mobile apps?

4.12 How do investment advisers generate records to support the investment advice they develop from using these types of technology? What types of records do they produce and how do investment advisers retain them? Does an investment adviser's recordkeeping process differ based on the type of technology it uses? If so, how?

4.13 Do investment advisers generate and retain records with respect to the testing of, or due diligence with respect to, the technology that they use in developing and providing investment advice?

4.14 To what extent do investment advisers market the types of technology the adviser uses in developing and providing investment advice? To the extent investment advisers market their use of technology, do advisers demonstrate that use to clients? To what extent do prospective and existing clients seek to assess investment advisers' understanding of the technology, or seek to understand the technology for themselves, in determining whether to hire or retain an investment adviser? If prospective or existing clients make such an assessment, how do they do so?

4.15 How do investment advisers disclose the types of technology used in developing and providing investment advice? What types of potential risks and conflicts of interest are disclosed? How are fees disclosed? To what extent does investment advisers' use of technology produce conflicts of interest that are similar to those of investment advisers that do not use such technologies? To what extent does investment advisers' use of technology produce conflicts that result from such use?

4.16 In what ways do investment advisers assess whether using these types of technology to develop and provide investment advice enables them to satisfy their fiduciary duty to their clients? How do investment advisers assess their ability to satisfy their duty of care and duty of loyalty when using these types of technology? How does an investment adviser determine whether the advice produced by its automated algorithm is in the best interest of a particular client? To what extent and how often do advisory personnel review investment advisers' algorithms to be sure that such advice is in the client's best interest? In conducting such review, to what extent do advisory personnel understand the algorithm, how it was created, and how it operates in practice? How do advisers take into account their fiduciary duty when developing, testing, monitoring, and overseeing these types of technology? To what extent do investment advisers rely on technology vendors or other third parties to provide technical knowledge so that advisers can understand the algorithms and the information or analysis they generate? When relying on such vendors or third parties, how do investment advisers assess whether the investment advisers are able to satisfy their duty of care and duty of loyalty?

4.17 What types of policies and procedures do investment advisers

maintain with respect to the technologies they use in developing and providing investment advice to clients? For example, do these investment advisers maintain policies and procedures under rule 206(4)–7 of the Advisers Act that are designed to address the technologies that they use or provide to clients? How do investment advisers' policies and procedures address their use of technology and the duties they owe their clients? Do they address how advisers determine how to incorporate information or analysis developed by these types of technologies into investment advice that satisfies their fiduciary duty? If so, how? How do investment advisers introduce new technology to their personnel?

4.18 What types of operational risks do investment advisers face using digital platforms to interact with clients? How do investment advisers interact with clients when the platform is unavailable—for example, when the adviser has lost internet service or when the platform is undergoing maintenance? What alternative means of communication are available to clients during those times? When issues arise, is the investment adviser responsible to the client for resolving those issues, or does the investment adviser rely on others to resolve the issues or to be responsible to the client? What terms of service do investment advisers put in place with cloud service providers in connection with the potential for loss of service or loss of data? We understand that investment advisers, like other financial services companies, may rely on a small number of cloud service providers.[101] What risks does this reliance present to the industry (and advisory clients)?

4.19 Under what circumstances do robo-advisers typically override their algorithm, and in what ways? What steps do robo-advisers take to ensure that any override of the algorithm is consistent with the adviser's disclosure and clients' best interest? Do robo-advisers document their determinations to override the algorithm and, if so, what specifically is documented? What have robo-advisers found to be the outcomes from overriding an algorithm?

4.20 When evaluating digital platforms, how do investment advisers weigh the platform's cost and quality of service?

4.21 Should the Commission consider amending Form ADV to collect information about the types of technology that advisers use to develop and provide investment advice? If so, what type of technology and why? What information about technology should we consider collecting? Should the Commission require investment advisers to describe their efforts to monitor the outputs of technology upon which they rely? Should the Commission consider another method of collecting this information?

4.22 What costs or benefits do investment advisers experience in registering with the Commission under the exemption for internet investment advisers? What costs or benefits do clients of internet investment advisers experience as compared to clients of other investment advisers registered with the Commission? Do commenters believe that the exemption for internet investment advisers should be updated in any way, including to facilitate its use or to modernize it? Are its conditions appropriate? Should we consider changes to, for example, the *de minimis* exception for non-internet clients or the recordkeeping requirement? Should we consider changes to the exemption's definition of ''interactive website''? Should the exemption specify what it means to provide investment advice ''exclusively'' through the interactive website? Would additional guidance on any of the exemption's conditions or definitions be useful?

4.23 The Commission has stated that an investment adviser relying on the internet investment adviser exemption ''may not use its advisory personnel to elaborate or expand upon the investment advice provided by its interactive website, or otherwise provide investment advice to its internet clients.'' [102] Should the Commission consider eliminating or modifying this language? Should the Commission consider changes to the exemption that reflect or otherwise address this language? Should the Commission provide additional guidance about the internet investment adviser exemption?

4.24 As discussed above, the Commission acknowledged that the internet investment adviser exemption was designed to balance these advisers' multiple state registration requirements with the Advisers Act's allocation of responsibility for regulating smaller advisers to state securities authorities. Consistent with this design, are there changes to the exemption that might help to ensure that it encompasses those investment advisers that provide advice through the internet while ensuring that advisers that use the internet only as a marketing tool, for example, remain subject to state registration? Should the Commission consider creating a registration exemption that reflects investment advisers' current use of technology in providing investment advice in a better way than the internet investment adviser exemption?

4.25 To what extent do investment advisers use digital platforms and other analytical tools in connection with wrap fee programs? [103] For example, do these programs use model portfolios or portfolio allocation models (whether developed by the investment adviser or by a third party that provides such models to the adviser for its use) to recommend investor allocations? [104] Do wrap fee programs with an online presence allow clients to engage directly with the portfolio manager managing the client's assets or provide access to a wider array of service providers than the client might otherwise have? Are there concerns with respect to these programs for clients with minimal or no trading activity as commissions for trade execution have moved toward zero? [105]

[101] *See, e.g.,* Sophia Furber, *As 'Big Tech' Dominates Cloud Use for Banks, Regulators May Need to Get Tougher,* S&P Global (Aug. 18, 2020), *https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/as-big-tech-dominates-cloud-use-for-banks-regulators-may-need-to-get-tougher-59669007.*

[102] Internet Investment Adviser Adopting Release, *supra* note 83, at 77621.

[103] In a wrap fee program, clients generally are charged one fee in exchange for investment advisory services, the execution of transactions, and custody (or safekeeping) as well as other services. An adviser acting as a sponsor to such a program may choose the service providers, including other investment advisers, and provide clients with access to those services through internet-based platforms that enable clients to engage directly with service providers.

[104] A model portfolio generally consists of a diversified group of assets (often mutual funds or ETFs) designed to achieve a particular expected return with exposure to corresponding risks that are rebalanced over time. *See* Morningstar, *2020 Model Portfolio Landscape* (2020) (noting that, while models can focus on a single asset class, most models combine multiple asset classes). Model portfolios are distinct from portfolio allocation models, which can be educational tools that investors use to obtain a general sense of which asset classes (as opposed to which specific securities) are appropriate for the investor to allocate its assets to (*e.g.,* appropriate balance of equities, fixed income, and other assets given age and other facts and circumstances).

[105] *See generally* Securities and Exchange Commission, Division of Examinations, Risk Alert: Observations from Examinations of Investment Advisers Managing Client Accounts That Participate in Wrap Fee Programs (July 21, 2021), at 4 (''Infrequent trading in wrap fee accounts was also identified at several examined advisers, raising concerns that clients whose wrap fee accounts are managed by portfolio managers with low trading activity are paying higher total fees and costs than they would in non-wrap fee accounts.''), *https://www.sec.gov/files/wrap-fee-programs-risk-alert_0.pdf.* The Risk Alert represents the views of the staff of the Division of Examinations. It is not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved its content. The Risk Alert, like all staff statements, has no legal force or effect: It does not alter or

Are such concerns different for wrap fee programs sponsored by robo-advisers as compared to those sponsored by traditional investment advisers?

4.26 To what extent do robo-advisers (as well as other sponsors of investment advisory programs) rely on Rule 3a–4 to determine that they are not sponsoring or otherwise operating investment companies under the Investment Company Act of 1940 (the ''Investment Company Act'')? [106] If such sponsors do not rely on the rule, what policies and practices have sponsors adopted to prevent their investment advisory programs from being deemed to be investment companies?

4.27 To satisfy the conditions of Rule 3a–4, among other things, a sponsor and personnel of the manager of the client's account who are knowledgeable about the account and its management must be reasonably available to the client for consultation. The rule does not dictate the manner in which such consultation with clients should occur. How do sponsors and other advisers satisfy this condition? Should we consider amending Rule 3a–4 to address technological developments, such as chatbots and/or other responsive technologies providing novel ways of interacting with clients? Should the Commission address these developments in some other way? Should the Commission provide additional guidance about this condition? If yes, what specifically should this guidance address?

4.28 To satisfy the conditions of Rule 3a–4, among other things, each client's account must be managed on the basis of the client's financial situation and investment objectives. Sponsors must obtain information from each client about their financial situation and investment objectives at account opening and must contact each client at least annually thereafter to determine whether there have been any changes in the client's financial situation or investment objectives. The Commission stated that the receipt of individualized advice is ''one of the key differences between clients of investment advisers and investors in investment companies.'' [107] How do sponsors ensure that they have sufficient information about a client's financial situation and investment objectives to provide investment advice that is in the best interest of the client, including advice that is suitable for the client? Given the availability of new technology for developing and providing investment advice, does a sponsor's reliance on Rule 3a–4 heighten the risk of clients receiving unsuitable advice? If so, are there other requirements or conditions that might address this risk?

4.29 One of the conditions of Rule 3a–4 is that investment advisory programs relying on the rule be managed in accordance with any reasonable restrictions imposed by the client on the management of the client's account. In addition, the client must have the opportunity to impose reasonable restrictions at the time the account is opened and must be asked at least annually whether the client might wish to impose any reasonable restrictions or reasonably modify existing restrictions. The Commission explained that the ability of a client to impose reasonable restrictions on the management of a client account is a critical difference between a client receiving investment advisory services and an investor in an investment company. Since the rule was adopted, enhanced technological capabilities and industry practices may have made it practical for sponsors to provide clients with other means of receiving meaningful individualized treatment regarding the management of their accounts. Do sponsors of investment advisory programs currently provide their clients with ways of customizing or personalizing their accounts other than through the imposition of reasonable restrictions? If yes, please provide examples of such practices. To what extent do clients avail themselves of those options for individualized treatment and do they find them to be valuable or important? Should we consider amending Rule 3a–4 to address these developments or should we address them in some other way, such as by providing additional guidance about this condition?

4.30 In view of the variety and increasing availability of technologies used by investment advisers to develop and provide investment advice, are there other regulatory matters that the Commission should consider? If so, what are they, and why? To the extent commenters recommend any modifications to existing regulations or additional regulations, what economic costs and benefits do commenters believe would result from their recommendations? Please provide or identify any relevant data and other information.

IV. General Request for Comment

This Request is not intended to limit the scope of comments, views, issues, or approaches to be considered. In addition to broker-dealers, investment advisers and investors, we welcome comment from other interested parties, researchers and particularly welcome statistical, empirical, and other data from commenters that may support their views or support or refute the views or issues raised by other commenters.

By the Commission.

Dated: August 27, 2021.

Vanessa A. Countryman,

Secretary.

Appendix A—Tell Us About Your Experiences With Online Trading and Investment Platforms

We're asking individual investors like you what you think about online trading or investment platforms such as websites and mobile applications (''apps''). It's important to us at the SEC to hear from investors who trade and invest this way so we can understand your experiences.

Please take a few minutes to answer any or all of these questions. Please provide your comments on or before October 1, 2021—and thank you for your feedback!

1. Do you have one or more online trading or investment accounts?

- ○ Yes, I have one or more accounts that I access online using a computer.
- ○ Yes, I have one or more accounts that I access using a mobile app.
- ○ Yes, I have one or more accounts that I access both online using a computer and using a mobile app.
- ○ Yes, I have one or more accounts that I access online, either using a computer or a mobile app, but I also access the account(s) in other ways (*e.g.,* by calling or visiting in person).

amend applicable law, and it creates no new or additional obligations for any person.

[106] *See* 17 CFR 270.3a–4. Certain discretionary investment advisory programs may meet the definition of ''investment company'' under the Investment Company Act, but the Commission has indicated that investment advisory programs that provide each client with individualized treatment and the ability to maintain indicia of ownership of the securities in their accounts are not investment companies. Whether such a program is an investment company is a factual determination and depends on whether the program is an issuer of securities under the Investment Company Act and the Securities Act. Rule 3a–4 under the Investment Company Act provides a non-exclusive safe harbor from the definition of ''investment company'' to investment advisory programs that are organized and operated in the manner provided in the rule. A note to the rule also states that there is no registration requirement under Section 5 of the Securities Act for programs that rely on the rule, and that the rule is not intended to create any presumption about a program that does not meet the rule's provisions.

[107] *See* Status of Investment Advisory Programs under the Investment Company Act of 1940, Investment Company Act Rel. No. 21260 (July 27, 1995), 60 FR 39574 (Aug. 2, 1995). The Commission also stated that to fulfill its duty to provide only suitable investment advice, ''an investment adviser must make a reasonable determination that the investment advice provided is suitable for the client based on the client's financial situation and investment objectives. The adviser's use of a model to manage client accounts would not alter this obligation in any way.'' *See* Status of Investment Advisory Programs under the Investment Company Act of 1940, Investment Company Act Rel. No. 22579 (Mar. 24, 1997), 62 FR 15098 (Mar. 31, 1997).

○ I have one or more accounts, but I do not access them online using a computer or using a mobile app.
○ No, I don't have a trading or investment account.

2. If your response to Question 1 is ''Yes'', do you think you would trade or invest if you could not do so online using a computer or using a mobile app?

○ Yes
○ No

3. On average, how often do you access your online account?

○ Daily/more than once a day
○ Once to a few times a week
○ Once to a few times per month
○ Less often than once a month
○ Never
○ Other

If Other, Explain:

4. On average, how often are trades made in your online account, whether by you or someone else?

○ Daily/more than once a day
○ Once to a few times a week
○ Once to a few times per month
○ Less often than once a month
○ Never
○ Other

If Other, Explain:

5. If you access your account online, did you have the account first, and only began to access it electronically later? Or did you open the account with the idea that you would access it electronically immediately?

○ I had a pre-existing account and downloaded an app or visited a website to access my account.
○ I downloaded an app or visited a website first, and then opened up an account with the company.

6. My goals for trading or investing in my online account are (check all that apply):

☐ Keep the amount of money I have, while keeping up with inflation
☐ Save and grow my money for short-term goals (in the next year or two)
☐ Save and grow my money for medium- to long-term goals
☐ Have fun
☐ Other

If Other, Explain:

7. What would you like us to know about your experience with the features of your online trading or investment platform? (Examples of features are: Social networking tools; games, streaks, or contests with prizes; points, badges, and leaderboards; notifications; celebrations for trading; visual cues, like changing colors; ideas presented at order placement or other curated lists or features; subscription and membership tiers; or chatbots.)

8. If you were trading or investing prior to using an online account, how have your investing and trading behaviors changed since you started using your online account? (For example, the amount of money you have invested, your interest in learning about investing and saving for retirement, the amount of time you have spent trading, your knowledge of financial products, the number of trades you have made, the amount of money you have made in trading, your knowledge of the markets, the number of different types of financial products you have traded, or your use of margin.)

9. How much experience do you have trading or investing in the following products (None, Less than 12 months, 1–2 years, 2–5 years, 5+ years):

Investment products	None	Less than 12 months	1–2 years	2–5 years	5+ years
Stocks	○	○	○	○	○
Bonds	○	○	○	○	○
Options	○	○	○	○	○
Mutual Funds	○	○	○	○	○
ETFs	○	○	○	○	○
Futures	○	○	○	○	○
Cryptocurrencies	○	○	○	○	○
Commodities	○	○	○	○	○
Closed-End Funds	○	○	○	○	○
Money Market Funds	○	○	○	○	○
Variable Insurance Products	○	○	○	○	○
Business Development Companies	○	○	○	○	○
Unit Investment Trusts	○	○	○	○	○

10. What is your understanding, if any, of the circumstances under which trading or investing in your account can be suspended or restricted?

11. What else would you like us to know—positive or negative—about your experience with online trading and investing?

Other Ways to Submit Your Feedback

You also can send us feedback in the following ways (include the file number S7–10–21 in your response):

Print Your Responses and Mail

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Print a PDF of Your Responses and Email

Use the printer-friendly page and select a PDF printer to create a file you can email to: *rule-comments@sec.gov*

Print a Blank Copy of this Flyer, Fill it Out, and Mail

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Contact Info (Not Required; to submit anonymously, leave blank)

First Name: _____
Last Name: _____

We will post your feedback on our website. Your submission will be posted without change; we do not redact or edit personal identifying information from submissions. You should only make submissions that you wish to make available publicly.

If you are interested in more information on the proposal, or want to provide feedback on additional questions, click here. Comments should be received on or before October 1, 2021.

Thank you!

[FR Doc. 2021–18901 Filed 8–31–21; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Change to SBA Secondary Market Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of change to secondary market program.

SUMMARY: The purpose of this Notice is to inform the public that the Small Business Administration (SBA) is making a change to its Secondary Market Loan Pooling Program. SBA is increasing the minimum maturity ratio for both SBA Standard Pools and Weighted-Average Coupon (WAC) Pools by 400 basis points, to 93.0%. The change described in this Notice is being made to cover the estimated cost of the timely payment guaranty for newly formed SBA 7(a) loan pools. This change will be incorporated, as needed, into the SBA Secondary Market Program Guide and all other appropriate SBA Secondary Market documents.

DATES: This change will apply to SBA 7(a) loan pools with an issue date on or after October 1, 2021.

ADDRESSES: Address comments concerning this Notice to John M. Wade, Chief Secondary Market Division, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416; or *john.wade@sba.gov.*

FOR FURTHER INFORMATION CONTACT: John M. Wade, Chief, Secondary Market Division at 202–205–3647; or *john.wade@sba.gov.*

SUPPLEMENTARY INFORMATION: The Secondary Market Improvements Act of 1984, 15 U.S.C. 634(f) through (h), authorized SBA to guarantee the timely payment of principal and interest on Pool Certificates. A Pool Certificate represents a fractional undivided interest in a ''Pool,'' which is an aggregation of SBA guaranteed portions of loans made by SBA Lenders under section 7(a) of the Small Business Act, 15 U.S.C. 636(a). In order to support the timely payment guaranty requirement, SBA established the Master Reserve Fund (MRF), which serves as a mechanism to cover the cost of SBA's timely payment guaranty. Borrower payments on the guaranteed portions of pooled loans, as well as SBA guaranty payments on defaulted pooled loans, are deposited into the MRF. Funds are held in the MRF until distributions are made to investors (Registered Holders) of Pool Certificates. The interest earned on the borrower payments and the SBA guaranty payments deposited into the MRF supports the timely payments made to Registered Holders.

From time to time, SBA provides guidance to SBA Pool Assemblers on the required loan and pool characteristics necessary to form a Pool. These characteristics include, among other things, the minimum number of guaranteed portions of loans required to form a Pool, the allowable difference between the highest and lowest gross and net note rates of the guaranteed portions of loans in a Pool, and the minimum maturity ratio of the guaranteed portions of loans in a Pool. The minimum maturity ratio is equal to the ratio of the shortest and the longest remaining term to maturity of the guaranteed portions of loans in a Pool.

Based on SBA's expectations as to the performance of future Pools, SBA has determined that for pools formed on or after October 1, 2021, SBA Pool Assemblers may decrease the difference between the shortest and the longest remaining term of the guaranteed portions of loans in a Pool by 4 percentage points (*i.e.,* increasing the minimum maturity ratio by 400 basis points). SBA does not expect a 4 percentage point increase in the minimum maturity ratio to have an adverse impact on either the program or the participants in the program. Therefore, effective October 1, 2021, all guaranteed portions of loans in Standard Pools and WAC Pools presented for settlement with SBA's Fiscal Transfer Agent will be required to have a minimum maturity ratio of at least 93.0%. SBA is making this change pursuant to Section 5(g)(2) of the Small Business Act, 15 U.S.C. 634(g)(2).

SBA will continue to monitor loan and pool characteristics and will provide notification of additional changes as necessary. It is important to note that there is no change to SBA's obligation to honor its guaranty of the amounts owed to Registered Holders of Pool Certificates and that such guaranty continues to be backed by the full faith and credit of the United States.

This program change will be incorporated as necessary into SBA's Secondary Market Guide and all other appropriate SBA Secondary Market documents. As indicated above, this change will be effective for Standard Pools and WAC Pools with an issue date on or after October 1, 2021.

John M. Wade,

Chief, Secondary Market Division, Office of Capital Access.

[FR Doc. 2021–18858 Filed 8–31–21; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

SBIC Licensing and Examination Fees Inflation Adjustment

AGENCY: U.S. Small Business Administration.

ACTION: Notice of SBIC fee increases.

SUMMARY: The U.S. Small Business Administration (SBA) is providing notice of the increased licensing and examination fees charged to Small Business Investment Companies (SBICs) due to the annual inflation adjustment required under SBIC program regulations.

DATES: The changes to the SBIC program licensing and examination fees identified in this notice take effect on October 1, 2021.

FOR FURTHER INFORMATION CONTACT: Steve Knott, Office of Investment and Innovation, at 202–205–7731 or *steve.knott@sba.gov.*

SUPPLEMENTARY INFORMATION: Beginning October 1, 2021, the SBIC program regulations at 13 CFR 107.300(b)(2) and 107.692(b)(2) require SBA to annually adjust the licensing and examination fees for SBICs using the Inflation Adjustment defined in 13 CFR 107.50. This document provides notice of that adjustment. The table below identifies the amounts of the adjusted licensing and examination fees payable by SBICs and SBIC license applicants, which become effective on October 1, 2021.

SBIC fee type	Fees amounts (effective Oct. 1, 2021)
Licensing Fees (§ 107.300)	
Initial Licensing Fee § 107.300(a)	$10,500
Final Licensing Fee § 107.300(b)	36,900
Examination Fees (§ 107.692(b))	
Minimum Base Fee	9,500
Maximum Base Fee for non-Leveraged SBICs	31,600
Maximum Base Fee for Leveraged SBICs	46,400

(Authority: 15 U.S.C. 681(e) and 687b(b), 13 CFR 107.300 and 107.692)

Thomas Morris,

Acting Deputy Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2021–18856 Filed 8–31–21; 8:45 am]

BILLING CODE 8026–03–P

TENNESSEE VALLEY AUTHORITY

Charter Renewal of the Regional Energy Resource Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the TVA Board of Directors has renewed the Regional Energy Resource Council (RERC) charter for an additional two-year period beginning on July 30, 2021.

FOR FURTHER INFORMATION CONTACT: Cathy Coffey, 865–632–4494, *ccoffey@tva.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to FACA and its implementing regulations, and following consultation with the Committee Management Secretariat, General Services Administration (GSA) in accordance with 41 CFR 102–3.60(a), notice is hereby given that the RERC has been renewed for a two-year period beginning July 30, 2021. The RERC will provide advice to TVA on its issues affecting energy resource activities. The RERC was originally established in 2013 to advise TVA on its energy resource activities and the priority to be placed among competing objectives and values. It has been determined that the RERC continues to be needed to provide an additional mechanism for public input regarding energy resource issues. Additionally, we would like to correct the error in the Summary section of the April 28, 2020, Regional Resource Stewardship Council renewal notice published in the **Federal Register** that misidentified the council as the Regional Energy Resource Council.

Dated: August 26, 2021.

The DFO of the Tennessee Valley Authority and Vice President of External Strategy & Regulatory Affairs, Melanie Farrell, having reviewed and approved this document, is delegating the authority to sign this document to Cathy Coffey, Senior Program Manager of Stakeholder Relations, for purposes of publication in the **Federal Register**.

Cathy Coffey,

Senior Program Manager, Tennessee Valley Authority.

[FR Doc. 2021–18867 Filed 8–31–21; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. –2022–2111]

Petition for Exemption; Summary of Petition Received; Corvus Airlines Inc. (dba Ravn Alaska)

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, 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 September 21, 2021.

ADDRESSES: Send comments identified by docket number FAA–2021–0423 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: Tiffany Jackson (202–267–9677), 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.

Timothy Adams,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–0423.

Petitioner: Corvus Airlines dba Ravn Alaska.

Section(s) of 14 CFR Affected: § 121.407(a)(1)(ii).

Description of Relief Sought: The petitioner operates a De Havilland (DHC) DHC–8–103 and DHC–8–106 series aircraft and seeks relief from § 121.407(a)(1)(ii) of Title 14, Code of Federal Regulations (14 CFR) to allow flightcrew training and checking to be conducted in a De Havilland DHC–8–200 series simulator and operate the Dash-8–100 series aircraft.

[FR Doc. 2021–18793 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Safety Oversight and Certification Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Safety Oversight and Certification Advisory Committee (SOCAC) meeting.

SUMMARY: This notice announces a meeting of the SOCAC.

DATES: The meeting will be held on September 22, 2021, from 1:00 p.m. to 3:00 p.m. Eastern Daylight Time.

Requests to attend the meeting must be received by September 13, 2021.

Requests for accommodations to a disability must be received by September 13, 2021.

Requests to submit written materials to be reviewed during the meeting must be received no later than September 13, 2021.

ADDRESSES: The meeting will be held virtually. Members of the public who wish to observe the meeting must RSVP by emailing *9-awa-arm-socac@faa.gov.* Information on the committee and copies of the meeting minutes will be available on the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/.*

FOR FURTHER INFORMATION CONTACT: Natalie Mitchell-Funderburk, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–0254; email *9-awa-arm-socac@faa.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The SOCAC was created under the Federal Advisory Committee Act (FACA), in accordance with the FAA Reauthorization Act of 2018, Public Law 115–254, to provide advice to the Secretary on policy-level issues facing the aviation community that are related to FAA safety oversight and certification programs and activities.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Review and Acceptance of March 29, 2021, Meeting Minutes.
- Subcommittee Report.
- FAA Updates.

Additional information will be posted on the committee's website listed in the **ADDRESSES** section at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public on a first-come, first served basis, as space is limited. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Please provide the following information: Full legal name, country of citizenship, and name of your industry association or applicable affiliation. The FAA will email registrants the meeting access information in a timely manner prior to the meeting.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. Any member of the public may present a written statement to the committee at any time by providing a copy to the Designated Federal Officer via the email listed in the **FOR FURTHER INFORMATION CONTACT** section.

Issued in Washington, DC.

Timothy R. Adams,

Acting Executive Director, Office of Rulemaking.

[FR Doc. 2021–18792 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0024]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 10, 2021, the Everett Railroad Company (EV) petitioned the Federal Railroad Administration (FRA) for an extension of a special approval/waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards), 223 (Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses), and 224 (Reflectorization of Rail Freight Rolling Stock). The relevant FRA Docket Number is FRA–2012–0024.

Specifically, EV requested to extend its special approval pursuant to 49 CFR 215.203, *Restricted cars,* for one caboose (EV 91517) that is more than 50 years from the date of original construction. EV also requests to extend its existing relief from 49 CFR 215.303, *Stenciling of restricted cars;* 223.15, *Requirements for existing cabooses;* and 224.101, *General requirements.* In support of its request, EV states that the relief would allow the caboose's historical appearance to be preserved for excursion, historical, and public relations purposes, and that installing FRA-certified glazing would be costly and difficult.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by October 18, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–18862 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0038]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 1, 2021, Penn Valley Railroad, LLC (PVRR) petitioned the Federal Railroad Administration (FRA) for an extension of a special approval/waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part

215, Railroad Freight Car Safety Standards. The relevant FRA Docket Number is FRA–2011–0038.

Specifically, PVRR requests relief from 49 CFR 215.203, *Restricted cars,* for one caboose (PRR 478044) that is more than 50 years of age from the date of original construction. PVRR also requests relief from 49 CFR 215.303, *Stenciling of restricted cars,* to retain the caboose's historical accuracy. In support of its petition, PVRR states that no accidents, incidents, or injuries to railroad personnel have occurred since the waiver/special approval was granted.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by October 18, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–18861 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2021–0086]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 16, 2021, the Steam Locomotive Heritage Association (SLHA) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 230.16, *Annual inspection.* FRA assigned the petition Docket Number FRA–2021–0086.

Specifically, SLHA requested relief for steam locomotive #1003, which is owned by 1003 Operations, LLP, and leased to SLHA to use for educational purposes. SHLA requests that #1003's annual inspection be delayed from its current due date of October 17, 2021, to December 31, 2021, so SLHA can use #1003 in several planned events during the month of November. In support of its request, SLHA states that #1003 would accumulate a total of 12 service days and 178 miles traveled since the previous annual inspection on October 17, 2020.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by October 18, 2021 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2021–18863 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0191]

Request for Comments of a Previously Approved Information Collection: Seamen's Claims, Administrative Action and Litigation

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on May 21, 2021.

DATES: Comments must be submitted on or before October 1, 2021.

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: Michael Yarrington, (202) 366–1915,

Office of Marine Insurance, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Seamen's Claims, Administrative Action and Litigation.

OMB Control Number: 2133–0522.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: The information is submitted by claimants seeking payments for injuries or illnesses they sustained while serving as masters or members of a crew on board a vessel owned or operated by the United States. The filing of a claim is a jurisdictional requirement for MARAD liability for such claims. MARAD reviews the information and makes a determination regarding agency liability and payments.

Respondents: Officers or members of a crew who suffered death, injury, or illness while employed on vessels owned or operated by the United States. Also included in this description of respondents are surviving dependents, beneficiaries, and/or legal representatives of the officers or crew members.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 15.

Total Estimated Number of Responses: 15.

Frequency of Collection: Annually.

Estimated Times per Respondent: 12.5 Hours.

Total Estimated Number of Annual Burden Hours: 188.

Public Comments Invited: Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.93)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–18811 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition To Modify an Exemption of a Previously Approved Antitheft Device; Mitsubishi Motors R&D of America

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

ACTION: Grant of petition to modify an exemption of a previously approved antitheft device.

SUMMARY: On February 2, 2009, the National Highway Traffic Safety Administration (NHTSA) granted in full Mitsubishi Motors R&D (Mitsubishi) of America's petition for an exemption from the Federal Motor Vehicle Theft Prevention Standard (theft prevention standard) for its Mitsubishi Outlander vehicle line beginning in model year (MY) 2011. On November 12, 2012, the agency granted Mitsubishi's first petition to modify its previously approved exemption for the Outlander vehicle line beginning with MY 2014. On August 1, 2019, Mitsubishi submitted a second petition to modify its previously approved exemption for the Outlander vehicle line beginning with MY 2022. On February 17, 2021, Mitsubishi submitted a third petition to modify its previously approved exemption for a confidential variant of the Outlander vehicle line beginning with MY 2023. Mitsubishi also requested confidential treatment for specific information in its petition. Therefore, no confidential information provided for purposes of this notice has been disclosed.

DATES: The modification granted by this notice is effective beginning with the 2023 MY.

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43–439, NRM–310, 1200 New Jersey Avenue SE, Washington, DC 20590. Ms. Ballard's phone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: On February 2, 2009, NHTSA published in the **Federal Register** a notice granting in full a petition from Mitsubishi for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR 541) for the Outlander vehicle line beginning with its MY 2011 vehicles (see 74 FR 5891). Mitsubishi equipped the MY 2011 Outlander vehicles with a passive, transponder-based, electronic engine immobilizer device and an audible and visible alarm.

On August 6, 2012, Mitsubishi submitted a petition to modify the previously approved exemption for the Outlander vehicle line. On November 28, 2012 (see 77 FR 71030), the agency granted the petition for modification of the previously granted exemption for the Outlander vehicle line beginning with its MY 2014 vehicles. On August 1, 2019, Mitsubishi submitted a second petition to modify the previously approved exemption for the Outlander vehicle line. On May 11, 2020 (see 85 FR 27798), the agency granted the petition for modification of the previously granted exemption for the Outlander vehicle line beginning with its MY 2021 vehicles, although Mitsubishi later notified the agency that the modification would be applied starting with its MY 2022 vehicles. On February 17, 2021, Mitsubishi submitted a third petition to modify the previously approved exemption for a confidential variant of the Outlander vehicle line beginning with its MY 2023 vehicles.

Mitsubishi's submission is a complete petition, as required by 49 CFR part 543.10(d), in that it meets the general requirements contained in 49 CFR part 543.5 and the specific content requirements of 49 CFR part 543.6. Mitsubishi's petition for modification provides a detailed description and diagram of the identity, design, and location of the components of the antitheft device proposed for installation beginning with the 2023 MY.

The details of Mitsubishi's first three previously-approved antitheft devices are described in the February 2009, November 2012, and May 2020 **Federal Register** notices granting their petitions for exemption (see 74 FR 5891, 77 FR 71030, and 85 FR 27798), as discussed above.

In its third modification for its 2023 vehicles, Mitsubishi stated that it will offer the one touch starting system (OSS 3) as standard equipment for all confidential variants of the Outlander vehicles. The OSS 3 is a transponder-based electronic immobilizer system that starts the engine without using a mechanical key as long as the registered iKey Fob is located in close proximity to the driver.

When the ignition switch is pushed to the ''on'' position, the transceiver module reads the specific ignition key code for the vehicle and transmits an encrypted message containing the key code to the electronic control unit (ECU) or hands free module (HFM), which verifies that the key is correct. The immobilizer then sends a separate encrypted start-code signal to the engine ECU or HFM to allow the driver to start

the vehicle. The powertrain will function only if the key code matches the unique identification key code previously programmed into the ECU or HFM. If the codes do not match, the powertrain engine/motor will be disabled.

Mitsubishi stated that its immobilizer system is further enhanced by several features that make it impossible to defeat, including encrypted communication between the transponder and the ECU (HFM). There are millions of different possible key codes for the new OSS 3 system making a successful key code duplication nearly impossible. Mitsubishi stated that the immobilizer device and the ECU or HFM share security data when first installed during vehicle assembly, making them a matched set. These matched modules will not function if taken out and reinstalled separately on other vehicles. Mitsubishi also stated that the device is extremely reliable and durable because there are no moving parts, the key does not require a separate battery and it is impossible to mechanically override the device and start the vehicle.

Mitsubishi stated that the Mitsubishi Outlander has been equipped with the immobilizer device since MY 2007. Mitsubishi also stated that the Eclipse, Galant, Endeavor, Lancer, Outlander Sport, I-MiEv, Mirage, and the Eclipse Cross vehicle lines have been equipped with a similar type of immobilizer device since January 2000, January 2004, April 2004, March 2007, September 2010, October 2011, July 2013 and December 2017 respectively, and they have all been granted parts-marking exemptions by the agency. Mitsubishi further stated that its Eclipse vehicle line has been equipped with a similar device since introduction of its MY 2000 vehicles. Mitsubishi further stated that the theft rate for the MY 2000 Eclipse decreased by almost 42% when compared with that of its MY 1999 Mitsubishi Eclipse (unequipped with an immobilizer device).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.8(b), the agency grants a petition for exemption from the parts-marking requirements of part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. In this case, Mitsubishi's petition is granted under 49 U.S.C. 33106(d) and 49 CFR 543.8(c), which state that if the Secretary of Transportation (NHTSA, by delegation) does not make a decision about a petition within 120 days of the petition submission, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.

Separately, the agency finds that Mitsubishi has provided adequate reasons for its belief that the antitheft device for its vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard. This conclusion is based on the information Mitsubishi provided about its antitheft device. NHTSA believes, based on the supporting evidence submitted by Mitsubishi and other information NHTSA has received about the effectiveness of antitheft devices, that the antitheft device for the confidential variant of the Outlander vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard.

The agency concludes that Mitsubishi's antitheft device will continue to provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the theft prevention standard for a given model year. 49 CFR 543.8(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the theft prevention standard.

If Mitsubishi decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mitsubishi wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.8(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.10(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in the exemption.''

The agency wishes to minimize the administrative burden that section 543.10(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if Mitsubishi contemplates making any changes, the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

For the foregoing reasons, the agency hereby announces a grant in full Mitsubishi's petition to modify the exemption for the confidential variant of the Outlander vehicle line, beginning with its MY 2023 vehicles. NHTSA has determined that the modified device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of 49 CFR part 541.

Jane Doherty,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2021–18801 Filed 8–31–21; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S.

persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On August 23, 2021, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

Individual

1. WOLDEYOHANNES, Filipos (a.k.a. WELDEYOHANES, Philipos; a.k.a. WELDEYOHANNES, Filipos; a.k.a. WELDEYOHANNES, Fillipos; a.k.a. WELDEYOHANNES, Philipos; a.k.a. WOLDEYOHANES, Filipos; a.k.a. WOLDEYOHANES, Phillipos; a.k.a. WOLDEYOHANNES, Philipos), Shire, Tigray, Ethiopia; Eritrea; DOB 1955; POB Ts'elot, Asmara, Eritrea; nationality Eritrea; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839, 3 CFR, 2018 Comp., p. 399, (E.O. 13818) for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

Dated: August 23, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021–18839 Filed 8–31–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

[Docket Number OFAC–2021–0003]

Effectiveness of Licensing Procedures for Exportation of Agricultural Commodities, Medicine, and Medical Devices to Sudan and Iran; Comment Request

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Request for comments.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is soliciting comments on the effectiveness of OFAC's licensing procedures for the exportation of agricultural commodities, medicine, and medical devices to Sudan and Iran for the time period between October 1, 2016, to September 30, 2018. Pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000, OFAC is required to submit a biennial report to the Congress on the operation of licensing procedures for such exports.

DATES: Written comments should be received on or before October 1, 2021, to be assured of consideration for the report.

ADDRESSES: You may submit comments by any of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

Email: OFACreport@treasury.gov with Attn: Request for Comments (TSRA).

Instructions: All submissions received must include the agency name and refer to Docket number OFAC–2021–0003. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about these licensing procedures should be directed to the Assistant Director for Licensing, 202–622–2480. Additional information about these licensing procedures is also available at *www.treasury.gov/tsra.*

SUPPLEMENTARY INFORMATION: The current procedures used by OFAC pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX of Pub. L. 106–387, 22 U.S.C. 7201 *et seq.*) (the ''Act'') for authorizing the export and reexport of agricultural commodities, medicine, and medical devices to Iran are set forth in 31 CFR 560.530, 560.532, and 560.533. Between October 22, 2012, and December 23, 2016, OFAC issued a series of general licenses and published amendments to the Iranian Transactions and Sanctions Regulations, 31 CFR part 560, to expand the scope of these authorizations and to issue new or expanded authorizations, including authorizations related to training, replacement parts, software, and services for the operation, maintenance, and repair of medical devices, and items that are broken or connected to product recalls or other safety concerns to Iran. *See* 31 CFR 560.530(a)(2) through (6). Accordingly, specific licenses are no longer required for these exports and related activities.

Effective October 12, 2017, sections 1 and 2 of Executive Order (E.O.) 13067 of November 3, 1997, ''Blocking Sudanese Government Property and Prohibiting Transactions With Sudan'' (62 FR 59989, November 5, 1997), and E.O. 13412 of October 13, 2006, ''Blocking Property of and Prohibiting Transactions With the Government of Sudan'' (71 FR 61369, October 17, 2006), were revoked, pursuant to E.O. 13761 of January 13, 2017, ''Recognizing Positive Actions by the Government of Sudan and Providing for the Revocation of Certain Sudan-Related Sanctions'' (82 FR 5331, January 18, 2017), as amended by E.O. 13804 of July 11, 2017, ''Allowing Additional Time for Recognizing Positive Actions by the Government of Sudan and Amending Executive Order 13761'' (82 FR 32611, July 14, 2017). As a result of the revocation of these sanctions provisions, U.S. persons are no longer prohibited from engaging in transactions that were previously prohibited under these provisions, and the Sudanese Sanctions Regulations, 31 CFR part 538, were revoked (83 FR 30539, June 29, 2018). However, pursuant to the Act, an OFAC license was required for exports and reexports to the Government of Sudan or any other entity in Sudan of agricultural commodities, medicine, and medical devices prior to the Secretary of State's December 14, 2020, recission of the designation of Sudan as a State Sponsor of Terrorism (85 FR 82565, December 18, 2020).

Under the provisions of section 906(c) of the Act, OFAC must submit a biennial report to the Congress on the operation, during the preceding two-year period, of the licensing procedures required by section 906 of the Act for the export of agricultural commodities, medicine, and medical devices to Sudan and Iran. This report is to include:

(1) The number and types of licenses applied for;

(2) The number and types of licenses approved;

(3) The average amount of time elapsed from the date of filing of a license application until the date of its approval;

(4) The extent to which the licensing procedures were effectively implemented; and

(5) A description of comments received from interested parties about the extent to which the licensing procedures were effective, after holding a public 30-day comment period.

This document solicits comments from interested parties regarding the effectiveness of OFAC's licensing procedures for the export of agricultural commodities, medicine, and medical devices to Sudan and Iran for the time period between October 1, 2016 and September 30, 2018. Interested parties submitting comments are asked to be as specific as possible. In the interest of accuracy and completeness, OFAC requires written comments. All comments received on or before October 1, 2021, will be considered by OFAC in developing the report to the Congress. Consideration of comments received after the end of the comment period cannot be assured.

All comments made will be a matter of public record. OFAC therefore will neither accept nor consider comments accompanied by a request that part or all of the comments be treated confidentially because of their business proprietary nature or for any other reason. Copies of past biennial reports may be obtained from OFAC's website: *https://home.treasury.gov/system/files/126/tsra.pdf.*

Dated: August 27, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021–18852 Filed 8–31–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 8849

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8849, Claim for Refund of Excise Taxes.

DATES: Written comments should be received on or before November 1, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Claim for Refund of Excise Taxes.

OMB Number: 1545–1420.

Form Number: Form 8849 and Schedules 1, 2, 3, 5, 6, and 8.

Abstract: IRC sections 6402, 6404, 6511 and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by IRS. Taxpayers use Form 8849 to claim refunds of excise taxes.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Responses: 111,147.

Estimated Time per Respondent: 8 hours, 31 minutes.

Estimated Total Annual Burden Hours: 946,827.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–18889 Filed 8–31–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments for Regulation Project.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning information collection requirements related to the guidance regarding the qualified severance of a trust for generation-skipping transfer (GST) tax purposes.

DATES: Written comments should be received on or before November 1, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Qualified Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes.

OMB Number: 1545–1902.

Regulation Project Number: TD 9348 and TD 9421.

Abstract: This previously approved Regulation requires taxpayers to report a qualified severance by filing a Form 706–GS(T), or such other form that may be published by the Internal Revenue Service in the future that is specifically designated to be utilized to report qualified severances. Where Form 706–GS(T) is used, the filer should attach a Notice of Qualified Severance to the return that clearly identifies the trust that is being severed and the new trusts created as a result of the severance. The Notice must also provide the inclusion ratio of the trust that was severed and the inclusion ratios of the new trusts resulting from the severance. The information collected will be used by the IRS to identify the trusts being severed and the new trusts created upon severance. The collection of information is required in order to have a qualified severance.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 650.

Estimated Time per Respondent: 2 hours, 8 minutes.

Estimated Total Annual Burden Hours: 1,352.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–18890 Filed 8–31–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is currently soliciting comments concerning public approval of tax-exempt private activity bonds.

DATES: Written comments should be received on or before November 1, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION:

The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Public Approval of Tax-Exempt Private Activity Bonds.

OMB Number: 1545–2185.

Regulation Project Number: TD 9845.

Abstract: The collection of information in these final regulations is the requirement in Treasury Regulations section 1.147(f)–1 that certain information be contained in a public notice or public approval and, consequently, disclosed to the public. The information is required to meet the statutory public approval requirement provided in the Internal Revenue Code section 147(f).

Current Actions: There are changes to this existing collection: The 2017 Proposed Regulations in REG–128841–07 were adopted as amended by the final regulations in Treasury Decision 9845.

Type of Review: Revision of a currently approved collection.

Affected Public: State and local governments.

Estimated Number of Respondents: 2000.

Estimated Time per Respondent: 1 hour, 18 minutes.

Estimated Total Annual Burden Hours: 2,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–18891 Filed 8–31–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council; Meeting

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Notice of meeting.

SUMMARY: The Internal Revenue Service Advisory Council will hold a public meeting.

DATES: The meeting will be held Wednesday, September 22, 2021.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Brown, Office of National Public Liaison, at 202–317–6564 or send an email to *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the Internal Revenue Service Advisory Council (IRSAC) will be held on Wednesday, September 22, 2021, to discuss topics that may be recommended for inclusion in a future report of the Council. The meeting will take place 4:00–5:00 p.m. ET.

The meeting will be held via Zoom. To register and for meeting link instructions, members of the public may contact Ms. Anna Brown at 202–317–6564 or send an email to *PublicLiaison@irs.gov.* Attendees are encouraged to join at least 5–10 minutes before the meeting begins.

Time permitting, after the close of this discussion by IRSAC members, interested persons may make oral statements germane to the Council's work. Persons wishing to make oral statements should contact Ms. Anna Brown at *PublicLiaison@irs.gov* and include the written text or outline of comments they propose to make orally. Such comments will be limited to five minutes in length. In addition, any interested person may file a written statement for consideration by the IRSAC by sending it to *PublicLiaison@irs.gov.*

Dated: August 26, 2021.

John A. Lipold,

Designated Federal Officer, Internal Revenue Service Advisory Council.

[FR Doc. 2021–18870 Filed 8–31–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Research Advisory Committee on Gulf War Veterans' Illnesses (RAC–GWVI) will meet by teleconference on September 28, 2021. The open session will convene at 12:00 p.m. (EST) and end at 1:30 p.m. (EST). The open session will be available to the public by connecting to: Webex URL: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m76f75236dd11340597c65dc36a2e6ca5.* Or, Join by phone: 1–404–397–1596 USA Toll Number or 1–833–558–0712 Toll-free Number; Meeting number (access code): 199 425 2064. Meeting password: GWVets1990!.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia Theater of operations during the Gulf War in 1990–1991.

The Committee will review VA program activities related to Gulf War Veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. This meeting will include discussions and voting of the 2021 Research Advisory Committee on Gulf War Veterans' Illnesses recommendations to the Secretary of Veterans Affairs. Public comment will be open starting at 1:00 p.m. (EST).

The meeting will include time reserved for public comments 30 minutes before the meeting closes. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may submit written statements for the Committee's review or seek additional information by contacting Dr. Karen Block, Designated Federal Officer, at 202–443–5600, or at *Karen.Block@va.gov.*

Dated: August 26, 2021.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–18804 Filed 8–31–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Veterans' Rural Health Advisory Committee will hold a teleconference meeting Monday, September 20, through Wednesday, September 22, 2021. The Zoom meeting link is *https://zoom.us/j/97205365400,* the teleconference phone number is 1–646–558–8656, and the Meeting ID is 972 0536 5400. The meeting will begin each day at 11:00 a.m. to 2:30 p.m. (EST). The meetings are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on rural health care issues affecting Veterans. The Committee examines programs and policies that impact the delivery of VA rural health care to Veterans and discusses ways to improve and enhance VA access to rural health care services for Veterans.

The agenda will include updates from Department leadership, the Executive Director Office of the VA Office of Rural Health, and the Committee Chair; as well as presentations by subject-matter experts on general rural health care access.

Public comments will be received at 3:00 p.m. on September 22, 2021. Interested parties should contact Ms. Judy Bowie, Management Analyst, via email at *VRHAC@va.gov,* or by mail at 810 Vermont Avenue NW (12POP7),

Washington, DC 20420. Individuals wishing to speak are invited to submit a 1–2-page summary of their comment for inclusion in the official meeting record. Any member of the public seeking additional information should contact Ms. Bowie at the phone number or email address noted above.

Dated: August 27, 2021.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–18879 Filed 8–31–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App.2, that a meeting of the Geriatrics and Gerontology Advisory Committee will be held virtually on Monday, September 27 and Tuesday, September 28, 2021. The meetings will begin at 12:00 p.m. and adjourn at 4:00 p.m. on both days. The meetings will be conducted virtually via WebEx and is open to the public.

The purpose of the Committee is to provide advice to the Secretary of VA and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans, and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to: Marianne Shaughnessy, CRNP, Ph.D., Designated Federal Officer, Veterans Health Administration by email at *Marianne.Shaughnessy@va.gov.* Comments will be accepted until close of business on September 15, 2021. In the communication, the writers must identify themselves and state the organization, association of person(s) they represent.

Any member of the public wishing to attend virtually, or seeking additional information should email *Marianne.Shaughnessy@va.gov* or call 202–407–6798, no later than close of business on September 15, 2021 to provide their name, professional affiliation, email address and phone number. For any members of the public that wish to attend, they may use the WebEx link for September 27, 2021: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m291b013c672555bac835f8667171e8a3* meeting number (access code): 199 581 4037, meeting password: : 8XgWivcp?32 or September 28, 2021: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m70e9b613ea98ee77f6c0615d1fe4706f* meeting number (access code): 199 836 8378, meeting password: xpPN7x7j9e*, or to join by phone either day: 1–404–397–1596.

Dated: August 27, 2021.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–18880 Filed 8–31–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Veterans and Community Oversight and Engagement Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, that the Veterans and Community Oversight and Engagement Board will meet virtually on September 29, 2021. The meeting will begin and end as follows:

Date: September 29, 2021

Time: 4:00 p.m. to 6:30 p.m. EST

The meetings are open to the public and will be recorded. Members of the public can attend the meeting by registering at the link below: *https://veteransaffairs.webex.com/veteransaffairs/onstage/g.php?MTID=e3361f2b23e9930313c521c9f3e2fe95a.*

The Board was established by the West Los Angeles Leasing Act of 2016 on September 29, 2016. The purpose of the Board is to provide advice and make recommendations to the Secretary of Veterans Affairs on: Identifying the goals of the community and Veteran partnership; improving services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any successor master plans.

On September 29, the agenda will include opening remarks from the Committee Chair, Executive Sponsor, and other VA officials. There will be a comprehensive briefing from the Veterans Administration Greater Los Angeles Healthcare System (VAGLAHS) on a revised Draft Master Plan v1.0 timeline and activities. The Board's Master Plan with Services and Outcomes subcommittee will present a recommendation that introduces a comprehensive engagement strategy considered for forwarding to the SECVA, that allows sufficient opportunity to obtain Veteran input.

A public comment session will occur from 5:45 p.m. to 6:15 p.m. Individuals wishing to make public comments are required to register during the WEBEX registration process. In the interest of time management, speakers will be held to a 5-minute time limit and selected in the order of event registration. If time expires and your name was not selected, or you did not register to provide public comment and would like to do so, you are asked to submit public comments via email at *VEOFACA@va.gov* for inclusion in the official meeting record.

To attend the meeting, use the registration instructions—Registration Instructions: Select the ''Register'' hyperlink in event status or the ''Register'' button located bottom center of the page. Attendees will then be asked to identify themselves by first name, last name, email address, affiliation (if any) and interest in making a public comment. Please select ''Submit'' to finish registration. You will receive a confirmation email from WEBEX shortly after registration. The confirmation email will include a calendar event invitation and instructions to join the meeting via web browser or telephone. Attempts to join the meeting will not work until the host opens the meeting approximately ten minutes prior to start time.

Any member of the public seeking additional information should contact Mr. Eugene W. Skinner Jr. at (202) 631–7645 or *Eugene.Skinner@va.gov.*

Dated: August 27, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–18888 Filed 8–31–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Agency Information Collection Activity Under OMB Review: Request for Approval of School Attendance and School Attendance Report

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 (VBA), 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: 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. Refer to ''OMB Control No. 2900–0049.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0049'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 101 (4)(A), 38 CFR 3.277 and 3.667.

Title: Request for Approval of School Attendance (VA Forms 21–674 and 674c) and School Attendance Report (VA Form 21–674b).

OMB Control Number: 2900–0049.

Type of Review: Reinstatement of a previously approved collection.

Abstract: 38 U.S.C. 101 (4)(A) provides the authority to pay benefits to or for a child who attends an approved course of instruction or training between the ages of 18 and 23. VA Forms 21–674, 674b, and 674c solicit information that is needed to determine eligibility to benefits for these children. Without this information, VA would be unable to properly authorize benefits.

Substantive changes have been made to both VA Forms 21–674 and 21–674b. Redundant questions have been removed. However, even with these changes, the estimated burden time has not changed. The decrease in respondent burden is due to the estimated number of receivables decreasing over the previous year.

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 86 FR 119 on June 24, 2021, page 33477.

Affected Public: Individuals or Households.

Estimated Annual Burden: 6,354 hours.

Estimated Average Burden per Respondent:

a. 15 minutes for VA Forms 21–674 and 674c.

b. 5 minutes for VA Form 21–674.

Frequency of Response: One time.

Estimated Number of Respondents: 32,679.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer, Alt. Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–18805 Filed 8–31–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 86 Wednesday,

No. 167 September 1, 2021

Part II

Environmental Protection Agency

40 CFR Parts 52 and 81

Clean Air Plans; California; San Joaquin Valley Moderate Area Plan and Reclassification as Serious Nonattainment for the 2012 $PM_{2.5}$ NAAQS; Contingency Measures for the 2006 $PM_{2.5}$ NAAQS; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2021–0543; FRL–8846–01–R9]

Clean Air Plans; California; San Joaquin Valley Moderate Area Plan and Reclassification as Serious Nonattainment for the 2012 $PM_{2.5}$ NAAQS; Contingency Measures for the 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to take action on portions of four state implementation plan (SIP) revisions submitted by California to address Clean Air Act (CAA or ''Act'') requirements for the 2012 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') and for the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley (SJV) $PM_{2.5}$ nonattainment area. Specifically, the EPA proposes to approve all but the contingency measure element of the submitted Moderate area plan for the 2012 $PM_{2.5}$ NAAQS, as updated by the submitted Serious area plan and related Valley State SIP Strategy, as meeting all applicable Moderate area plan requirements for the 2012 $PM_{2.5}$ NAAQS and to approve 2022 motor vehicle emissions budgets for use in transportation conformity analyses for the 2012 $PM_{2.5}$ NAAQS. The EPA proposes to disapprove the contingency measure element with respect to the ''Moderate'' area requirements for the 2012 $PM_{2.5}$ NAAQS. The EPA also proposes to reclassify the SJV $PM_{2.5}$ nonattainment area, including reservation areas of Indian country and any other area of Indian country within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction, as a ''Serious'' nonattainment area for the 2012 $PM_{2.5}$ NAAQS based on the EPA's determination that the area cannot practicably attain the standard by the applicable Moderate area attainment date of December 31, 2021. Upon final reclassification of the SJV as a Serious area for this NAAQS, California would be required to submit a Serious area plan for the area that includes a demonstration of attainment by the applicable Serious area attainment date, which is no later than December 31, 2025, or by the most expeditious alternative date practicable. However, we note that California has already submitted such Serious area plan that the EPA will address in a separate rulemaking. Lastly, the EPA is proposing to disapprove the contingency measure element in the Serious area plan for the 2006 $PM_{2.5}$ NAAQS.

DATES: Any comments on this proposal must be received by October 1, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0543 at *https://www.regulations.gov,* or via email to *mays.rory@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (*e.g.,* audio or video) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR–2), EPA Region IX, by phone at (415) 972–3227 or email at *mays.rory@epa.gov.*

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

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I. Background for Proposed Action

On January 15, 2013, the EPA strengthened the primary annual NAAQS for particulate matter with a diameter of 2.5 microns or less ($PM_{2.5}$) by lowering the level from 15.0 micrograms per cubic meter (μg/m³) to 12.0 μg/m³ (''2012 $PM_{2.5}$ NAAQS'').[1] The EPA established these standards after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$ concentrations above these levels.

Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits,

[1] 78 FR 3086 and 40 CFR 50.18. The EPA first established NAAQS for $PM_{2.5}$ on July 18, 1997 (62 FR 38652), including annual standards of 15.0 μg/m³ based on a 3-year average of annual mean concentrations and 24-hour (daily) standards of 65 μg/m³ based on a 3-year average of 98th percentile 24-hour concentrations (40 CFR 50.7) (''1997 $PM_{2.5}$ NAAQS''). In addition, on October 17, 2006, the EPA strengthened the 24-hour (daily) NAAQS for $PM_{2.5}$ by lowering the level from 65 μg/m³ to 35 μg/m³ (''2006 $PM_{2.5}$ NAAQS''). 71 FR 61144 and 40 CFR 50.13. Unless otherwise noted, all references to the $PM_{2.5}$ standards in this notice are to the 2012 annual NAAQS of 12.0 μg/m³ codified at 40 CFR 50.18.

absences from school or work, and restricted activity days), changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[2] $PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$'') or can be formed in the atmosphere (''secondary $PM_{2.5}$'') as a result of various chemical reactions among precursor pollutants such as nitrogen oxides (NO_X), sulfur oxides (SO_X), volatile organic compounds (VOC), and ammonia (NH_3).[3]

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. Under subpart 4 of part D of title I of the CAA and applicable implementing regulations, the EPA designates areas found to be violating the $PM_{2.5}$ NAAQS, and areas with emissions that contribute to such violations, as nonattainment and classifies them initially as Moderate.[4] States with Moderate areas have to attain the NAAQS as expeditiously as practicable, but not later than the end of the sixth calendar year after the date of designation.[5] The EPA reclassifies as Serious those Moderate areas that cannot practicably attain the NAAQS by the latest statutory attainment date and those areas that fail to attain the NAAQS by the applicable attainment date. States with Serious areas are subject to more stringent SIP revision requirements and must attain the NAAQS as expeditiously as practicable, but not later than the end of the tenth calendar year after designation.

On January 15, 2015, the EPA designated and classified the SJV as Moderate nonattainment for the 2012 $PM_{2.5}$ NAAQS.[6] With respect to the 1997 $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS, the SJV is designated nonattainment and is classified as Serious.[7] The SJV $PM_{2.5}$ nonattainment area encompasses over 23,000 square miles and includes all or part of eight counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and the valley portion of Kern.[8] The area is home to four million people and is the nation's leading agricultural region. Stretching over 250 miles from north to south and averaging 80 miles wide, it is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east. Under State law, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'') has primary responsibility for developing plans to provide for attainment of the NAAQS in this area. The District works cooperatively with the California Air Resources Board (CARB) in preparing these plans. Authority for regulating sources under state jurisdiction in the SJV is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources and some categories of consumer products.

States with areas designated as nonattainment are required to submit SIP revisions that address various requirements, including the requirement to demonstrate attainment of the NAAQS as expeditiously as practicable but no later than the maximum attainment date established in the CAA or EPA's implementing regulations. However, states with Moderate $PM_{2.5}$ nonattainment areas may submit an impracticability demonstration, in lieu of a modeled attainment demonstration, if the state can establish that the area cannot practicably attain a particular $PM_{2.5}$ NAAQS by the outermost statutory Moderate area attainment date.[9]

On May 10, 2019, CARB made two SIP submissions intended to address the attainment plan requirements for areas designated as nonattainment for the 2012 $PM_{2.5}$ NAAQS.[10] First, the ''2016 Moderate Area Plan for the 2012 $PM_{2.5}$ Standard'' (''2016 $PM_{2.5}$ Plan'') addresses the Moderate area attainment plan requirements and includes a demonstration of impracticability of attaining the 2012 $PM_{2.5}$ NAAQS in the SJV by the latest permissible Moderate area attainment date of December 31, 2021. In this document, the EPA is proposing action on all portions of the 2016 $PM_{2.5}$ Plan. Second, the ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards'' (''2018 $PM_{2.5}$ Plan'') addresses the Serious area attainment plan requirements for the 2012 $PM_{2.5}$ NAAQS, in anticipation of the reclassification of SJV from Moderate to Serious for that $PM_{2.5}$ NAAQS. The 2018 $PM_{2.5}$ Plan incorporates by reference the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' (''Valley State SIP Strategy''), a related plan adopted by CARB on October 25, 2018, and submitted to the EPA with the 2018 $PM_{2.5}$ Plan on May 10, 2019. For the purposes of this action, the relevant portion of the Valley State SIP Strategy includes the control measure commitments associated with the quantitative milestones for 2019 and 2022.

The 2018 $PM_{2.5}$ Plan updates several elements in the 2016 $PM_{2.5}$ Plan, including the base year emissions inventory, plan precursor demonstration, controls analysis, reasonable further progress (RFP) and quantitative milestones, and motor vehicle emission budgets (MVEBs or ''budgets''). In this document, the EPA is proposing action on those portions of the 2018 $PM_{2.5}$ Plan that apply to the Moderate area plan requirements for the 2012 $PM_{2.5}$ NAAQS. However, the EPA is not, at this time, proposing to act on those portions of the 2018 $PM_{2.5}$ Plan that are not relevant to our evaluation of compliance with Moderate area plan requirements for 2012 $PM_{2.5}$ NAAQS, such as the best available control measures (BACM) demonstration, control strategy commitments, attainment demonstration, RFP demonstration and quantitative milestones for later years, and MVEBs for later years.

The 2018 $PM_{2.5}$ Plan also addresses attainment plan requirements for areas classified as Serious for the 2006 $PM_{2.5}$ NAAQS. In 2020, we approved those portions of the 2018 $PM_{2.5}$ Plan that pertain to the 2006 $PM_{2.5}$ NAAQS, excluding the contingency measures element for the 2006 $PM_{2.5}$ NAAQS.[11] In this document, we are proposing action on the portion of the 2018 $PM_{2.5}$ Plan that addresses the contingency measure requirement for the 2006 $PM_{2.5}$ NAAQS.

Lastly, the 2018 $PM_{2.5}$ Plan addresses the contingency measure requirement for the 2006 $PM_{2.5}$ NAAQS by reference to, among other things, a District contingency measure, and emissions estimates for the year following the attainment year for use in evaluating whether the emissions reductions from the contingency measure are

[2] 78 FR 3086, 3088.

[3] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

[4] CAA section 188(a) and 40 CFR 51.1002(a).

[5] CAA section 188(c)(1) and 40 CFR 51.1004(a)(1)(i).

[6] 80 FR 2206 (codified at 40 CFR 81.305).

[7] See the tables of area designations for the 1997 and 2006 $PM_{2.5}$ NAAQS in 40 CFR 81.305.

[8] For a precise description of the geographic boundaries of the SJV $PM_{2.5}$ nonattainment area, see 40 CFR 81.305.

[9] 40 CFR 51.1002(b)(1).

[10] CARB submitted the two plans electronically on May 10, 2019, as an attachment to a letter dated May 9, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

[11] 85 FR 44192 (July 22, 2020).

sufficient.[12] With respect to the District contingency measure, the 2018 $PM_{2.5}$ Plan calls for the District to amend District Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters'') to include a requirement in the rule with a trigger that would activate the requirement should the EPA issue a final rulemaking that SJV failed to meet a regulatory requirement necessitating implementation of a contingency measure.

In response to the commitment made in the 2018 $PM_{2.5}$ Plan, in June 2019 the District adopted amendments to Rule 4901, including a new provision (codified as section 5.7.3 of the amended rule) that is a contingency measure. On July 19, 2019, CARB submitted the amended rule to the EPA for approval.[13] We have already taken final action to approve the amended Rule 4901 (including the new section 5.7.3) into the California SIP, but in our approval we noted that we were not evaluating the contingency measure in section 5.7.3 of revised Rule 4901 for compliance with all requirements of the CAA and the EPA's implementing regulations that apply to such measures.[14] Rather, we approved the new provision (section 5.7.3) into the SIP as part of our approval of the entire amended rule because the provision strengthens the rule by providing a possibility of additional curtailment days and thus potentially additional emissions reductions. We indicated that we would evaluate whether section 5.7.3, in conjunction with other submitted provisions, meets the statutory and regulatory requirements for contingency measures in a future action. In this document, we are evaluating District Rule 4901, and in particular section 5.7.3, in the context of our action on the contingency measure element in the 2016 $PM_{2.5}$ Plan for the 2012 $PM_{2.5}$ NAAQS and the contingency measure element in the 2018 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS.

II. Summary of San Joaquin Valley 2016 and 2018 $PM_{2.5}$ Plans

A. 2016 $PM_{2.5}$ Plan Summary

The SJVUAPCD Governing Board adopted the 2016 $PM_{2.5}$ Plan on September 15, 2016, and CARB adopted the plan on January 24, 2019.[15] CARB submitted the plan to the EPA on May 10, 2019.

The 2016 $PM_{2.5}$ Plan is organized into three chapters, five appendices, and two attachments. Chapter 1 (''Introduction'') provides general background, including discussion of the federal $PM_{2.5}$ standards, $PM_{2.5}$ pollution and health effects in the SJV, challenges to attaining the standards, and the District's public process. Chapter 2 (''Impracticability Demonstration and Request for Reclassification'') presents CARB and the District's demonstration, based on air quality modeling, that attaining the 2012 $PM_{2.5}$ NAAQS by the latest permissible attainment date of December 31, 2021, is impracticable, and a request for reclassification to Serious. Chapter 3 (''Demonstration of Federal Clean Air Act Requirements'') describes how the 2016 $PM_{2.5}$ Plan addresses the federal requirements for Moderate $PM_{2.5}$ nonattainment areas, including a plan precursor demonstration, reasonably available control measures, RFP, quantitative milestones, contingency measures, stationary source permitting, and transportation conformity. The 2016 $PM_{2.5}$ Plan includes the following five technical appendices:

- Appendix A (''Air Quality Modeling'') provides the State's photochemical air quality modeling in support of the plan's impracticability demonstration and precursor demonstration;
- Appendix B (''Emissions Inventory'') presents the base year and future year emissions inventory for direct $PM_{2.5}$, NO_X, ammonia, SO_X, and VOC;
- Appendix C (''SIP Creditable Incentive-Based Emission Reductions'') provides a demonstration of NO_X emission reductions from heavy-duty off-road vehicle engine vehicle replacements under the 2011 Carl Moyer Guidelines in support of the plan's Moderate contingency measure element;
- Appendix D (''New Source Review and Emission Reduction Credits'') discusses the use of emission reduction credits (ERCs) in the context of the plan; and
- Appendix E (''Summary of Significant Comments and Responses'') summarizes significant comments received during the District's 2016 public review period and the District's responses thereto.

In addition, the 2016 $PM_{2.5}$ Plan includes Attachment 1 (''Stationary and Area Source Control Measure Analyses'') and Attachment 2 (''Mobile Source Control Measure Analyses''), which together resubmit the State's 2015 analyses that the District's stationary and area source control measures and CARB's mobile source control measures represent BACM and most stringent measures (MSM).

Lastly, on December 13, 2019, CARB submitted the following two additional documents that CARB had prepared for the 2016 $PM_{2.5}$ Plan and made available for public review along with the plan, but had inadvertently omitted them from the May 10, 2019 SIP submission to the EPA:[16] (i) The ''Staff Report, ARB Review of the San Joaquin Valley 2016 Moderate Area Plan for the 2012 $PM_{2.5}$ Standard,'' released September 16, 2016 (''CARB 2016 Staff Report''), that provides CARB's staff review of the 2016 $PM_{2.5}$ Plan, including brief summaries for each of the Moderate area plan requirements; and (ii) the ''Modeling Emission Inventory for the $PM_{2.5}$ State Implementation Plan in the San Joaquin Valley,'' August 23, 2016 (''2016 Modeling Emissions Inventory'') that describes the development of the 2016 $PM_{2.5}$ Plan's modeling emissions inventory, estimation of the 2013 base year emissions inventory, the methodology used to develop the base year and baseline emissions inventory, and quality assurance of the modeling emissions inventory.

B. 2018 $PM_{2.5}$ Plan Summary

The SJVUAPCD Governing Board adopted the 2018 $PM_{2.5}$ Plan on November 15, 2018, and CARB adopted the plan on January 24, 2019.[17] CARB submitted the 2018 $PM_{2.5}$ Plan to the EPA on May 10, 2019, concurrently with the 2016 $PM_{2.5}$ Plan.

The following portions of the 2018 $PM_{2.5}$ Plan and related support documents apply to the Moderate area attainment plan requirements for the 2012 $PM_{2.5}$ NAAQS in the SJV: (i) Chapter 4 (''Attainment Strategy for $PM_{2.5}$''); (ii) Chapter 7 (''Demonstration of Federal Requirements for the 2012 $PM_{2.5}$ Standard'');[18] (iii) numerous

[12] 2018 $PM_{2.5}$ Plan, App. H (revised February 11, 2020), H–24 to H–26.

[13] Letter dated July 19, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

[14] 85 FR 44206 (July 22, 2020) (final approval of District Rule 4901); 85 FR 1131, 1132–33 (January 9, 2020) (proposed approval of District Rule 4901).

[15] SJVUAPCD Governing Board Resolution 16–9–10, September 15, 2016, and CARB Resolution 19–1, January 24, 2019.

[16] Letter dated December 11, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, with enclosures.

[17] SJVUAPCD Governing Board Resolution 18–11–16, November 15, 2018, and CARB Resolution 19–1, January 24, 2019.

[18] Chapter 5 (''Demonstration of Federal Requirements for the 1997 $PM_{2.5}$ Standard'') and Chapter 6 (''Demonstration of Federal Requirements for the 2006 $PM_{2.5}$ Standard'') of the 2018 $PM_{2.5}$ Plan pertain to the 1997 $PM_{2.5}$ NAAQS and 2006 $PM_{2.5}$ NAAQS, respectively. The EPA has acted on

appendices to the 2018 $PM_{2.5}$ Plan; (iv) CARB's ''Staff Report, Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' release date December 21, 2018 (''CARB 2018 Staff Report''); [19] and (v) the State's and District's board resolutions adopting the 2018 $PM_{2.5}$ Plan.[20]

The appendices to the 2018 $PM_{2.5}$ Plan, in order of their evaluation in this proposal, include the following: (i) Appendix (''App.'') B (''Emissions Inventory''); (ii) a plan precursor demonstration and clarifications, including App. G (''Precursor Demonstration'') and Attachment A (''Clarifying information for the San Joaquin Valley 2018 Plan regarding model sensitivity related to ammonia and ammonia controls'') to the CARB 2018 Staff Report; (iii) control strategy appendices, including App. C (''Stationary Source Control Measure Analyses'') and App. D (''Mobile Source Control Measures Analyses''); and (iv) App. H (''RFP, Quantitative Milestones, and Contingency''). The 2018 $PM_{2.5}$ Plan addresses requirements for MVEBs in the ''Transportation Conformity'' section of App. D.[21]

The 2018 $PM_{2.5}$ Plan also includes an Executive Summary, Introduction (Ch. 1), chapters on ''Air Quality Challenges and Trends'' (Ch. 2) and ''Health Impacts and Health Risk Reduction Strategy'' (Ch. 3), and appendices on ''Public Education and Technology Advancement'' (App. F), ''Ambient $PM_{2.5}$ Data Analysis'' (App. A), ''New Source Review and Emission Reduction Credits'' (App. I) and ''Summary of Significant Comments and Responses'' (App. M), as well other chapters and appendices that are primarily relevant to the Serious area plan requirements, including App. E (''Incentive-Based Strategy''), App. J (''Modeling Emission Inventory''), App. K (''Modeling Attainment Demonstration''), and App. L (''Modeling Protocol'').

Lastly, on February 11, 2020, CARB submitted, via the EPA State Planning Electronic Collaboration System, a revised version of App. H (''RFP, Quantitative Milestones, and Contingency'') that replaces the version submitted with the 2018 $PM_{2.5}$ Plan on May 10, 2019. All references to App. H of the 2018 $PM_{2.5}$ Plan in this proposed rule are to the revised version of Appendix H submitted February 11, 2020.

C. Procedural Requirements for SIPs and SIP Revisions

Sections 110(a)(1) and (2) and 110(l) of the CAA require each state to provide reasonable public notice and an opportunity for a public hearing prior to the adoption and submittal of a SIP or SIP revision to the EPA. To meet this requirement, every SIP submission should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submission of the 2016 $PM_{2.5}$ Plan and the 2018 $PM_{2.5}$ Plan. The District provided public notice and opportunity for public comment prior to its September 15, 2016 public hearing on and adoption of the 2016 $PM_{2.5}$ Plan.[22] CARB also provided public notice and opportunity for public comment prior to its October 20, 2016 public hearing,[23] where the 2016 $PM_{2.5}$ Plan was tabled.

Subsequently, the District provided public notice and opportunity for public comment prior to its November 15, 2018 public hearing on and adoption of the 2018 $PM_{2.5}$ Plan.[24] CARB also provided public notice and opportunity for public comment prior to its January 24, 2019 public hearing,[25] when CARB adopted the 2016 $PM_{2.5}$ Plan and the 2018 $PM_{2.5}$ Plan.[26] The SIP submission includes proof of publication of notices for the respective public hearings. It also includes copies of the written and oral comments received during the State's and District's public review processes and the agencies' responses thereto.[27] [28] Therefore, we find that the 2016 $PM_{2.5}$ Plan and the 2018 $PM_{2.5}$ Plan meet the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

We present our evaluation of the 2016 $PM_{2.5}$ Plan (and 2018 $PM_{2.5}$ Plan as applicable to the Moderate area attainment plan requirements for the 2012 $PM_{2.5}$ NAAQS) in Section IV of this proposed rule. We present our evaluation of the 2018 $PM_{2.5}$ Plan as applicable to the contingency measure requirements for the 2006 $PM_{2.5}$ NAAQS in section VII of this proposed rule.

III. Clean Air Act Requirements for Moderate $PM_{2.5}$ Nonattainment Area Plans

With respect to the statutory requirements for particulate matter (PM) attainment plans, the general nonattainment area planning requirements of title I, part D of the CAA are found in subpart 1, and the attainment planning requirements specifically for PM are found in subpart 4.

The EPA has a longstanding general guidance document that interprets the 1990 amendments to the CAA, commonly referred to as the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (''General Preamble'').[29] The General Preamble addresses the relationship between the subpart 1 and subpart 4 requirements and provides recommendations to states for meeting certain statutory requirements for PM attainment plans. As explained in the General Preamble, specific requirements applicable to Moderate area attainment plan SIP submissions for the PM NAAQS are set forth in subpart 4 of part

Chapter 6 in our rulemaking for the 2006 $PM_{2.5}$ NAAQS. See 80 FR 44192 (July 22, 2020). The EPA has proposed to act on Chapter 5 as part of a separate rulemaking on the 1997 annual $PM_{2.5}$ NAAQS. See 86 FR 38652 (July 22, 2021).

[19] The CARB 2018 Staff Report includes CARB's review of, among other things, the 2018 $PM_{2.5}$ Plan's control strategy and attainment demonstration. Letter dated December 11, 2019 from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, transmitting the CARB 2018 Staff Report [on the 2018 $PM_{2.5}$ Plan].

[20] CARB Resolution 19–1, ''2018 $PM_{2.5}$ State Implementation Plan for the San Joaquin Valley,'' January 24, 2019, and SJVUAPCD Governing Board Resolution 18–11–16, ''Adopting the [SJVUAPCD] 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' November 15, 2018.

[21] See D–119 to D–131.

[22] SJVUAPCD, ''Notice of Public Hearing, Adopt the Proposed 2016 Moderate Area Plan for the 2012 $PM_{2.5}$ Standard,'' August 16, 2016, and SJVUAPCD Governing Board Resolution 16–9–10.

[23] CARB, ''Notice of Public Meeting to Consider the 2016 $PM_{2.5}$ State Implementation Plan for the San Joaquin Valley,'' September 20, 2016.

[24] SJVUAPCD, ''Notice of Public Hearing for Adoption of Proposed 2018 $PM_{2.5}$ Plan for the 1997, 2006, and 2012 Standards,'' October 16, 2018, and SJVUAPCD Governing Board Resolution 18–11–16.

[25] CARB, ''Notice of Public Meeting to Consider the 2018 $PM_{2.5}$ State Implementation Plan for the San Joaquin Valley,'' December 21, 2018.

[26] CARB Resolution 19–1. See also J&K Court Reporting, LLC, ''Meeting, State of California Air Resources Board,'' October 20, 2016 (transcript of CARB's public hearing), 186–190.

[27] For the 2016 $PM_{2.5}$ Plan: CARB, ''Board Meeting Comments Log,'' available at *https://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=sjvpmplan2016* (accessed August 20, 2021); J&K Court Reporting, LLC, ''Meeting, State of California Air Resources Board,'' October 16, 2016 (transcript of CARB's public hearing), available at *https://ww3.arb.ca.gov/board/mt/2016/mt102016.pdf* (accessed December 29, 2020); and 2016 $PM_{2.5}$ Plan, App. E (''Summary of Significant Comments and Responses''), noting that no comments were received during the District's 2016 public review.

[28] For the 2018 $PM_{2.5}$ Plan: CARB, ''Board Meeting Comments Log,'' March 29, 2019; J&K Court Reporting, LLC, ''Meeting, State of California Air Resources Board,'' January 24, 2019 (transcript of CARB's public hearing); and 2018 $PM_{2.5}$ Plan, App. M (''Summary of Significant Comments and Responses'').

[29] General Preamble, 57 FR 13498 (April 16, 1992).

D, title I of the Act, but such SIP submissions must also meet the general attainment planning provisions in subpart 1 of part D, title I of the Act, to the extent these provisions ''are not otherwise subsumed by, or integrally related to,'' the more specific subpart 4 requirements.[30] The EPA provided further guidance to States on PM plan submissions in the Addendum to the General Preamble (''General Preamble Addendum'').[31]

To implement the $PM_{2.5}$ NAAQS, the EPA has also promulgated the ''Fine Particle Matter National Ambient Air Quality Standard: State Implementation Plan Requirements; Final Rule'' (''$PM_{2.5}$ SIP Requirements Rule'').[32] The $PM_{2.5}$ SIP Requirements Rule establishes regulatory requirements and provides additional guidance applicable to attainment plan submissions for the $PM_{2.5}$ NAAQS, including the 2012 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS, addressed in this section and section VII, respectively, of this proposed rule.

The general subpart 1 statutory requirements for attainment plans include the following: (i) The section 172(c)(1) requirement for reasonably available control measures (RACM)/reasonably available control technology (RACT) and attainment demonstrations; (ii) the section 172(c)(2) requirement to RFP; (iii) the section 172(c)(3) requirement for emissions inventories; (iv) the section 172(c)(5) requirement for a nonattainment new source review (NNSR) permitting program; and (v) the section 172(c)(9) requirement for contingency measures.

The more specific subpart 4 statutory requirements for Moderate $PM_{2.5}$ nonattainment areas include the following: (i) The section 189(a)(1)(A) and 189(e) NNSR permit program requirements; (ii) the section 189(a)(1)(B) requirement for attainment demonstrations; (iii) the section 189(a)(1)(C) requirement for RACM; and (iv) the section 189(c) requirements for RFP and quantitative milestones. Under subpart 4, states with Moderate $PM_{2.5}$ nonattainment areas must provide for attainment in the area as expeditiously as practicable but no later than the latest permissible attainment date under CAA section 188(c), *i.e.,* December 31, 2021, for the 2012 $PM_{2.5}$ NAAQS in the SJV, unless the EPA determines, per section 188(b)(1), that the area cannot practicably attain the NAAQS by the Moderate area attainment date.[33] In addition, under subpart 4, direct $PM_{2.5}$ and all precursors to the formation of $PM_{2.5}$ are subject to control unless the EPA approves a demonstration from the state establishing that a given precursor does not contribute significantly to $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the area.[34]

IV. Review of San Joaquin Valley Plans for Moderate Area Requirements

A. Emissions Inventory

1. Requirements for Emissions Inventories

Section 172(c)(3) of the CAA requires that each SIP include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the nonattainment area. We refer to this inventory as the ''base year inventory.'' The EPA has established regulatory requirements for base year and other emissions inventories in the $PM_{2.5}$ SIP Requirements Rule[35] and issued guidance concerning emissions inventories for $PM_{2.5}$ nonattainment areas.[36]

The base year emissions inventory should provide a state's best estimate of actual emissions from all sources of the relevant pollutants in the area, *i.e.,* all emissions that contribute to the formation of a particular NAAQS pollutant. For the $PM_{2.5}$ NAAQS, the base year emissions inventory must include direct $PM_{2.5}$ emissions, separately reported filterable and condensable $PM_{2.5}$ emissions,[37] and emissions of all chemical precursors to the formation of secondary $PM_{2.5}$: NO_X, SO_2, VOC, and ammonia.[38] In addition, the emissions inventory base year for a Moderate $PM_{2.5}$ nonattainment area must be one of the three years (*i.e.,* 2011–2013) for which monitored data were used to designate the area as nonattainment, or another technically appropriate year justified by the state in its Moderate area attainment plan submission.[39]

In its SIP submission, a state must include documentation explaining how it calculated emissions data. In estimating mobile source emissions, a state should use the latest emissions models and planning assumptions available at the time it develops the SIP submission. States are also required to use the EPA's ''Compilation of Air Pollutant Emission Factors'' (''AP–42'') road dust method for calculating re-entrained road dust emissions from paved roads.[40] [41] At the time the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan were developed, California was required to use EMFAC2014 to estimate tailpipe and brake and tire wear emissions of $PM_{2.5}$, NO_X, SO_2, and VOC from on-road mobile sources.[42]

In addition to the base year inventory submitted to meet the requirements of CAA section 172(c)(3), a state must also submit future ''baseline inventories'' for the projected attainment year, each RFP milestone year, and any other year of significance for meeting applicable CAA requirements.[43] By baseline inventories we mean projected emissions inventories for future years that account for, among other things, the ongoing

[30] Id. at 13538.

[31] 59 FR 41998 (August 16, 1994).

[32] 81 FR 58010 (August 24, 2016).

[33] Generally, under CAA section 188(c), the latest permissible attainment date for a Moderate nonattainment area is the end of the sixth calendar year after the area's designation as nonattainment. Because the EPA designated and classified the San Joaquin Valley as a Moderate nonattainment area for the 2012 $PM_{2.5}$ NAAQS effective April 15, 2015 (80 FR 2206, 2217–2218), the latest permissible attainment date for these NAAQS in the San Joaquin Valley is December 31, 2021.

[34] 40 CFR 51.1006 and 51.1009.

[35] 40 CFR 51.1008.

[36] 81 FR 58010, 58078–58079 and ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA, May 2017 (''Emissions Inventory Guidance''), available at *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-implementation-ozone-and-particulate.*

[37] The Emissions Inventory Guidance identifies the types of sources for which the EPA expects states to provide condensable PM emissions inventories. Emissions Inventory Guidance, section 4.2.1 (''Condensable PM Emissions''), 63–65.

[38] 40 CFR 51.1008.

[39] 40 CFR 51.1008(a)(1)(i).

[40] The EPA released an update to AP–42 in January 2011 that revised the equation for estimating paved road dust emissions based on an updated data regression that included new emissions tests results. (76 FR 6328, February 4, 2011). CARB used the revised 2011 AP–42 methodology in developing on-road mobile source emissions.

[41] AP–42 has been published since 1972 as the primary source of the EPA's emission factor information. It contains emission factors and process information for more than 200 air pollution source categories. A source category is a specific industry sector or group of similar emitting sources. The emission factors have been developed and compiled from source test data, material balance studies, and engineering estimates.

[42] The EMFAC model (short for EMission FACtor) is a computer model developed by CARB. The EPA approved and announced the availability of EMFAC2014 for use in SIP development and transportation conformity in California on December 14, 2015 (80 FR 77337). The EPA's approval of the EMFAC2014 emissions model for SIP and conformity purposes was effective on the date of publication in the **Federal Register**. On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by state and local governments to meet CAA requirements (84 FR 41717). EMFAC2017 was not available to the State and District at the time they were developing the 2016 $PM_{2.5}$ Plan and had only recently been submitted to the EPA on July 20, 2018, prior to the adoption of the 2018 $PM_{2.5}$ Plan.

[43] 40 CFR 51.1008(a)(2) and 51.1012(a)(2); see also Emissions Inventory Guidance.

effects of economic growth and adopted emission control requirements. The SIP submission should include documentation to explain how the state calculated the emissions projections.

2. Summary of State's Emissions Inventories

Within the 2016 $PM_{2.5}$ Plan, the annual average planning inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors (NO_X, ammonia, SO_X,[44] and VOC) for the SJV $PM_{2.5}$ nonattainment area, together with documentation for the inventories, are found in Appendix B (''Emissions Inventory''). In addition, Appendix A (''Air Quality Modeling'') contains inventory documentation specific to the air quality modeling inventories. These portions of the 2016 $PM_{2.5}$ Plan contain annual average daily emission inventories for 2013 thru 2022 projected from the 2012 actual emissions inventory,[45] including the 2013 base year, the 2019 RFP baseline year, the 2021 Moderate area attainment year, and the 2022 post-attainment RFP year. The winter average daily inventory is used to evaluate sources of emissions for attainment of the 2012 $PM_{2.5}$ NAAQS in the 2016 $PM_{2.5}$ Plan.[46]

Similarly, within the 2018 $PM_{2.5}$ Plan, the annual average planning inventories for direct $PM_{2.5}$ and all $PM_{2.5}$ precursors, together with documentation for the inventories, are found in Appendix B (''Emissions Inventory''). In addition, Appendix J (''Modeling Emission Inventory'') contains inventory documentation specific to the air quality modeling inventories. These portions of the 2018 $PM_{2.5}$ Plan contain annual average daily emission inventories for 2013 thru 2028 projected from the 2012 actual emissions inventory, [47] including the 2013 base year, the 2019 and 2022 RFP baseline years, the 2025 Serious area attainment year, and the 2028 post-attainment RFP year. Both the annual average and the winter average daily inventories are used to evaluate sources of emissions for attainment of the 2012 $PM_{2.5}$ NAAQS in the 2018 $PM_{2.5}$ Plan.[48]

The base year inventories for stationary sources were developed using actual emissions reports made by facility operators. The State developed the base year emissions inventories for area sources using the most recent models and methodologies available at the time the State was developing the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan.[49] Importantly, CARB and the District updated the emissions inventory in the 2018 $PM_{2.5}$ Plan using the latest available activity data and emission methodologies available at the time of plan development. The 2013 base year, annual average emissions inventories for most source categories did not change or only changed plus or minus 0.1 tons per day (tpd) between the two plans.[50] However, the base year emissions inventory from several important source categories were smaller in the 2018 $PM_{2.5}$ Plan relative to the 2016 $PM_{2.5}$ Plan based on the latest information. These include a 1.2 tpd decrease in direct $PM_{2.5}$ emissions from residential fuel combustion based on a 2016 emissions inventory methodology update,[51] a 0.4 tpd decrease in direct $PM_{2.5}$ emissions from farming operations based on updated estimates by the California Department of Conservation of harvested acreage in 2010–2020 rather than 2000–2009,[52] and a 0.9 tpd decrease in NO_X emissions from trains based on updated locomotive data from 2016 on Class I and Class II railroads.[53] Overall, for the 2013 base year, total emissions of both direct $PM_{2.5}$ and NO_X were 0.9 tpd smaller in the 2018 $PM_{2.5}$ Plan relative to the 2016 $PM_{2.5}$ Plan.

Furthermore, the 2016 $PM_{2.5}$ Plan's emissions inventory does not separately report filterable and condensable $PM_{2.5}$ emissions. However, the 2018 $PM_{2.5}$ Plan includes background, methodology, and inventories of condensable and filterable $PM_{2.5}$ emissions from stationary point and non-point combustion sources that are expected to generate condensable $PM_{2.5}$.[54] It provides filterable and condensable emissions estimates, expressed as annual $PM_{2.5}$ emissions (tons per year), for all of the identified source categories for the years applicable to the Moderate area timeframe, including the 2013 base year, the 2019 RFP year, the 2021 Moderate area attainment year, and the 2022 post-attainment RFP year, as well as subsequent years.

CARB used EMFAC2014 to estimate on-road motor vehicle emissions based on transportation activity data from the 2014 Regional Transportation Plan adopted by the transportation planning agencies in the SJV.[55] Re-entrained paved road dust emissions were calculated using a CARB methodology consistent with the EPA's AP–42 road dust methodology.[56] CARB also provided emissions inventories for off-road equipment, including aircraft, trains, recreational boats, construction equipment, and farming equipment, among others. CARB uses a suite of category-specific models to estimate off-road emissions for many categories and, where a new model was not available, used the OFFROAD2007 model.[57]

CARB developed the emissions forecasts by applying growth and control profiles to the base year inventory. CARB's mobile source emissions projections take into account predicted activity rates and vehicle fleet turnover by vehicle model year and adopted controls.[58] In the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan, the District provides for use of pre-base year ERCs as offsets by accounting for such ERCs in the projected emissions inventory for the 2022 RFP year and the projected 2025 attainment year, respectively.[59] The plans identify growth factors, control factors, and estimated offset use between 2013 and 2022, and between 2013 and 2025, for direct $PM_{2.5}$, NO_X, SO_X, and VOC emissions by source category and lists all pre-base year ERCs

[44] The 2016 $PM_{2.5}$ Plan generally uses ''sulfur oxides'' or ''SO_X'' in reference to SO_2 as a precursor to the formation of $PM_{2.5}$. We use SO_X and SO_2 interchangeably throughout this notice.

[45] 2016 $PM_{2.5}$ Plan, App. B, B–18.

[46] The 2016 $PM_{2.5}$ Plan includes annual average and winter day average inventories for $PM_{2.5}$ planning purposes. The winter average daily planning inventory corresponds to the months of November through April, when daily, ambient $PM_{2.5}$ concentrations are typically highest. 2016 $PM_{2.5}$ Plan, App. B, B–19. The base year inventory is from the California Emissions Inventory Development and Reporting System (CEIDARS) and future year inventories were estimated using the California Emission Projection Analysis Model (CEPAM) version 1.04.

[47] 2018 $PM_{2.5}$ Plan, App. B, B–18.

[48] 2018 $PM_{2.5}$ Plan, App. B, B–19. The base year inventory is from CEIDARS and future year inventories were estimated using CEPAM, version 1.05.

[49] 2016 $PM_{2.5}$ Plan, App. B, section B.3 (''Emissions Inventory Summary and Methodology''), and 2018 $PM_{2.5}$ Plan, App. B, section B.2 (''Emissions Inventory Summary and Methodology'').

[50] For example, paved road dust direct $PM_{2.5}$ emissions decreased 0.1 tpd while off-road equipment NO_X emissions increased by 0.1 tpd between the 2016 and 2018 $PM_{2.5}$ Plans.

[51] 2018 $PM_{2.5}$ Plan, App. B, B–26.

[52] 2018 $PM_{2.5}$ Plan, App. B, B–27.

[53] 2018 $PM_{2.5}$ Plan, App. B, B–34.

[54] 2018 $PM_{2.5}$ Plan, App. B, B–42 to B–44. The EPA has approved the emissions inventory submission for the 2006 $PM_{2.5}$ NAAQS in the SJV, including the filterable and condensable $PM_{2.5}$ inventories. 85 FR 44192 (July 22, 2020) (final rule); and 85 FR 17382, 17389 (March 27, 2020) (proposed rule).

[55] 2016 $PM_{2.5}$ Plan, App. B, B–33; and 2018 $PM_{2.5}$ Plan, App. B, B–37. We note that the vehicle miles traveled data used in the 2018 $PM_{2.5}$ Plan's emissions inventory is from the final 2017 Federal Transportation Improvement Program from each of the SJV's eight metropolitan planning organizations.

[56] 2016 $PM_{2.5}$ Plan, App. B, B–26; and 2018 $PM_{2.5}$ Plan, App. B, B–28.

[57] 2016 $PM_{2.5}$ Plan, App. B, B–33 through B–35; and 2018 $PM_{2.5}$ Plan, App. B, B–38 through B–40.

[58] 2016 $PM_{2.5}$ Plan, App. B, B–19; and 2018 $PM_{2.5}$ Plan, App. B, B–19.

[59] 2016 $PM_{2.5}$ Plan, App. D, D–1 through D–5; and 2018 $PM_{2.5}$ Plan, App. I, I–1 through I–5.

issued by the District for PM_{10},[60] NO_X, SO_X, and VOC emissions, by facility.[61]

Table 1 provides a summary of the 2018 $PM_{2.5}$ Plan's winter (24-hour) average inventories in tpd of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions for the 2013 base year. Table 2 provides a summary of 2018 $PM_{2.5}$ Plan's annual average inventories of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions for the 2013 base year. For purposes of this proposal, these annual average inventories provide bases primarily for our evaluation of the precursor demonstration, control measure analysis, impracticability demonstration, RFP demonstration, and MVEBs in the 2018 $PM_{2.5}$ Plan with respect the Moderate area requirements.

TABLE 1—SAN JOAQUIN VALLEY WINTER AVERAGE EMISSIONS INVENTORY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2013 BASE YEAR

[tpd]

Category	Direct $PM_{2.5}$	NO_X	SO_X	VOC	Ammonia
Stationary Sources	8.5	35.0	6.9	86.6	13.9
Area Sources	41.4	11.5	0.5	156.8	291.5
On-Road Mobile Sources	6.4	188.7	0.6	51.1	4.4
Non-Road Mobile Sources	4.4	65.3	0.3	27.4	0.0
Totals [a]	60.8	300.5	8.4	321.9	309.8

Source: 2018 $PM_{2.5}$ Plan, Appendix B, tables B–1 through B–5.
[a] Totals reflect disaggregated emissions and may not add exactly as shown here due to rounding.

TABLE 2—SAN JOAQUIN VALLEY ANNUAL AVERAGE EMISSIONS INVENTORY FOR DIRECT $PM_{2.5}$ AND $PM_{2.5}$ PRECURSORS FOR THE 2013 BASE YEAR

[tpd]

Category	Direct $PM_{2.5}$	NO_X	SO_X	VOC	Ammonia
Stationary Sources	8.8	38.6	7.2	87.1	13.9
Area Sources	41.5	8.1	0.3	153.4	310.9
On-Road Mobile Sources	6.4	183.1	0.6	49.8	4.4
Non-Road Mobile Sources	5.8	87.4	0.3	33.8	0.0
Totals [a]	62.5	317.2	8.5	324.1	329.2

Source: 2018 $PM_{2.5}$ Plan, Appendix B, tables B–1 through B–5.
[a] Totals reflect disaggregated emissions and may not add exactly as shown here due to rounding.

3. EPA Evaluation and Proposed Action

Consistent with the requirement that inventories be based on the most current and accurate information available to the State and District at the time they were developing the plans and inventories, our evaluation for the SJV for the 2012 $PM_{2.5}$ NAAQS relies primarily on the emissions inventories in the 2018 $PM_{2.5}$ Plan. The inventories in the 2018 $PM_{2.5}$ Plan include the latest version of California's mobile source emissions model, EMFAC2014, that had been approved by the EPA at the time, and the EPA's most recent AP–42 methodology for paved road dust. The inventories comprehensively address all source categories in the SJV $PM_{2.5}$ nonattainment area and are consistent with the EPA's inventory guidance.

In accordance with 40 CFR 51.1008(a), the 2013 base year is one of the three years for which monitored data were used for designating the area, and it represents annual average emissions of all sources within the nonattainment area. Direct $PM_{2.5}$ and $PM_{2.5}$ precursors are included in the inventories, and filterable and condensable direct $PM_{2.5}$ emissions are identified separately.

With respect to future year baseline projections, we have reviewed the growth and control factors and find them acceptable and thus conclude that the future baseline emissions projections in the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan reflect appropriate calculation methods and the latest planning assumptions at the time the State and District were developing the plans and inventories. Also, as a general matter, the EPA will approve a SIP submission that takes emissions reduction credit for a control measure only where the EPA has approved the measure as part of the SIP. Thus, for example, to take credit for the emissions reductions from newly adopted or amended District rules for stationary and area sources, the related rules must be approved by the EPA into the SIP.

Given the State's impracticability demonstration for attaining the 2012 $PM_{2.5}$ NAAQS in the SJV by the outermost Moderate area attainment date, the 2016 $PM_{2.5}$ Plan describes the District rules achieving post-2013 emission reductions that contribute towards attaining the NAAQS.[62] In our rulemaking on the State's attainment plan for the 2006 $PM_{2.5}$ NAAQS in the SJV, we reviewed the baseline measures identified as 2018 $PM_{2.5}$ Plan baseline controls to ensure that the measures that are relied upon in the plan have been submitted and approved as part of the California SIP.[63] That set of 2018 $PM_{2.5}$ Plan baseline measures includes all

[60] Particulate matter with a diameter of 10 microns or less.

[61] 2016 $PM_{2.5}$ Plan, App. D, tables D–1 through D–5; and 2018 $PM_{2.5}$ Plan, App. I, tables I–1 through I–5.

[62] 2016 $PM_{2.5}$ Plan, Table 3–2. This includes District rules for open burning; boilers, steam generators, and process heaters; flares; glass melting furnaces; stationary internal combustion engines; and residential wood burning.

[63] EPA, ''Technical Support Document, General Evaluation, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's General Evaluation TSD''). Table V–A of EPA's General Evaluation TSD shows District rules with post-2013 compliance dates that are reflected in the future year baseline inventories of the 2018 $PM_{2.5}$ Plan, along with information on the EPA's approval of these rules.

those baseline measures identified in the 2016 $PM_{2.5}$ Plan's RFP demonstration as achieving emission reductions post-2013. Based on that review, we confirm that the stationary and area source baseline measures in the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan are approved into the SIP and support the emissions reductions for future years in the SJV. With respect to mobile sources, the EPA has acted in recent years to approve CARB mobile source regulations into the state-wide portion of the California SIP.[64] We therefore find that the future year baseline projections in the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan are properly supported by SIP-approved stationary, area, and mobile source measures.[65]

For these reasons, we are proposing to approve the 2013 base year emissions inventory in the 2018 $PM_{2.5}$ Plan as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008. We are also proposing to find that the future year baseline inventories in the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan satisfy the requirements of 40 CFR 51.1008(a)(2) and 51.1012(a)(2) and provide an adequate basis for the control measure, RFP, and impracticability demonstrations in the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan, respectively.

B. $PM_{2.5}$ Precursors

1. Requirements for Control of $PM_{2.5}$ Precursors

The provisions of subpart 4 of part D, title I of the CAA do not define the term ''precursor'' for purposes of $PM_{2.5}$, nor do they explicitly require the control of any specifically identified PM precursor. The statutory definition of ''air pollutant'' in CAA section 302(g), however, provides that the term ''includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' The EPA has identified NO_X, SO_2, VOC, and ammonia as precursors to the formation of $PM_{2.5}$. Accordingly, the attainment plan requirements of subpart 4 apply to emissions of all four precursor pollutants and direct $PM_{2.5}$ from all types of stationary, area, and mobile sources, except as otherwise provided in the Act (*e.g.,* in CAA section 189(e)).

Section 189(e) of the Act requires that the control requirements for major stationary sources of direct PM_{10} (which includes $PM_{2.5}$) also apply to major stationary sources of PM_{10} precursors, except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels that exceed the standard in the area. Section 189(e) contains the only express exception to the control requirements under subpart 4 (*e.g.,* requirements for RACM, RACT, BACM, best available control technology (BACT), MSM, and NNSR) for sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursor emissions. Although section 189(e) explicitly addresses only major stationary sources, the EPA interprets the Act as authorizing it also to determine, under appropriate circumstances, that regulation of specific $PM_{2.5}$ precursors from other source categories in a given nonattainment area is not necessary. For example, under the EPA's longstanding interpretation of the control requirements that apply to stationary and mobile sources of PM_{10} precursors in the nonattainment area under CAA section 172(c)(1) and subpart 4,[66] a state may demonstrate in a SIP submission that control of a certain precursor pollutant is not necessary in light of its insignificant contribution to ambient PM_{10} levels in the nonattainment area.[67]

Under the $PM_{2.5}$ SIP Requirements Rule, a state may elect to submit to the EPA a ''comprehensive precursor demonstration'' for a specific nonattainment area to show that emissions of a particular precursor from all existing sources located in the nonattainment area do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area.[68] If the EPA determines that the contribution of the precursor to $PM_{2.5}$ levels in the area is not significant and approves the demonstration, the state is not required to control emissions of the relevant precursor from existing sources in the attainment plan.[69]

We are evaluating the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan with respect to the Moderate area requirements in accordance with the presumption embodied within subpart 4 that all $PM_{2.5}$ precursors must be addressed in the State's evaluation of potential control measures, unless the State adequately demonstrates that emissions of a particular precursor or precursors do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the nonattainment area. In reviewing any determination by the State to exclude a $PM_{2.5}$ precursor from the required evaluation of potential control measures, we consider both the magnitude of the precursor's contribution to ambient $PM_{2.5}$ concentrations in the nonattainment area and the sensitivity of ambient $PM_{2.5}$ concentrations in the area to reductions in emissions of that precursor.

2. Summary of State's Precursor Demonstrations

The State presents analyses of $PM_{2.5}$ precursors in both the 2016 $PM_{2.5}$ Plan and the 2018 $PM_{2.5}$ Plan and primarily relies on sensitivity-based contribution analyses to determine whether each $PM_{2.5}$ plan precursor contributes significantly to ambient $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS. We summarize below key points from the State's analyses and conclusions for each pollutant, focusing on the three precursors (ammonia, SO_X, and VOC) that the State concludes do not contribute significantly to $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV.

In the 2016 $PM_{2.5}$ Plan, the State's precursor demonstration and conclusions are found in section 2.3 (''Summary of Modeling Results''), section 3.3 (''Precursor

[64] See, *e.g.,* 81 FR 39424 (June 16, 2016), 82 FR 14447 (March 21, 2017), and 83 FR 23232 (May 18, 2018).

[65] The baseline emissions projections in the 2016 $PM_{2.5}$ Plan assume implementation of CARB's zero emissions vehicle (ZEV) sales mandate and greenhouse gas (GHG) standards, based on the approved EMFAC2014 model and assumptions that were available at the time of the SIP's development. On September 27, 2019, the U.S. Department of Transportation and the EPA (the Agencies) issued a notice of final rulemaking for the ''Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program'' (''SAFE I'') that, among other things, withdrew the EPA's 2013 waiver of preemption of CARB's ZEV sales mandate and vehicle GHG standards. 84 FR 51310 (September 27, 2019). See also proposed SAFE rule at 83 FR 42986 (August 24, 2018). In response to SAFE I, CARB developed EMFAC off-model adjustment factors to account for anticipated changes in on-road emissions. On March 12, 2020, the EPA informed CARB that the EPA considers these adjustment factors to be acceptable for future use. See letter dated March 12, 2020, from Elizabeth J. Adams, EPA Region IX, to Steven Cliff, CARB. On April 30, 2020 (85 FR 24174), the Agencies issued a notice of final rulemaking for the ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks'' (''SAFE II''), establishing the federal fuel economy and GHG vehicle emissions standards based on the August 2018 SAFE proposal. The effect of both SAFE final rules (SAFE I and SAFE II) on the on-road vehicle mix in the SJV nonattainment area and on the resulting vehicular emissions is expected to be minimal during the timeframe addressed in this SIP revision. Therefore, we anticipate the SAFE final rules would not materially change the demonstration that it is impracticable for the SJV 2012 $PM_{2.5}$ Moderate area to attain by the Moderate area attainment date of December 31, 2021.

[66] General Preamble, 13539–13542.

[67] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}. See, *e.g., Assoc. of Irritated Residents* v. *EPA, et al.,* 423 F.3d 989 (9th Cir. 2005).

[68] 40 CFR 51.1006(a)(1).

[69] Id.

Demonstration''), and Appendix A (''Air Quality Modeling''). The State estimates that baseline anthropogenic emissions of NO_X, ammonia, SO_X, and VOC will decrease by 38 percent (%), 1%, 2%, and 8%, respectively, between 2013 and 2021.[70] The State does not present a concentration-based analysis of the contribution of each precursor to ambient $PM_{2.5}$ concentrations, but does estimate $PM_{2.5}$ component concentrations in the 2013 base year across all SJV monitoring sites.[71] The concentrations indicate that each precursor may have a significant impact on $PM_{2.5}$ levels.[72] The State presents a sensitivity-based precursor analysis using the modeled response of ambient $PM_{2.5}$ concentrations to a 15% increase or decrease in the future baseline emissions of each precursor in 2025 (the latest permissible attainment year if the area is reclassified to Serious for the 2012 $PM_{2.5}$ NAAQS).[73] For each precursor, the State then takes the difference between the $PM_{2.5}$ concentrations from the 15% increase and the 15% decrease to estimate the ambient $PM_{2.5}$ response to a 30% change in the precursor, and reviews the resulting change at each monitor to see whether any response exceeds a threshold of 0.2 μg/m³.[74]

The responses range from 0.5 μg/m³ to 1.5 μg/m³ for NO_X; from 0.1 μg/m³ to 0.2 μg/m³ for ammonia; from 0.1 μg/m³ to 0.2 μg/m³ for SO_X; and from –0.1 μg/m³ to 0.1 μg/m³ for VOC.[75] The State concludes that emissions of NO_X (as well as direct $PM_{2.5}$) contribute significantly to ambient $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS but ammonia, SO_X, and VOC do not contribute significantly to such exceedances.[76] The 2016 $PM_{2.5}$ Plan, Appendix A, section 5.5 (''Discussion of Precursor Sensitivity'') includes additional discussion of ammonia's and VOC's role in the formation of ammonium nitrate and VOC's role in the formation of secondary organic aerosols.

In the 2018 $PM_{2.5}$ Plan, the State's precursor demonstration and conclusions are found in Chapter 7 (''Demonstration of Federal Requirements for 2012 $PM_{2.5}$ Standard'') and Appendix G (''Precursor Demonstration''). CARB also provides clarifying information on its precursor assessment, including an Attachment A to its letter transmitting the 2018 $PM_{2.5}$ Plan to the EPA[77] and further clarifications in four email transmittals.[78]

The State estimates that anthropogenic emissions of NO_X, ammonia, SO_X, and VOC will decrease by 64%, 1%, 6%, and 9%, respectively, between 2013 and 2025.[79] The 2018 $PM_{2.5}$ Plan provides both concentration-based and sensitivity-based analyses of precursor contributions to ambient $PM_{2.5}$ concentrations in the SJV. Based on these analyses, the State concludes that emissions of NO_X (as well as direct $PM_{2.5}$) contribute significantly to ambient $PM_{2.5}$ levels that exceed the $PM_{2.5}$ NAAQS in the SJV but ammonia, SO_X, and VOC do not contribute significantly to such exceedances.

While these analyses are primarily designed to evaluate the role of precursors in attaining the 2006 24-hour $PM_{2.5}$ NAAQS by 2024 and the 2012 annual $PM_{2.5}$ NAAQS by 2025, they are important to the consideration of precursors for the State's Moderate area plan because they are based on updated data (*e.g.,* updated emissions inventories, as discussed in section IV.A of this proposed rule), use an updated methodology to evaluate the sensitivity of ambient $PM_{2.5}$ to a range of precursor emission reductions, consistent with the EPA's guidance, and best reflect the State's understanding of the control strategies being implemented in the SJV.

We summarize the State's analyses and conclusions in the following paragraphs. For ammonia, SO_X, and VOC, CARB assesses the 2015 annual average concentration of each precursor in ambient $PM_{2.5}$ at Bakersfield, for which the necessary speciated $PM_{2.5}$ data is available and where the highest $PM_{2.5}$ design values have been recorded in most years, and compares those concentrations to the recommended annual average contribution threshold of 0.2 μg/m³ from the EPA's ''Draft $PM_{2.5}$ Precursor Guidance''[80] available at the time the State developed the SIP.[81] The 2015 annual average contributions of ammonia, SO_X, and VOC are 5.2 μg/m³, 1.6 μg/m³ and 6.2 μg/m³, respectively.

Given that these levels are well above the EPA's recommended contribution threshold in the Draft $PM_{2.5}$ Precursor Guidance, the State models the sensitivity of ambient $PM_{2.5}$ in the SJV to reductions in each precursor pollutant. For direct $PM_{2.5}$ and NO_X, the State models the sensitivity of ambient $PM_{2.5}$ in the SJV to a 30% reduction in anthropogenic emissions of each pollutant in 2013, 2020, and 2024.[82] The State concludes that direct $PM_{2.5}$ and NO_X emissions reductions will continue to have a significant impact on annual

[70] 2016 $PM_{2.5}$ Plan, 2–4 and Table 2–1.

[71] Id. at Table 2–4.

[72] Using the species assignments recommended in the Draft Precursor Demonstration Guidance (on page 21) the relevant concentrations are as follows: For NO_X, the nitrate and associated ammonium is up to 7.1 μg/m³; for SO_2, sulfate is up to 1.7 μg/m³; for ammonia, the sum of ammonium and nitrate is up to 7.1 μg/m³; for VOC the only available concentration is for ''OM'' (organic matter), which is up to 8.7 μg/m³, and is likely much higher than the secondary organic aerosol that is relevant for VOC as a $PM_{2.5}$ precursor. All these values are well above the 0.2 μg/m³ threshold.

[73] 2016 $PM_{2.5}$ Plan, App. A, section 5.4 (''Precursor Sensitivity Analysis'').

[74] For the annual $PM_{2.5}$ NAAQS, the EPA generally expects that a precursor demonstration showing that the air quality impact of a given precursor at all relevant locations does not exceed a contribution threshold of 0.2 μg/m³ will be adequate to exempt sources of that precursor from control requirements. $PM_{2.5}$ Precursor Guidance, 17.

[75] 2016 $PM_{2.5}$ Plan, App. A, tables 24, 26, 28, and 27, respectively.

[76] Id. at 2–6 and 3–3, and App. A, A–52. We note that direct $PM_{2.5}$ emissions are considered a primary source of ambient $PM_{2.5}$ (*i.e.,* no further formation in the atmosphere is required), and therefore is not considered a precursor pollutant under subpart 4, which may differ from a more generalized understanding of what contributes to ambient $PM_{2.5}$.

[77] Letter dated May 9, 2019, from Richard W. Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region IX, Attachment A (''Clarifying information for the San Joaquin Valley 2018 Plan regarding model sensitivity related to ammonia and ammonia controls'').

[78] Email dated June 20, 2019, ''RE: SJV model disbenefit from SO_X reduction,'' from Jeremy Avise, CARB, to Scott Bohning, EPA Region IX, with attachment (''CARB's June 2019 Precursor Clarification''); email dated September 19, 2019, ''FW: SJV species responses,'' from Jeremy Avise, CARB, to Scott Bohning, EPA Region IX, with attachments (''CARB's September 2019 Precursor Clarification''); email dated October 18, 2019, from Laura Carr, CARB to Scott Bohning, Jeanhee Hong, and Rory Mays, EPA Region IX, with attachment ''Clarifying Information on Ammonia'' (''CARB's October 2019 Precursor Clarification''); and email dated April 26, 2021, from Laura Carr, CARB, to Scott Bohning, EPA Region IX, Subject: ''RE: Ammonia update,'' with attachment ''Ammonia in San Joaquin Valley'' (''CARB's April 26, 2021, Precursor Clarification'').

[79] 2018 $PM_{2.5}$ Plan, Ch. 7, 7–5 and Table 7–2. Notably, the estimated 64% reduction in NO_X from 2013 to 2025 (per the 2018 $PM_{2.5}$ Plan) is much larger than the estimated 38% reduction in NO_X from 2013 to 2021 (per the 2016 $PM_{2.5}$ Plan), reflecting both additional years of reductions and additional reductions anticipated from the 2018 $PM_{2.5}$ Plan control strategy. We also note that a copy of the contents of the 2018 $PM_{2.5}$ Plan, App. G appears in the CARB 2018 Staff Report, App. C4 (''Precursor Demonstrations for Ammonia, SO_X, and ROG'').

[80] ''$PM_{2.5}$ Precursor Demonstration Guidance, Draft for Public Review and Comments,'' EPA–454/P–16–001, November 17, 2016, including Memo dated November 17, 2016 from Stephen D. Page, Director, OAQPS, EPA to Regional Air Division Directors, Regions 1–10, EPA.

[81] 2018 $PM_{2.5}$ Plan, App. G, 3. The 2018 $PM_{2.5}$ Plan presents a graphical representation of annual average ambient $PM_{2.5}$ components (*i.e.,* crustal particulate matter, elemental carbon, organic matter, ammonium sulfate, and ammonium nitrate) for 2011–2013 for Bakersfield, Fresno, and Modesto. 2018 $PM_{2.5}$ Plan, Ch. 3, 3–3 to 3–4.

[82] 2018 $PM_{2.5}$ Plan, Ch. 7, 7–7. The sensitivity-based analysis used the same modeling platform as that used for the 2018 $PM_{2.5}$ Plan's attainment and RFP demonstrations. CARB modeled the impacts of both NO_X reductions and direct $PM_{2.5}$ reductions, but the direct $PM_{2.5}$ results were used only as a point of comparison, as direct $PM_{2.5}$ emissions must be regulated in all $PM_{2.5}$ nonattainment areas.

and 24-hour $PM_{2.5}$ design values in the SJV, with NO_X reductions being particularly important.[83]

For ammonia, SO_X, and VOC, the State then models the sensitivity of ambient $PM_{2.5}$ to 30% and 70% reductions in anthropogenic emissions of each precursor pollutant in 2013 (the 2018 $PM_{2.5}$ Plan's base year), 2020 (the modeled attainment year for the 1997 $PM_{2.5}$ NAAQS), and 2024 (the modeled attainment year for the 2006 $PM_{2.5}$ NAAQS, and proxy for the modeled attainment year of 2025 for the 2012 $PM_{2.5}$ NAAQS).[84] Depending on the analysis year and percentage precursor emission reduction, the sensitivity of ambient $PM_{2.5}$ to reductions in annual average precursor emissions ranges from 0.08 μg/m³ to 2.30 μg/m³ for ammonia; from −0.05 μg/m³ to 0.15 μg/m³ for SO_X; and from −0.50 μg/m³ to 0.40 μg/m³ for VOC.[85]

For ammonia, the modeled sensitivity of ambient $PM_{2.5}$ levels to a 30% or 70% emission reduction exceed 0.2 μg/m³ in certain years at specific monitoring sites. We provide a detailed summary of these modeling results and our evaluations thereof in the ''Technical Support Document, EPA Evaluation of Ammonia Precursor Demonstration, San Joaquin Valley Moderate Area $PM_{2.5}$ Plan for the 2012 $PM_{2.5}$ NAAQS,'' August 2021 (''EPA's Ammonia Precursor TSD''). In contrast, for SO_X and VOC, the modeled sensitivity of ambient $PM_{2.5}$ levels to a 30% or 70% emission reduction in either precursor is below 0.2 μg/m³, including a disbenefit at certain monitoring sites (*i.e.,* ambient $PM_{2.5}$ level increase), in all scenarios except one. For 2013, the State's modeling shows an ambient $PM_{2.5}$ change greater than 0.2 μg/m³ in response to a 70% VOC emission reduction. According to the State, however, such sensitivity results do not reflect the atmospheric chemistry in the SJV given the projected emission reductions from 2013 to 2024 for all four $PM_{2.5}$ precursors, especially for VOC and NO_X.[86]

The State supplements the sensitivity analysis, particularly for ammonia, with consideration of additional information, including factors identified in the Draft $PM_{2.5}$ Precursor Guidance, such as emission trends, the appropriateness of future year versus base year sensitivity, available emission controls, and the severity of nonattainment.[87] The $PM_{2.5}$ Precursor Guidance confirms that these factors may be relevant to a sensitivity-based contribution analysis.[88]

For ammonia, the State notes that a 53% reduction in (baseline) NO_X emissions is projected to occur between 2013 and 2024,[89] so the conditions in the early years will not persist and the future year (2024) is more representative of the Valley's ambient conditions than earlier years. The 2018 $PM_{2.5}$ Plan's precursor demonstration also presents a review of District agricultural rules that control VOC emissions and also provide ammonia co-benefits. The State concludes that a 30% reduction is a reasonable upper bound on the ammonia reductions to model. Finally, the 2018 $PM_{2.5}$ Plan's precursor demonstration presents extensive support for the State's conclusion regarding an ambient excess of ammonia relative to NO_X, *i.e.,* that particulate ammonium nitrate formation is NO_X-limited, beyond that presented in the 2016 $PM_{2.5}$ Plan's precursor demonstration.

3. EPA Evaluation and Proposed Action

The EPA has evaluated the State's precursor demonstrations in the 2016 $PM_{2.5}$ Plan, as supplemented and updated by the precursor demonstrations in the 2018 $PM_{2.5}$ Plan, as well as other relevant information available to the EPA, consistent with the $PM_{2.5}$ SIP Requirements Rule and the recommendations in the $PM_{2.5}$ Precursor Guidance. Based on this evaluation, the EPA agrees with the State's conclusion that NO_X emissions contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV and that NO_X emission sources, therefore, remain subject to control requirements under subparts 1 and 4 of part D, title I of the Act. Additionally, for the reasons provided in the following paragraphs, the EPA proposes to approve the State's comprehensive precursor demonstrations for ammonia, SO_X, and VOC based on a conclusion that emissions of these precursor pollutants do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV.

The State based its analyses on the latest available data and studies concerning ambient $PM_{2.5}$ formation in the SJV from precursor emissions. For the required concentration-based analysis, the State assessed the absolute annual average contribution of each precursor to ambient $PM_{2.5}$ (*i.e.,* in 2015). Given the absolute concentrations in 2015 were above the EPA's recommended contribution thresholds for both the 24-hour and annual average $PM_{2.5}$ NAAQS, the State proceeded to a sensitivity-based analysis, consistent with the $PM_{2.5}$ SIP Requirements Rule.

For the sensitivity-based analysis, the State performed its analyses in a straightforward application of the EPA's recommended approach—*i.e.,* for each modeled year and level of emissions reduction (in percentages), the State estimated the ambient $PM_{2.5}$ response using the procedure recommended in the $PM_{2.5}$ Precursor Guidance, and compared the result to the EPA's recommended contribution threshold.[90] The EPA finds that the performance of the photochemical models were adequate for use in estimating the ambient $PM_{2.5}$ responses.[91] In particular, for the 2018 $PM_{2.5}$ Plan precursor demonstration, the State considered the EPA's recommended range of emission reductions (30% to 70%) for the 2013 base year, 2020 (an interim year), and 2024 (as a proxy for the projected 2025 attainment year for the 2012 $PM_{2.5}$ NAAQS), and quantified

[83] Id. Ch. 7, 7–7; and 2018 $PM_{2.5}$ Plan, App. G, 2. CARB presents its sensitivity analysis for emission reductions in direct $PM_{2.5}$ and NO_X in the plan's attainment demonstration appendix. 2018 $PM_{2.5}$ Plan, App. K, Table 46 (annual average design values) and Table 50 (24-hour average design values).

[84] 2018 $PM_{2.5}$ Plan, Ch. 7, 7–7. The 2018 $PM_{2.5}$ Plan precursor demonstration assumes that 2025 attainment year sensitivities are very similar to those modeled in 2024. 2018 $PM_{2.5}$ Plan, App. G, 10. We note that the State only modeled 30% and 70% reductions in SO_X for 2013, finding that the sensitivity of ambient $PM_{2.5}$ to such changes were below the EPA's recommended threshold.

[85] Id. at App. G, tables 2 through 7 for ammonia, tables 8 and 9 for SO_X, and tables 10 through 15 for VOC.

[86] For a more detailed summary of the State's precursor demonstration in the 2018 $PM_{2.5}$ Plan for the 2006 24-hour $PM_{2.5}$ NAAQS, see the EPA's ''Technical Support Document, EPA Evaluation of $PM_{2.5}$ Precursor Demonstration, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's 24-hour $PM_{2.5}$ Precursor TSD'').

[87] 2018 $PM_{2.5}$ Plan, App. G, 5.

[88] $PM_{2.5}$ Precursor Guidance, 18–19 (consideration of additional information), 31 (available emission controls), and 35–36 (appropriateness of future year versus base year sensitivity).

[89] 2018 Plan, App. G, 8.

[90] For the 2016 $PM_{2.5}$ Plan precursor demonstration, CARB modeled a 15% increase and 15% decrease in a precursor and took the difference between the resulting $PM_{2.5}$ concentrations to estimate the ambient $PM_{2.5}$ response to a 30% change in the precursor, rather than a straight 30% reduction, which would be expected to slightly understate the response, as described in the EPA's Ammonia Precursor TSD. Nevertheless, this is a reasonable approach and the State consulted with the EPA on whether this approach using then-available modeling runs would be acceptable.

[91] For the 2018 $PM_{2.5}$ Plan, the model performance is discussed further in section J (''Air Quality Model Performance'') of the EPA's ''Technical Support Document, EPA Evaluation of Air Quality Modeling, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's Modeling TSD''). See further discussion in section IV.C of this proposed rule.

the estimated response of ambient $PM_{2.5}$ concentrations to precursor emission changes in the SJV.

The State's emissions projections in the 2016 $PM_{2.5}$ Plan and the 2018 $PM_{2.5}$ Plan show that baseline emissions of each of these precursors will decrease from the 2013 base year to 2021 and 2025, respectively (*i.e.,* none of these pollutants is projected to increase). These decreases are included in the State's modeled projections of ambient $PM_{2.5}$ levels in the SJV for purposes of demonstrating attainment and RFP. The State's sensitivity analyses are consistent with these projections, in accordance with the EPA's recommendations in the $PM_{2.5}$ Precursor Guidance.[92]

In the subsections that follow, we summarize below our evaluation of the State's precursor demonstrations for ammonia, SO_X, and VOC for purposes of the 2012 $PM_{2.5}$ NAAQS in the SJV.

a. Ammonia Precursor Demonstration

In the 2016 $PM_{2.5}$ Plan, CARB estimates the ambient $PM_{2.5}$ response to a 30% reduction in emissions in 2025 and, in the 2018 $PM_{2.5}$ Plan, CARB estimates the ambient $PM_{2.5}$ response to both a 30% and a 70% emission reduction in 2013, 2020, and 2024. We have evaluated CARB's sensitivity-based contribution analyses for 2013, 2020, and 2024 (in the 2018 $PM_{2.5}$ Plan) and for 2025 (in the 2016 $PM_{2.5}$ Plan), and CARB's determination that 2024, as a proxy for the projected attainment year of 2025, is more representative of conditions in the SJV for purposes of a sensitivity-based analysis, as discussed in the following paragraphs. We find it appropriate for the State to consider additional information as part of its evaluation of whether the ammonia contribution is significant and to rely on the responses to the 30% modeled ammonia emissions reduction in its precursor demonstration for ammonia. We provide a detailed evaluation of the State's precursor demonstration for ammonia emissions in the EPA's Ammonia Precursor TSD.

As part of its analysis in the 2016 $PM_{2.5}$ Plan, CARB estimates that the ambient $PM_{2.5}$ response to a 30% reduction in ammonia emissions would range from 0.1 $\mu g/m^3$ to 0.2 $\mu g/m^3$ in 2025 with 3 of 16 monitoring sites having a response of 0.2 $\mu g/m^3$. However, the precursor demonstration in the 2018 $PM_{2.5}$ Plan indicates that the ambient response to a 30% ammonia emission reduction would exceed the EPA's recommended contribution threshold of 0.2 $\mu g/m^3$ at a number of monitoring sites, primarily in the 2013 and 2020 analysis years. For example, the sensitivity results for a 30% reduction in ammonia emission reductions in 2020 (the closest analysis year to 2021), show that the ambient $PM_{2.5}$ response at 9 of 15 monitoring sites would exceed the 0.2 $\mu g/m^3$ threshold. We consider two lines of reasoning provided by the State to support its conclusion that ammonia emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV.

First, multiple researchers have suggested that ammonia emissions are underestimated in the SJV by a factor of two to five or more.[93] This conclusion is based on comparing ambient and satellite measurements to model results that incorporate estimates of ammonia emissions and comparing monitoring or modeling results to what would be expected based on the size(s) of the ammonia and other precursor (*e.g.,* NO_X) emission inventories. In a supplemental transmittal,[94] CARB described the results of two analyses confirming the likely underestimation of ammonia emissions. CARB compared Community Multiscale Air Quality (CMAQ) model predictions of ammonia with the 2013 DISCOVER–AQ[95] aircraft measurements and found that ammonia was underpredicted, and noted that this would result in the response to ammonia reductions being overpredicted. CARB also compared 2017 satellite measurements of ammonia with CMAQ model predictions and found that modeled ammonia concentrations were half of the magnitude of the satellite observations at some locations, and the modeled average in the SJV was about 25% less than observed. As a result of the likely ammonia emissions underestimation, the modeled response to ammonia precursor reductions in the 2018 $PM_{2.5}$ Plan's precursor demonstration may be unrealistically large.

If ammonia emissions were increased in the modeling to correct the likely underestimation, then modeled ammonia would be more abundant relative to nitrate; particulate nitrate formation would be more NO_X-limited, and less responsive to ammonia reductions; and the modeled response to ammonia reductions would be lower than is reported in the 2018 $PM_{2.5}$ Plan's precursor demonstration and likely below the EPA's recommended contribution threshold at most monitors in 2021.

In addition, an upward revision in the ammonia emission estimate would make the model response more consistent with the ambient measurement studies discussed in the submittal.[96] The relevant studies suggest a very low ambient sensitivity to ammonia, based on measured excess ammonia relative to NO_X, the abundance of particulate nitrate relative to gaseous NO_X, and the large abundance of ammonia relative to nitric acid.[97] The studies all conclude that there is a large amount of ammonia left over after reacting with NO_X, so that ammonia emission reductions would be expected mainly to reduce the amount of ammonia excess, rather than to reduce the particulate amonium nitrate.

Based on these evaluations, we find that a correction to the likely underestimation of the ammonia emission inventory would likely result in a modeled response to ammonia reductions below the 0.2 $\mu g/m^3$ contribution threshold in 2021.

Second, the air quality benefit of ammonia emission reductions is projected to decline steeply over time and both the Moderate and Serious area plans for the 2012 $PM_{2.5}$ NAAQS for the SJV have been submitted to the EPA. While a concentration-based analysis is the initial step for a precursor demonstration under the $PM_{2.5}$ SIP Requirements Rule,[98] a precursor

[92] $PM_{2.5}$ Precursor Guidance, 35.

[93] See, *e.g.,* Parrish, D., ''Synthesis of Policy Relevant Findings from the CalNex 2010 Field Study, Final Report to the Research Division of the California Air Resources Board,'' 2014, 63, *https://www.esrl.noaa.gov/csd/projects/calnex/*; and Kelly, J.T. *et al.* 2018, ''Modeling NH_4NO_3 over the San Joaquin Valley during the 2013 DISCOVER–AQ campaign,'' Journal of Geophysical Research: Atmospheres, 123, 4727–4745, *https://doi.org/10.1029/2018JD028290 at 4731.* See also the EPA's Ammonia Precursor TSD for further discussion of ammonia research studies.

[94] CARB's April 26, 2021, Precursor Clarification.

[95] NASA, ''Deriving Information on Surface conditions from COlumn and VERtically Resolved Observations Relevant to Air Quality,'' available at *https://www.nasa.gov/mission_pages/discover-aq/index.html.*

[96] 2018 $PM_{2.5}$ Plan, 6–7, and App. G, G–9 to G–10; the CARB 2018 Staff Report, App. C, 12–15; and Submittal Letter, Attachment A.

[97] Lurmann et al. 2006, ''Processes Influencing Secondary Aerosol Formation in the San Joaquin Valley during Winter,'' *Journal of the Air & Waste Management Association* (1995) 56(12):1679–93, *https://doi.org/10.1080/10473289.2006.10464573*; Markovic *et al.,* 2014, ''Measurements and modeling of the inorganic chemical composition of fine particulate matter and associated precursor gases in California's San Joaquin Valley during CalNex 2010,'' *Journal of Geophysical Research—Atmospheres,* 119, 6853–6866, *https://doi.org/10.1002/2013JD021408.* CalNex, or California Research at the Nexus of Air Quality and Climate Change, was a NOAA-sponsored field study during summer 2010. *https://www.esrl.noaa.gov/csd/projects/calnex/.*

[98] 40 CFR 51.1006 (a)(1)(i).

demonstration may then proceed to a sensitivity-based contribution analysis [99] to consider how sensitive ambient $PM_{2.5}$ levels would be to emissions reductions. Precursor concentration alone does not account for complications of meteorology and chemistry; ambient $PM_{2.5}$ may be relatively insensitive to emissions reductions and, in some circumstances, emissions reductions may even result in increased ambient $PM_{2.5}$, *i.e.,* show a ''disbenefit.'' [100]

In selecting the analysis year for a precursor demonstration, we find it appropriate to consider changes in atmospheric chemistry that may occur between the base or current year and the attainment year because the changes may ultimately affect the nonattainment area's progress toward expeditious attainment. Based on these considerations, we find it reasonable for the State to focus on the ambient $PM_{2.5}$ response to ammonia emission reductions in 2024, rather than an earlier year, as the modeled response in 2024 in the SJV better reflects the potential benefit of ammonia control measures for purposes of expeditious attainment of the 2012 $PM_{2.5}$ NAAQS. We consider the precursor demonstration in the 2018 $PM_{2.5}$ Plan as part of this evaluation, because the 2018 $PM_{2.5}$ Plan contains a Serious area attainment plan for the 2012 $PM_{2.5}$ NAAQS based on modeled emissions projections for 2024 and 2025 that are relevant to our evaluation of the ammonia precursor demonstration in the 2016 $PM_{2.5}$ Plan. The 2018 $PM_{2.5}$ Plan provides updated analyses with comprehensive modeling and additional information beyond that provided in the 2016 $PM_{2.5}$ Plan, and the 2024 model results in the 2018 $PM_{2.5}$ Plan corroborate the 2025 model results in the 2016 $PM_{2.5}$ Plan.

The State's precursor demonstrations in the 2016 $PM_{2.5}$ Plan and the 2018 $PM_{2.5}$ Plan show that ambient sensitivity to ammonia emission reductions in the SJV declines steeply over time. Between 2020 and 2024, the modeled response to a 30% ammonia emission reduction declines by 50% at the Bakersfield-Planz monitoring site, which has the highest projected $PM_{2.5}$ level, and by 37% averaged over all monitoring sites. In absolute terms, the ambient $PM_{2.5}$ response declines from 0.24 μg/m³ in 2020 to 0.12 μg/m³ in 2024 at Bakersfield-Planz, and from 0.23 μg/m³ to 0.14 μg/m³ as averaged over all monitoring sites, with the decline being generally larger for the sites with the highest projected $PM_{2.5}$ levels. Thus, between 2020 and 2024, the number of sites at which modeled sensitivity exceeds the 0.2 μg/m³ threshold declines from 9 of 15 to 1 or 2 of 15.[101] [102] As discussed above, ammonia sensitivity declines because of the shifting atmospheric chemistry caused by NO_X emissions decreases. NO_X emissions are projected to decrease 27% between 2020 and 2024 due to baseline measures (*e.g.,* existing motor vehicle controls). The decreased NO_X emissions will make ammonia more abundant relative to NO_X, and even less of a limiting factor on $PM_{2.5}$ formation. In other words, the model response in the future attainment year 2024 gives a more realistic assessment of the potential effect of ammonia controls than past or current conditions.

Moreover, given the likely underestimate in ammonia emissions in the SJV, 2024 modeling results may be more representative even of current conditions than 2020 modeling results. For example, if 2013 ammonia emissions are underestimated by a factor of three, as suggested by the CalNex summary report,[103] then the 2013 ratio of ammonia to NO_X emissions of 1.04 should be about 3.1, instead. The emissions ratio of ammonia to NO_X in 2024 is 2.2, which is closer to 3.1 than the emissions ratio of ammonia to NO_X in 2020, which is 1.6.[104] Using 2024 modeling results partly compensates for the likely ammonia emissions underestimation.

Finally, the decision on whether to control ammonia does not affect the attainment year for the 2012 annual $PM_{2.5}$ NAAQS. From the 2020 sensitivity results,[105] a 30% reduction in ammonia emissions would reduce the projected $PM_{2.5}$ level in 2021 [106] by 0.24 μg/m³. The design value would decrease from a 2020 baseline value of 14.6 μg/m³ down to 14.3 μg/m³. The State uses a 30% ammonia emission reduction as an upper bound in the modeling but shows that even a 70% ammonia emission reduction would reduce the design value to only 13.8 μg/m³. The result of a 30% or even a 70% ammonia emission reduction, if those were possible, would still be well above the NAAQS level of 12.0 μg/m³. Attainment would remain impracticable in 2021. A decision to evaluate and possibly adopt additional ammonia controls in the 2016 $PM_{2.5}$ Plan would not remove the need for a Serious area plan identifying a later attainment year for the 2012 $PM_{2.5}$ NAAQS.

Such reductions would also have little effect in 2025. Based on the 2024 sensitivity results,[107] if ammonia emissions were reduced by 30%, the area's 12.0 μg/m³ design value would be reduced by 0.12 μg/m³, which would not be considered significant (it is below the EPA's recommended threshold of 0.2 μg/m³). A 70% reduction might lower the design value by 0.36 μg/m³ to 11.7 μg/m³. Conceivably that could result in attainment of the 2012 $PM_{2.5}$ NAAQS in 2024 rather than 2025, but it is not clear whether reductions of that magnitude are feasible.

In sum, we find that the State quantified the sensitivity of ambient $PM_{2.5}$ levels to reductions in ammonia emissions using appropriate modeling techniques that performed well; there is likely an underestimation of ammonia emissions in the SJV and, if corrected, the modeled response to ammonia reductions would be lower than reported; and the State's choice of 2024 and 2025 as the reference points for purposes of evaluating the sensitivity of

[99] 40 CFR 51.1006 (a)(1)(ii).

[100] An example of a disbenefit is ''sulfate replacement,'' which can occur at intermediate ammonia levels when there is not enough ammonia to fully react with the SO_X and NO_X present. Reducing SO_X emissions reduces ambient particulate ammonium sulfate. For each ammonium sulfate, two ammonium ions are freed; both can combine with a nitrate, forming two particulate ammonium nitrate molecules. The net result of the SO_X emissions decrease is then an increase in ambient $PM_{2.5}$ concentration. See also the EPA's 24-hour $PM_{2.5}$ Precursor TSD, 17–18; and West, J.J., Ansari, A.S., Pandis, S.N., 1999, ''Marginal $PM_{2.5}$: Nonlinear aerosol mass response to sulfate reductions in the eastern United States,'' *Journal of the Air & Waste Management Association,* 49, 1415–1424. *https://doi.org/10.1080/10473289.1999.10463973.*

[101] 2018 $PM_{2.5}$ Plan, App. G, tables 4 & 5, G–11. The result for the Madera site is unclear since its monitored concentrations are biased high.

[102] For 2025, the 2016 $PM_{2.5}$ Plan states there are no sites are above the contribution threshold. The sensitivities show similar declines from 2020 to 2025 of 58% for the monitoring site with the highest projected $PM_{2.5}$ level and 46% averaged over all monitoring sites. Because only a single decimal place is provided for 2025, the percent declines are more approximate. Extrapolating the 2018 $PM_{2.5}$ Plan results to 2025, the percent declines are 55% and 40%, respectively, which are comparable to those for 2024.

[103] Parrish, D., ''Synthesis of Policy Relevant Findings from the CalNex 2010 Field Study, Final Report to the Research Division of the California Air Resources Board,'' 2014, 63, *https://www.esrl.noaa.gov/csd/projects/calnex/.*

[104] 2018 $PM_{2.5}$ Plan, App. B, tables B–2 (''NO_X'') and B–5 (''Ammonia''), annual average tpd, Grand Total for San Joaquin Valley, B–7 and B–16. The ammonia to NO_X ratio is 329.2/317.2 = 1.04 in 2013; 325.9/203.3 = 1.6 in 2020; and 324.6/148.9 = 2.2 in 2024.

[105] 2018 $PM_{2.5}$ Plan, App. G, tables 4 and 6.

[106] Sensitivity for the year 2021 is being represented by model results for 2020. Given the declining NO_X emissions and corresponding decline in ammonia sensitivity, the actual $PM_{2.5}$ response to ammonia reductions for 2021 would be lower than stated.

[107] 2018 $PM_{2.5}$ Plan, App. G, tables 5 and 7, 11–12. The response to 2025 ammonia reductions would be lower than the values stated in the text, due to the effect of declining NO_X emissions.

ambient $PM_{2.5}$ levels to ammonia emission reductions is well-supported. Based on all of these considerations, the EPA proposes to approve the State's demonstration that ammonia emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV.

b. SO_X Precursor Demonstration0.05

As described in section IV.B.2 of this proposed rule, in the 2016 $PM_{2.5}$ Plan, CARB estimated the ambient $PM_{2.5}$ response to a 30% reduction in SO_X emissions in 2025 to range from 0.1 μg/m³ to 0.2 μg/m³, with half the monitoring sites having a response of 0.2 μg/m³. In the 2018 $PM_{2.5}$ Plan, CARB estimated the 2013 ambient $PM_{2.5}$ response to a 30% SO_X emission reduction to range from −0.01 μg/m³ to 0.07 μg/m³ and estimated the ambient $PM_{2.5}$ response to a 70% SO_X emission reduction to range from −0.05 μg/m³ to 0.15 μg/m³.[108] The State also provides an emissions trend chart that shows SO_X emissions to be steady at approximately 8 tpd from 2013 through 2024. Given that the relative levels of SO_X and ammonia emissions over that timeframe remain similar, the State concludes that the 2013 sensitivities are also representative of future years.[109] The State also provides the ambient $PM_{2.5}$ responses in 2013, 2020, and 2024 to 30% and 70% reductions in SO_X emissions, all of which are below the 0.2 μg/m³ contribution threshold.[110]

We note that the 2016 $PM_{2.5}$ Plan's sensitivity estimates for 2025 are at or below the EPA's recommended contribution threshold of 0.2 μg/m³, and that the 2018 $PM_{2.5}$ Plan's sensitivity estimates for 2013 are well below that threshold for both the 30% and 70% emission reduction scenarios and even negative for certain monitoring sites. Given that the latter precursor demonstration was based on updated data and an updated methodology, and the steady SO_X emission levels over 2013 to 2025 (as opposed to increases), the EPA agrees with the State's conclusion that the 2013 modeled sensitivities provide a sufficient basis for the SO_X precursor demonstration. The supplemental results provided by the State for 2020 and 2024 support this conclusion.

Therefore, on the basis of these modeled ambient $PM_{2.5}$ responses to SO_X emission reductions in the SJV, and the facts and circumstances of the area, the EPA proposes to approve the State's demonstration that SO_X emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV.

c. VOC Precursor Demonstration

In the 2016 $PM_{2.5}$ Plan, CARB estimated the ambient $PM_{2.5}$ response to a 30% difference in VOC emissions in 2025 to range from −0.1 μg/m³ to 0.1 μg/m³. In the 2018 $PM_{2.5}$ Plan, the State found that the ambient $PM_{2.5}$ response to VOC emission reductions were generally below the EPA's recommended contribution threshold of 0.2 μg/m³, and often predicted an increase in ambient $PM_{2.5}$ levels in response to such reductions (*i.e.,* a disbenefit), except for a 70% emission reduction for the 2013 base year, where the State predicted the ambient $PM_{2.5}$ response to be above both recommended thresholds at a majority of sites.[111]

We note that the 2016 $PM_{2.5}$ Plan's sensitivity estimates for 2025 are at or below the EPA's recommended contribution threshold of 0.2 μg/m³, and that the 2018 $PM_{2.5}$ Plan's sensitivity estimates for 2020 and 2024 are well below that threshold for both the 30% and 70% emission reduction scenarios, and even negative for certain monitoring sites. The State also provides an emissions trend chart that shows VOC emissions are projected to decrease by about 30 tpd, or 9% between 2013 and 2020 as well as between 2013 and 2024, and concludes that 2013 sensitivity results are not representative into the future and that the 2020 and 2024 results are representative.[112] Finally, the State concludes that VOC emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS.

The EPA has evaluated and agrees with the State's determination in the 2018 $PM_{2.5}$ Plan that the projected 2024 attainment year is more representative of conditions in the SJV for sensitivity-based analyses and that VOC reductions in 2024 would mostly result in a disbenefit to ambient $PM_{2.5}$ levels. The EPA agrees that the 9% VOC emissions decrease from 2013 to 2024 supports reliance on the 2024 modeling results. Furthermore, there is a large decrease in NO_X emissions over this period, as described in section IV.B.2 of this proposed rule, that affects the atmospheric chemistry with respect to ambient $PM_{2.5}$ formation from VOC emissions. The 9% VOC emission reductions and the vast majority of NO_X emissions reductions are expected to result from baseline measures already in effect. Therefore, we find it reasonable to rely on future year 2024 modeled responses to VOC reductions. The EPA also finds that the State provided a reasonable explanation for the VOC reduction disbenefit and evidence that it occurs in the SJV; as discussed in the EPA's ''Technical Support Document, EPA Evaluation of $PM_{2.5}$ Precursor Demonstration, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's 2006 NAAQS Precursor TSD''), VOC reductions led to less peroxyacetyl nitrate formation, and greater availability of nitrate to form particulate ammonium nitrate.[113]

For these reasons, we propose to approve the State's demonstration that VOC emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV.

C. Air Quality Modeling

1. Requirements for Air Quality Modeling

Section 189(a)(1)(B) of the CAA requires each state in which a Moderate area is located to submit a plan that includes a demonstration (including air quality modeling) of either (i) attainment of the $PM_{2.5}$ NAAQS by the applicable attainment date, or (ii) attainment by that date is impracticable. The 2016 $PM_{2.5}$ Plan includes a demonstration that attainment by the Moderate attainment date is impracticable.

The EPA's $PM_{2.5}$ modeling guidance[114] (''Modeling Guidance'' and ''Modeling Guidance Update'') recommends that a photochemical model, such as the Comprehensive Air Quality Model with Extensions or CMAQ, be used to simulate a base case, with meteorological and emissions inputs reflecting a base case year, to replicate concentrations monitored in that year. The model application to the base year undergoes a performance evaluation to ensure that it satisfactorily corroborates the concentrations monitored in that year. The model may then be used to simulate emissions occurring in other years required for a

[108] 2018 $PM_{2.5}$ Plan, App. G, 15–16, tables 8 and 9.

[109] 2018 $PM_{2.5}$ Plan, App. G, 15.

[110] CARB's September 2019 Precursor Clarification.

[111] 2018 $PM_{2.5}$ Plan, App. G, 18–19, tables 10 and 11.

[112] 2018 $PM_{2.5}$ Plan, App. G, 19–20.

[113] EPA's 2006 NAAQS Precursor TSD, 22.

[114] Memorandum dated November 29, 2018, from Richard Wayland, Air Quality Assessment Division, Office of Air Quality Planning and Standards (OAQPS), EPA, to Regional Air Division Directors, EPA, Subject: ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' (''Modeling Guidance''), and Memorandum dated June 28, 2011 from Tyler Fox, Air Quality Modeling Group, OAQPS, EPA, to Regional Air Program Managers, EPA, Subject: ''Update to the 24 Hour $PM_{2.5}$ NAAQS Modeled Attainment Test,'' (''Modeling Guidance Update'').

plan, namely the base year (which may differ from the base case year) and future year.[115] The modeled response to the emission changes between those years is used to calculate relative response factors (RRFs) that are applied to the design value in the base year to estimate the projected design value in the future year for comparison against the NAAQS. Separate RRFs are estimated for each chemical species component of $PM_{2.5}$, and for each quarter of the year, to reflect their differing responses to seasonal meteorological conditions and emissions. Because each species is handled separately, before applying an RRF, the base year design value must be speciated using available chemical species measurements—that is, each day's measured $PM_{2.5}$ concentration must be split into its species components. The Modeling Guidance provides additional detail on the recommended approach.[116]

The EPA has not issued modeling guidance specific to impracticability demonstrations but believes that a state seeking to make such a demonstration generally should provide air quality modeling similar to that required for an attainment demonstration.[117] The main difference is that for an impracticability demonstration, the implementation of the SIP control strategy (including RACM) does not result in attainment of the standard by the Moderate area attainment date.

For an attainment demonstration, a thorough review of all modeling inputs and assumptions (including consistency with EPA guidance) is especially important because the modeling must ultimately support a conclusion that the plan (including its control strategy) will provide for timely attainment of the applicable NAAQS. In contrast, for an impracticability demonstration, the end point is a reclassification to Serious, which triggers the requirement for a new Serious area attainment plan with a new air quality modeling analysis, and a new control strategy.[118] Thus, the Serious area planning process would provide an opportunity to refine the modeling analysis and/or correct any technical shortcomings in the impracticability demonstration. Therefore, the burden of proof will generally be lower for an impracticability demonstration compared to an attainment demonstration.[119]

2. Summary of State's Air Quality Modeling

In the 2016 $PM_{2.5}$ Plan, the State discussed its air quality modeling in section 2.3 (''Summary of Modeling Results'') and Appendix A (''Air Quality Modeling'') and concludes that it is not practicable to attain the 2012 $PM_{2.5}$ NAAQS in the SJV by December 31, 2021. The State used CMAQ (version 5.02) to model three simulations: A 2013 base year to demonstrate that the model reasonably reproduced observed $PM_{2.5}$ concentrations, a 2013 reference base year simulation that excluded exceptional events such as wildfires, and a 2021 future year based on the reference year but using projected 2021 emissions. For the base year simulation, CARB conducted photochemical modeling with the CMAQ model using inputs developed from routinely available meteorological and air quality data, as well as more detailed and extensive data from the DISCOVER–AQ field study conducted in January to February 2013.

The State then generated site- and species-specific RRFs for the ammonium ion, nitrate ion, sulfate ion, organic carbon, elemental carbon, and a combined grouping of other primary $PM_{2.5}$ material for the 2021 future year simulation and calculated future year design values by multiplying the species- and site-specific RRFs by the corresponding quarterly mean component concentrations. The State summed the quarterly mean components to determine quarterly mean $PM_{2.5}$ concentrations, which it subsequently averaged to determine the annual design values. The future year design values reflect the weighted quarterly average concentration from the projections of five years of data. The State projected future year annual $PM_{2.5}$ design values for the 2021 Moderate area attainment year for the 2012 $PM_{2.5}$ NAAQS.

The 2021 baseline simulation used emission levels projected from the 2013 base year that reflect all control measures adopted by the time of the 2016 $PM_{2.5}$ Plan's development that would be implemented by December 31, 2021. This simulation indicates that the 2012 annual $PM_{2.5}$ standard will not be met in the SJV in 2021. The projected 2021 control scenario design value is 14.8 μg/m^3 at Bakersfield-Planz, which is typically the monitoring site that records the highest $PM_{2.5}$ levels in the SJV.

The 2018 $PM_{2.5}$ Plan includes a modeled demonstration projecting that the SJV will attain the 2012 annual $PM_{2.5}$ NAAQS by December 31, 2025. It also includes a modeled demonstration projecting attainment of the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2020, with a design value of 14.6 μg/m^3 at Bakersfield-Planz. While the plan does not explicitly have a demonstration of impracticability of attaining the 2012 $PM_{2.5}$ NAAQS by 2021, the latter projections of annual $PM_{2.5}$ concentrations in 2020 provides additional information on which to judge the practicability of attaining by 2021 in that it is the closest analysis year available and represents modeling based on updated data. These projections lend support for the 2016 $PM_{2.5}$ Plan indication that the 2012 annual $PM_{2.5}$ standard will not be met in the SJV in 2021.

The Plan's primary discussion of the photochemical modeling appears in Appendix K (''Modeling Attainment Demonstration'') of the 2018 $PM_{2.5}$ Plan. The State briefly summarizes the area's air quality problem in Chapter 2.2 (''Air Quality Challenges and Trends'') and summarizes the modeling results in Chapter 6.4 (''Attainment Demonstration and Modeling'') of the 2018 $PM_{2.5}$ Plan. The State provides a conceptual model of $PM_{2.5}$ formation in the SJV as part of the modeling protocol in Appendix L (''Modeling Protocol''). Appendix J (''Modeling Emission Inventory'') describes emission input preparation procedures. The State presents additional relevant information in Appendix C (''Weight of Evidence Analysis'') of the CARB 2018 Staff Report, which includes ambient trends and other data in support of the demonstration of attainment by 2025.

3. EPA Evaluation and Conclusion

CARB's air quality modeling approach investigated the many interconnected facets of modeling ambient $PM_{2.5}$ in the SJV, including model input preparation, model performance evaluation, use of the model output for the numerical NAAQS attainment test, and modeling documentation. Specifically, this required the development and evaluation of a conceptual model, modeling protocol, episode (*i.e.,* base

[115] In this section, we use the terms ''base case,'' ''base year'' or ''baseline,'' and ''future year'' as described in section 2.3 of the EPA's Modeling Guidance. The ''base case'' modeling simulates measured concentrations for a given time period, using emissions and meteorology for that same year. The modeling ''base year'' (which can be the same as the base case year) is the emissions starting point for the plan and for projections to the future year, both of which are modeled for the attainment demonstration. Modeling Guidance, 37–38. Note that CARB sometimes uses ''base year'' synonymously with ''base case'' and ''reference year'' instead of ''base year.''

[116] Modeling Guidance, section 4.4, ''What is the Modeled Attainment Tests for the Annual Average $PM_{2.5}$ NAAQS.''

[117] 81 FR 58010, 58048.

[118] CAA section 189(b)(1).

[119] 81 FR 58010, 58049.

year) selection, modeling domain, CMAQ model selection, initial and boundary condition procedures, meteorological model choice and performance, modeling emissions inventory preparation procedures, model performance, attainment test procedure, and adjustments to baseline air quality for modeling. These analyses are generally consistent with the EPA's recommendations in the Modeling Guidance.

The model performance evaluation in section 5.2 (''CMAQ Model Evaluation'') of both Appendix A of the 2016 $PM_{2.5}$ Plan and Appendix K of the 2018 $PM_{2.5}$ Plan included statistical and graphical measures of model performance.

The EPA previously evaluated and approved the modeling conducted for the 2006 24-hour $PM_{2.5}$ NAAQS as part of the 2018 $PM_{2.5}$ Plan; see the EPA's ''Technical Support Document, EPA Evaluation of Air Quality Modeling, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''EPA's 2006 NAAQS Modeling TSD'') accompanying that action for details.[120] The conclusions in the EPA's 2006 NAAQS Modeling TSD focused on the 24-hour $PM_{2.5}$ NAAQS; in this notice we extend the evaluation with information specific to the annual $PM_{2.5}$ NAAQS. Unless otherwise noted, the discussion applies to both the modeling in both the 2016 $PM_{2.5}$ Plan (Appendix A) and 2018 $PM_{2.5}$ Plan (Appendix K), since they followed the same model platform development procedures, and had identical meteorological inputs, very similar emissions inputs, and very similar model performance.

Most aspects of the 2018 $PM_{2.5}$ Plan modeling and the EPA's evaluation of it are the same for the 24-hour and the annual averaging times, and the EPA has found them adequate. These include the modeling protocol, choice of model, meteorological modeling, modeling emissions inventory, choice of model, modeling domain, and procedures for model performance evaluation. One aspect that differs between the 24-hour and annual averaging times is the specific calculation procedure for estimating a future design value. In the Modeling Guidance, for both averaging times, the model is used to calculate RRFs, the ratio of modeled future concentrations to base year concentrations, and the RRF is applied to monitored base year concentrations. This is done for each monitor, $PM_{2.5}$ species, and calendar quarter. But for the 24-hour averaging time, the procedure uses the highest individual concentration days in each quarter, whereas for the annual average, it uses the average of all days in each quarter. The EPA previously found that the procedures used in the 2018 $PM_{2.5}$ Plan for the 24-hour $PM_{2.5}$ NAAQS generally followed the EPA's recommendations and were adequate. For the current action, the EPA finds that State procedures[121] for estimating future design values for the annual $PM_{2.5}$ NAAQS generally followed the EPA's recommendations and are adequate.

Another modeling aspect that can differ between 24-hour and annual average is the focus of the model performance evaluation on the respective averaging times. For the 24-hour average, it is especially important that modeled concentrations on the highest days are comparable to those on the highest monitored days, since calculation of the design value for the 24-hour $PM_{2.5}$ NAAQS uses the 98th percentile concentrations, *i.e.,* the top 2%. For the annual average, peak concentrations continue to be important, but lower concentration days are also important since all days are included in the average. Under- and over-predictions on non-peak days may average out and have little overall effect on the modeled annual concentration, but systematic underprediction on non-peak days could lead to model underprediction of the annual average concentration. This problem of model bias is mitigated by the use of the model in a relative sense as recommended in the Modeling Guidance. In the RRF, model bias ''cancels out'' to a degree since it would be present in both its numerator (future year) and its denominator (base year); and applying the RRF to monitored base year concentration anchors the final model prediction to unbiased real-world concentrations. Further, RRFs are calculated on a quarterly basis, so the bias correction can better account for emissions sources and atmospheric chemistry that differ between the seasons.

The 2018 $PM_{2.5}$ Plan did not have a separate model performance evaluation for the 24-hour and annual $PM_{2.5}$ averaging times; it used statistical and graphical analyses applicable to both. For the most part, the EPA's 2006 NAAQS Modeling TSD did not distinguish between the two averaging times either but drew conclusions for the 24-hour averaging time rather than the annual averaging time. It did note a large negative bias (underprediction) in the ammonium and nitrate performance statistics[122] for the 2nd quarters for monitoring sites in Bakersfield, Fresno, and Visalia; and we add here that the 3rd quarter has similar negative bias. The negative model bias in the 2016 $PM_{2.5}$ Plan was slightly better than in the 2018 $PM_{2.5}$ Plan, *i.e.,* the underprediction was slightly less. Underprediction of total $PM_{2.5}$ in the 2nd and 3rd quarters is also evident in time series plots for most monitoring sites, though by only a small amount for several monitoring sites.[123] The EPA's 2006 NAAQS Modeling TSD noted that since those quarters have concentrations that are less than half of those in the 1st and 4th, this may not be much of a concern for the annual average. (It is of less concern for the 24-hour average, since peak 24-hour concentrations occur in winter, *i.e.,* in the 1st and 4th quarters.) As noted above, the RRF procedure removes much of this bias, so the underprediction in the model performance evaluation does not directly translate into an underpredicted 2020 design value. In addition, the 2018 $PM_{2.5}$ Plan shows that annual model performance for each $PM_{2.5}$ species is quite good relative to that seen in other modeling studies, for multiple performance statistics.[124]

The high days are generally captured by the model, even though some are underpredicted in December at certain monitoring sites such as Fresno. Overall, the modeled site maxima are comparable to the measurements; also, the frequency of high and low days generally matches observations so the annual as well as the daily model performance is acceptable.

The EPA evaluated the State's choice of model for the impracticability demonstration and the extensive discussion in the 2016 $PM_{2.5}$ Plan about modeling procedures, tests, and performance analyses, as well as the State's modeling choices, procedures, test, and performance analyses in the 2018 $PM_{2.5}$ Plan.[125] We find the State's analyses consistent with the EPA's guidance on modeling for $PM_{2.5}$ attainment planning purposes. Based on these reviews, we find that the modeling in the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$

[120] The model performance is discussed further in section J (''Air Quality Model Performance'') of the EPA's 2006 NAAQS Modeling TSD.

[121] 2018 $PM_{2.5}$ Plan, App. K, 18.

[122] 2016 $PM_{2.5}$ Plan, App. A 48*ff,* tables 15 through 18; 2018 $PM_{2.5}$ Plan, App. K, 48*ff,* tables 20 through 23.

[123] 2016 $PM_{2.5}$ Plan, App. A, 107*ff,* Supplemental materials, Figures S.37–S.52; 2018 $PM_{2.5}$ Plan, App. K, 131*ff,* Supplemental materials, Figures S.41–S.52.

[124] 2016 $PM_{2.5}$ Plan, App. A, 46, Figure 13; 2018 $PM_{2.5}$ Plan, App. K, 54, Figure 14.

[125] For a more detailed summary of the State's air quality modeling in the 2018 $PM_{2.5}$ Plan with respect to the 2006 24-hour $PM_{2.5}$ NAAQS, rather than the 2012 annual $PM_{2.5}$ NAAQS, please refer to the EPA's 2006 NAAQS Modeling TSD.

Plan is adequate for the purposes of supporting the RFP demonstration and the demonstration of impracticability in the 2016 $PM_{2.5}$ Plan.

D. Reasonably Available Control Measures and Control Strategy

1. Requirements for RACM/RACT and Control Strategies

The general subpart 1 attainment plan requirement for RACM/RACT is described in CAA section 172(c)(1), which requires that attainment plan submissions ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology)'' and provide for attainment of the NAAQS.

The attainment planning requirements specific to $PM_{2.5}$ under subpart 4 likewise impose an obligation upon states with nonattainment areas classified as Moderate to develop attainment plans that require RACM/RACT on sources of direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors. CAA section 189(a)(1)(C) requires that Moderate area $PM_{2.5}$ SIPs contain provisions to assure that RACM/RACT are implemented no later than four years after designation of the area. The EPA reads CAA section 172(c)(1) and 189(a)(1)(C) together to require that attainment plans for Moderate nonattainment areas provide for the implementation of RACM/RACT for existing sources of $PM_{2.5}$ and those $PM_{2.5}$ precursors subject to control in the nonattainment area as expeditiously as practicable but no later than four years after designation.[126]

The $PM_{2.5}$ SIP Requirements Rule defines RACM as ''any technologically and economically feasible measure that can be implemented in whole or in part within 4 years after the effective date of designation of a $PM_{2.5}$ nonattainment area and that achieves permanent and enforceable reductions in direct $PM_{2.5}$ emissions and/or $PM_{2.5}$ plan precursor emissions from sources in the area. RACM includes reasonably available control technology (RACT).'' [127] The EPA has historically defined RACT as the lowest emission limitation that a particular stationary source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[128]

Under the $PM_{2.5}$ SIP Requirements Rule, those control measures that otherwise meet the definition of RACM but ''can only be implemented in whole or in part during the period beginning 4 years after the effective date of designation of a nonattainment area and no later than the end of the sixth calendar year following the effective date of designation of the area'' must be adopted and implemented as ''additional reasonable measures.'' [129]

States must provide written justification in a SIP submission for eliminating potential control options from further review on the basis of technological or economic infeasibility.[130] An evaluation of technological feasibility may include consideration of factors such as a source's process and operating conditions, raw materials, physical plant layout, and non-air quality and energy impacts (*e.g.,* increased water pollution, waste disposal, and energy requirements).[131] An evaluation of economic feasibility may include consideration of factors such as cost per ton of pollution reduced (cost-effectiveness), capital costs, and operating and maintenance costs.[132] Absent other indications, the EPA presumes that it is reasonable for similar sources to bear similar costs of emission reductions. Economic feasibility of RACM/RACT is thus largely informed by evidence that other sources in a source category have in fact applied the control technology, process change, or measure in question in similar circumstances.[133]

Consistent with these requirements, CARB and SJVUAPCD must implement RACM, including RACT, for sources of direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors no later than April 15, 2019, and must implement additional reasonable measures for these sources no later than December 31, 2021.

2. Summary of State's Control Strategy

The RACM/RACT evaluation for sources of direct $PM_{2.5}$ and NO_X emissions in the SJV area is presented in Chapter 3 of the 2016 $PM_{2.5}$ Plan and in Attachment 1 and Attachment 2 to the 2016 $PM_{2.5}$ Plan. Attachment 1 to the 2016 $PM_{2.5}$ Plan contains (1) a copy of the BACM/BACT and MSM control strategy evaluation for stationary and area sources that the District adopted on April 16, 2015, as part of its ''2015 Plan for the 1997 $PM_{2.5}$ Standard'' (''2015 $PM_{2.5}$ Plan''), and (2) a copy of the RACM/RACT control strategy evaluation for stationary and area sources that the District adopted on June 16, 2016, as part of its ''2016 Plan for the 2008 8-Hour Ozone Standard'' (''2016 Ozone Plan'').[134] Attachment 2 to the 2016 $PM_{2.5}$ Plan contains (1) a copy of the BACM/BACT and MSM control strategy evaluation for mobile sources that CARB adopted on May 21, 2015, as part of the 2015 $PM_{2.5}$ Plan, and (2) a copy of the RACM/RACT control strategy evaluation for mobile sources that CARB adopted on July 21, 2016, as part of the 2016 Ozone Plan.[135]

The 2015 $PM_{2.5}$ Plan and 2016 Ozone Plan contain comprehensive analyses to identify potential emission reduction opportunities for sources of direct $PM_{2.5}$ and NO_X emissions and to determine whether additional measures would be technologically and economically feasible for implementation in the SJV.[136] The District states in the 2016 $PM_{2.5}$ Plan that it has not identified any new emission control technologies that could further reduce emissions in the SJV area, that the cost of technologies recently found not to be cost-effective has not changed, and that potential additional measures remain economically infeasible, consistent with the analyses and conclusions in the 2015 $PM_{2.5}$ Plan and the 2016 Ozone Plan.[137] Based on these analyses, the District concludes that the 2016 $PM_{2.5}$ Plan satisfies the RACM/RACT requirement for stationary and area sources of direct $PM_{2.5}$ and NO_X emissions. The 2018 $PM_{2.5}$ Plan, submitted May 10, 2019, supplements these analyses by providing updated evaluations of potential control measures for sources of direct $PM_{2.5}$ and NO_X emissions and the District's rationale for finding that additional

[126] This interpretation is consistent with guidance provided in the General Preamble, 13540.

[127] 81 FR 58010, 58035.

[128] General Preamble, 13541 and 57 FR 18070, 18073–18074.

[129] 40 CFR 51.1000, 51.1009(a)(4)(i)(B), and 51.1009(a)(4)(ii)(B).

[130] 40 CFR 51.1009(a)(3).

[131] 40 CFR 51.1009(a)(3); see also 57 FR 18070, 18073–18074.

[132] Id.

[133] 57 FR 18070, 18074.

[134] 2016 $PM_{2.5}$ Plan, Attachment 1 (comprising 2015 $PM_{2.5}$ Plan, App. C (''BACM and MSM for Stationary and Area Sources'')) and 2016 Ozone Plan, App. C (''Stationary and Area Source Control Strategy Evaluations''). See also SJVUAPCD Governing Board Resolution 15–4–7A, April 16, 2015 (adopting the 2015 $PM_{2.5}$ Plan) and SJVUAPCD Governing Board Resolution 16–6–20, June 16, 2016 (adopting the 2016 Ozone Plan).

[135] 2016 $PM_{2.5}$ Plan, Attachment 2 (comprising 2015 $PM_{2.5}$ Plan, App. D (''BACM and MSM for Mobile Sources (Provided by ARB)'') and 2016 Ozone Plan, App. D (''Mobile Source Control Strategy''). See also CARB Resolution 15–9, May 21, 2015 (adopting the 2015 $PM_{2.5}$ Plan) and CARB Resolution 16–8, July 21, 2016 (adopting the 2016 Ozone Plan).

[136] 2016 $PM_{2.5}$ Plan, Ch. 3, 3–5 to 3–6.

[137] Id.

control measures are not technologically and economically feasible for implementation in the SJV.[138]

With respect to mobile sources, the 2016 $PM_{2.5}$ Plan states that CARB has implemented the most stringent mobile source emissions control program in the nation, including emission standards for new vehicles, in-use programs for exiting vehicles and fleets, cleaner fuels, and incentive programs to accelerate penetration of cleanest vehicles.[139] CARB states that its analyses of these mobile source control measures are presented in the 2015 $PM_{2.5}$ Plan and the 2016 Ozone Plan (included as Attachment 2 to the 2016 $PM_{2.5}$ Plan) and states that there are no additional reasonably available control measures that would advance attainment of the $PM_{2.5}$ NAAQS in the SJV.[140] Based on these analyses, CARB concludes that the 2016 $PM_{2.5}$ Plan satisfies the RACM/RACT requirement for mobile sources of direct $PM_{2.5}$ and NO_X emissions. The 2018 $PM_{2.5}$ Plan, submitted May 10, 2019, supplements these analyses by providing updated evaluations of CARB's mobile source control measures and its rationale for finding that additional control measures are not technologically and economically feasible for implementation in the SJV at this time.[141]

Finally, with respect to transportation control measures (TCMs), the 2016 $PM_{2.5}$ Plan states that the eight county metropolitan planning organizations (MPOs) of the SJV (''SJV MPOs'') identified and evaluated all TCMs during development of the plan.[142] The plan states that the SJV MPOs implement TCMs in CAA section 108(f) consistent with the Congestion Mitigation and Air Quality cost effectiveness policy when developing each MPO's Regional Transportation Plan. In 2016 the Valley MPOs revisited the minimum cost effectiveness standard for TCMs during the development of the MPOs' 2017 Federal Transportation Improvement Program.[143] The District concludes that the Valley MPOs are implementing all reasonable TCMs under the MPOs' jurisdictions and that adoption of additional TCMs would not expedite attainment of the 2012 $PM_{2.5}$ NAAQS in the SJV.[144] The 2018 $PM_{2.5}$ Plan, submitted May 10, 2019, supplements these analyses by providing an updated discussion of the transportation control measures being implemented in the SJV.[145]

3. EPA's Evaluation and Proposed Action

We have reviewed the State and District's demonstrations in the 2016 $PM_{2.5}$ Plan concerning RACM/RACT and additional reasonable measures for mobile, stationary, and area sources of direct $PM_{2.5}$ and one $PM_{2.5}$ plan precursor (*i.e.,* NO_X) in the SJV. Our evaluation relies primarily on our previous evaluations of the State and District rules in connection with our February 12, 2019 approval of the SJV RACM demonstration for the 2008 ozone NAAQS (for NO_X emission sources)[146] and in connection with our July 22, 2020 approval of the State and District's demonstrations to meet the BACM (including BACT) and MSM requirements for the 2006 $PM_{2.5}$ NAAQS.[147] We provide a detailed discussion of these evaluations in the technical support document for this proposed rule.[148] Based on these reviews, we propose to find that the District's rules provide for the implementation of RACM and additional reasonable measures[149] for stationary and area sources of direct $PM_{2.5}$ and NO_X and that CARB's current program implements RACM and additional reasonable measures for mobile sources of direct $PM_{2.5}$ and NO_X emissions for purposes of the 2012 $PM_{2.5}$ NAAQS in the SJV.

With respect to transportation controls, we find that the SJV MPOs have well-established TCM development programs in which TCMs are continuously identified, reviewed, and evaluated throughout the transportation planning process. Overall, we believe that the programs developed and administered by CARB and the SJV MPOs provide for the implementation of RACM and additional reasonable measures for sources of direct $PM_{2.5}$ and NO_X in the SJV.

For these reasons, we propose to find that the 2016 $PM_{2.5}$ Plan provides for the implementation of RACM and additional reasonable measures for all sources of direct $PM_{2.5}$ and NO_X as expeditiously as practicable, for purposes of implementing the 2012 $PM_{2.5}$ NAAQS in the SJV in accordance with the requirements of CAA section 189(a)(1)(C) and 40 CFR 51.1009.

E. Nonattainment New Source Review Requirements Under CAA Section 189(e)

Section 189(e) of the CAA specifically requires that the control requirements applicable to major stationary sources of direct $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standards in the area.[150] The control requirements applicable to major stationary sources of direct $PM_{2.5}$ in a Moderate $PM_{2.5}$ nonattainment area include, at a minimum, the requirements of an NNSR permit program meeting the requirements of CAA sections 172(c)(5) and 189(a)(1)(A). In the $PM_{2.5}$ SIP Requirements Rule, we established a deadline for states to submit NNSR plan revisions to implement the $PM_{2.5}$ NAAQS 18 months after an area is initially designated and classified as a Moderate nonattainment area.[151]

California submitted NNSR SIP revisions for the SJV to address the subpart 4 requirements for Moderate $PM_{2.5}$ nonattainment areas on May 19,

[138] 2018 $PM_{2.5}$ Plan, App. C (''Stationary Source Control Measure Analyses'').

[139] 2016 $PM_{2.5}$ Plan, 3–6.

[140] CARB 2016 Staff Report, 13.

[141] 2018 $PM_{2.5}$ Plan, App. D (''Mobile Source Control Measure Analyses'').

[142] 2016 $PM_{2.5}$ Plan, 3–6.

[143] 2016 $PM_{2.5}$ Plan, 3–23 to 3–24. See also 2016 $PM_{2.5}$ Plan, Attachment 2, App. D, section D.2.2 (D–16 through D–18) and Attachment D (''Adopted Transportation Control Measures'').

[144] 2016 $PM_{2.5}$ Plan, 3–6.

[145] 2018 $PM_{2.5}$ Plan, App. D, D–127 to D–128 (noting that the MPOs revisited the minimum cost effectiveness standard during the development of their 2018 Regional Transportation Plans and 2019 Federal Transportation Improvement Program and concluded that they were implementing all reasonable transportation control measures).

[146] 84 FR 3302.

[147] 85 FR 44192 (final rule approving 2018 $PM_{2.5}$ Plan as meeting, inter alia, BACM/BACT and MSM requirements for 2006 $PM_{2.5}$ NAAQS). Because the RACM/RACT and additional reasonable measure control strategy in the 2016 $PM_{2.5}$ Plan is very similar to the BACM/BACT and MSM control strategy in the 2018 $PM_{2.5}$ Plan, and because the State's and District's control measure evaluations in the 2016 $PM_{2.5}$ Plan substantially overlap with their BACM/BACT and MSM control evaluations in the 2018 $PM_{2.5}$ Plan, we rely primarily on our evaluation of the State's and District's BACM/BACT and MSM control measure evaluations in the 2018 $PM_{2.5}$ Plan (see proposed rule, 85 FR 17382 (March 27, 2020) and final rule, 85 FR 44192) to support our evaluation of the RACM/RACT and additional reasonable measure control strategy in the 2016 $PM_{2.5}$ Plan.

[148] EPA, Region IX, Air Division, ''Technical Support Document, EPA Evaluation of RACM/RACT and Additional Reasonable Measures, San Joaquin Valley Moderate Area Plan for the 2012 $PM_{2.5}$ NAAQS,'' August 2021.

[149] The 2018 $PM_{2.5}$ Plan identifies Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters''), as amended June 20, 2019, as an additional reasonable measure that is scheduled for implementation beginning in 2020. 2018 $PM_{2.5}$ Plan, Table 4–4 (''Proposed Regulatory Measures''). The EPA approved Rule 4901 into the California SIP on July 22, 2020. 85 FR 44206 (final rule approving Rule 4901) and 85 FR 44192 (determination that Rule 4901 implements BACM and MSM for residential wood burning).

[150] General Preamble, 13539 and 13541–13542.

[151] 81 FR 58010, 58115.

2011.[152] The EPA fully approved these SIP revisions on September 17, 2014.[153] California also submitted NNSR SIP revisions for the SJV to address the subpart 4 requirements for Moderate and Serious $PM_{2.5}$ nonattainment areas on November 20, 2019. The EPA is evaluating this SIP submission and will act on it in a separate rulemaking. Accordingly, in this action, the EPA is not addressing the NNSR control requirements that apply to major stationary sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in the SJV under CAA section 189(e).

F. Demonstration That Attainment by Moderate Area Attainment Date Is Impracticable

1. Requirements for Attainment/Impracticability of Attainment Demonstrations

Section 189(a)(1)(B) of the CAA requires that each Moderate area attainment plan include a demonstration that the plan provides for attainment by the applicable Moderate area attainment date or, alternatively, that attainment by such date is impracticable. This provision explicitly requires that a demonstration of attainment be based on air quality modeling but does not require such modeling for an impracticability demonstration. Although the EPA expects that most impracticability demonstrations will also be supported by air quality modeling, it may be possible in some cases to support an impracticability demonstration with ambient $PM_{2.5}$ data and other relevant non-modeling information.[154]

Section 188(c) of the CAA states, in relevant part, that the Moderate area attainment date ''shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment . . . .'' For the SJV, which was initially designated as nonattainment for the 2012 $PM_{2.5}$ standard effective April 15, 2015, the applicable Moderate area attainment date under section 188(c) for this standard is as expeditiously as practicable but no later than December 31, 2021.

In SIP submissions that demonstrate impracticability, the state should document how its required control strategy in the attainment plan represents the application of RACM/RACT and additional reasonable measures, at minimum, to existing sources. The EPA believes it is appropriate to require adoption of all available control measures that are reasonable, *i.e.,* technologically and economically feasible, in areas that do not demonstrate timely attainment, even where those measures cannot be implemented within the 4-year timeframe for implementation of RACM/RACT under CAA section 189(a)(1)(C). The impracticability demonstration will then be based on a showing that the area cannot attain by the applicable attainment date, notwithstanding implementation of the required controls.

2. Summary of State's Impracticability Demonstration

The 2016 $PM_{2.5}$ Plan includes a demonstration, based on air quality modeling, that even with the implementation of RACM/RACT and additional reasonable measures for all appropriate sources, attainment by December 31, 2021, is not practicable. The impracticability demonstration is included in Appendix A of the 2016 $PM_{2.5}$ Plan. As described in section IV.C.2 of this proposed rule, the projected 2021 control scenario design value is 14.8 μg/m³ at Bakersfield-Planz, which is typically the monitoring site that records the highest $PM_{2.5}$ levels in the SJV.

As further described in section IV.C.2 of this proposed rule, the 2018 $PM_{2.5}$ Plan includes a modeled demonstration that projects annual $PM_{2.5}$ concentrations in 2020 that provides additional information on which to judge the practicability of attaining by 2021 in that it is the closest analysis year available and represents modeling based on updated data. These projections lend support for the 2016 $PM_{2.5}$ Plan conclusion that the 2012 annual $PM_{2.5}$ standard will not be met in the SJV in 2021.

Table 3 shows the projected annual $PM_{2.5}$ concentrations at the four $PM_{2.5}$ monitoring sites in the SJV that are equipped with comprehensive particulate matter species characterization, as well as Bakersfield-Planz, given that it is the site with the highest annual $PM_{2.5}$ concentrations in the base year and projected future year. From the 2016 $PM_{2.5}$ Plan, the projections are for 2021 (latest permissible Moderate area attainment year); from the 2018 $PM_{2.5}$ Plan, the projections are for 2020 (the analysis year closest to 2021).

TABLE 3—PROJECTED ANNUAL $PM_{2.5}$ CONCENTRATIONS AT SELECTED MONITORING SITES IN THE SAN JOAQUIN VALLEY

[μg/m³]

Site location	2016 $PM_{2.5}$ Plan			2018 $PM_{2.5}$ Plan		
	2013	2021	Difference (2013–2021)	2013	2020	Difference (2013–2021)
Bakersfield-Planz	17.3	14.8	−2.5	17.2	14.6	−2.6
Bakersfield-California Ave	16.0	13.6	−2.4	16.0	13.5	−2.5
Visalia North Church	16.2	13.7	−2.5	16.2	13.5	−2.7
Fresno-Garland	15.0	12.9	−2.1	15.0	12.4	−2.6
Modesto-14th St	13.0	11.2	−1.8	13.0	11.0	−2.0

Sources: 2016 $PM_{2.5}$ Plan, Table 2–2, and 2018 $PM_{2.5}$ Plan, App. K, Table 25.

3. EPA Evaluation and Proposed Action

The impracticability demonstration in the 2016 $PM_{2.5}$ Plan is based on air quality modeling that is generally consistent with applicable EPA guidance. We find the modeling adequate to support the impracticability demonstration in the plan, as discussed in section IV.C.3 of this notice. Similarly, the attainment modeling demonstration in the 2018 $PM_{2.5}$ Plan is generally consistent with applicable EPA guidance and provides additional support that it is impracticable to attain the 2012 $PM_{2.5}$ NAAQS by 2021.

We have also evaluated the State's control measure demonstration, which relies on its BACM/MSM

[152] Letter dated May 19, 2011, from Robert D. Fletcher, Deputy Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region IX.

[153] 79 FR 55637.

[154] 81 FR 58010, 58048 and 58049.

demonstration, as updated by the 2018 $PM_{2.5}$ Plan, and find that it provides for the expeditious implementation of all RACM/RACT and additional reasonable measures that may feasibly be implemented at this time, consistent with the requirements of CAA sections 172(c)(1) and 189(a)(1)(C) for the 2012 $PM_{2.5}$ NAAQS in the SJV, as discussed in section IV.D of this notice.

Finally, we have reviewed available monitored data to assess the practicability of attaining by 2021. Specifically, the certified 2018–2020 annual average design value for SJV is 17.6 μg/m³ (at Bakersfield-Planz), with exceedances of the 12.0 μg/m³ standard throughout the area.[155] We note that the SJV may have experienced higher than normal $PM_{2.5}$ concentrations in 2018 and 2020 due to wildfires in the surrounding areas during the summer and fall months.[156] This monitored data similarly supports the State's demonstration that it is impracticable to attain the 2012 $PM_{2.5}$ NAAQS by the end of 2021.

Based on this evaluation, we propose to approve the State's demonstration in the 2016 $PM_{2.5}$ Plan that attainment of the 2012 $PM_{2.5}$ NAAQS in the SJV by the Moderate area attainment date of December 31, 2021, is impracticable, consistent with the requirements of CAA section 189(a)(1)(B)(ii). On this basis, we also propose to reclassify the SJV as a Serious nonattainment area, which would trigger requirements for the State to submit a Serious area attainment plan consistent with the requirements of subparts 1 and 4 of part D, title I of the Act (as described in section V of this notice).

G. Reasonable Further Progress and Quantitative Milestones

1. Requirements for Reasonable Further Progress and Quantitative Milestones

Section 172(c)(2) of the CAA states that all nonattainment area plans shall require RFP. In addition, CAA section 189(c) requires that all $PM_{2.5}$ nonattainment area plans include quantitative milestones that the state must achieve every three years until the area is redesignated to attainment and that demonstrate RFP. Section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.'' Neither subpart 1 nor subpart 4 of part D, title I of the Act requires a set percentage of emission reductions that states must achieve in any given year for purposes of satisfying the RFP requirement.

For purposes of the $PM_{2.5}$ NAAQS, the EPA has interpreted the RFP requirement to require that nonattainment area plans show annual incremental emission reductions sufficient to maintain generally linear progress toward attainment by the applicable deadline.[157] As discussed in the EPA's guidance in the General Preamble Addendum,[158] requiring linear progress in reductions of direct $PM_{2.5}$ and any individual precursor in a $PM_{2.5}$ plan may be appropriate in the following situations:

- The pollutant is emitted by a large number and range of sources,
- the relationship between any individual source or source category and overall air quality is not well known,
- a chemical transformation is involved (*e.g.,* secondary particulate contributes significantly to $PM_{2.5}$ levels over the standard), and/or
- the emission reductions necessary to attain the $PM_{2.5}$ standard are inventory-wide.[159]

The General Preamble Addendum indicates that requiring linear progress may be less appropriate in other situations, such as in situations where:

- there are a limited number of sources of direct $PM_{2.5}$ or a precursor,
- the relationships between individual sources and air quality are relatively well defined, and/or
- the emission control systems utilized (*e.g.,* at major point sources) will result in a swift and dramatic emission reductions.

In nonattainment areas characterized by any of these latter conditions, RFP may be better represented as stepwise progress as controls are implemented and achieve significant reductions soon thereafter. For example, if an area's nonattainment problem can be attributed to a few major sources, the EPA's guidance indicates that ''RFP should be met by 'adherence to an ambitious compliance schedule' which is likely to periodically yield significant emission reductions of direct $PM_{2.5}$ or a $PM_{2.5}$ precursor.'' [160]

Attainment plans for the $PM_{2.5}$ NAAQS must include detailed schedules for compliance with emission regulations in the nonattainment area and provide corresponding emissions projections for each applicable milestone year that represent generally linear or stepwise progress in reducing emissions on an annual basis.[161] In reviewing an attainment plan under subpart 4, the EPA considers whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective of timely attainment. Although early implementation of the most cost-effective control measures is often appropriate, states should consider both cost-effectiveness and pollution reduction effectiveness when developing implementation schedules for control measures and may implement measures that are more effective at reducing $PM_{2.5}$ earlier to provide greater public health benefits.[162]

The $PM_{2.5}$ SIP Requirements Rule establishes specific regulatory requirements for purposes of satisfying the Act's RFP requirements and provides related guidance in the preamble to the rule. Specifically, under the $PM_{2.5}$ SIP Requirements Rule, each $PM_{2.5}$ attainment plan must contain an RFP analysis that includes, at a minimum, the following four components: (1) An implementation schedule for control measures; (2) RFP projected emissions for direct $PM_{2.5}$ and all $PM_{2.5}$ plan precursors for each applicable milestone year, based on the anticipated control measure implementation schedule; (3) a demonstration that the control strategy and implementation schedule will achieve reasonable progress toward attainment between the base year and the attainment year; and (4) a demonstration that by the end of the calendar year for each milestone date for the area, pollutant emissions will be at levels that reflect either generally linear progress or stepwise progress in reducing emissions on an annual basis between the base year and the

[155] EPA design value workbook dated May 24, 2021, ''pm25_designvalues_2018_2020_final_05_24_21.xlsx,'' worksheets ''Table 1a'' and ''Table 5a.'' The certified design value includes all available data; no data flagged for exceptional events have been excluded. The EPA's Air Quality System (AQS) contains ambient air pollution data collected by federal, state, local, and tribal air pollution control agencies from thousands of monitors. More information is available at: *https://www.epa.gov/aqs*. See also EPA, 2010–2020 AQS Design Value Report, AMP480, June 30, 2021.

[156] Concentrations at all 17 monitors in the SJV with data spanning 2018 to 2020 are significantly higher in 2018 and 2020 relative to concentrations in 2019, possibly due to the wildfires in those years. 86 FR 38652, 38665, Table 5 (July 22, 2021) (proposed rule on the 2018 $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS of 15.0 μg/m³). Notwithstanding the potential effect of wildfires, ambient $PM_{2.5}$ levels in the SJV remain well above the 2012 $PM_{2.5}$ NAAQS standard of 12.0 μg/m³.

[157] 59 FR 41998, 42015.

[158] Id.

[159] Id.

[160] Id.

[161] 40 CFR 51.1012(a) and 59 FR 41998, 42016.

[162] Id.

attainment year.[163] States should estimate the RFP projected emissions for each quantitative milestone year by sector on a pollutant-by-pollutant basis.[164] In an area that cannot practicably attain the $PM_{2.5}$ standard by the applicable Moderate area attainment date, full implementation of a control strategy that satisfies the Moderate area control requirements represents RFP towards attainment.[165]

Section 189(c) requires that attainment plans include quantitative milestones that demonstrate RFP. The purpose of the quantitative milestones is to allow for periodic evaluation of the area's progress towards attainment of the NAAQS consistent with RFP requirements. Because RFP is an annual emission reduction requirement and the quantitative milestones are to be achieved every three years, when a state demonstrates compliance with the quantitative milestone requirement, it will demonstrate that RFP has been achieved during each of the relevant three years. Quantitative milestones should provide an objective means to evaluate progress toward attainment meaningfully, *e.g.,* through imposition of emission controls in the attainment plan and the requirement to quantify those required emission reductions. The CAA also requires states to submit milestone reports (due 90 days after each milestone), and these reports should include calculations and any assumptions made by the state concerning how RFP has been met, *e.g.,* through quantification of emission reductions to date.[166] The Act requires states to include RFP and quantitative milestones even for areas that cannot practicably attain.

The CAA does not specify the starting point for counting the three-year periods for quantitative milestones under CAA section 189(c). In the General Preamble and General Preamble Addendum, the EPA interpreted the CAA to require that the starting point for the first three-year period be the due date for the Moderate area plan submission.[167] Consistent with this longstanding interpretation of the Act, the $PM_{2.5}$ SIP Requirements Rule requires that each plan for a Moderate $PM_{2.5}$ nonattainment area contain quantitative milestones to be achieved no later than milestone dates 4.5 years and 7.5 years from the date of designation of the area.[168] Because the EPA designated the SJV nonattainment for the 2012 $PM_{2.5}$ NAAQS effective April 15, 2015,[169] the applicable quantitative milestone dates for purposes of this NAAQS in the SJV are October 15, 2019, and October 15, 2022. Following reclassification of the SJV as Serious for the 2012 $PM_{2.5}$ standard, later milestones would be addressed by the Serious area plan.[170]

2. Summary of State's Reasonable Further Progress Demonstrations and Quantitative Milestones

a. 2016 $PM_{2.5}$ Plan RFP and Quantitative Milestones

The RFP demonstration and quantitative milestones are discussed in section 3.5 of the 2016 $PM_{2.5}$ Plan. The plan estimates that emissions of direct $PM_{2.5}$ and NO_X will generally decline from the 2013 base year and states that emissions of each of these pollutants will remain at or below the levels needed to show ''generally linear progress'' through 2022, the Moderate area post-attainment milestone year for the 2012 $PM_{2.5}$ NAAQS.[171] The Plan's emissions inventory shows that direct $PM_{2.5}$ and NO_X are emitted by a large number and range of sources in the SJV and that the emission reductions needed for these pollutants are inventory-wide.[172] The Plan states that all RACM and RACT for stationary, area, and mobile sources have been identified and adopted, and identifies the District rules achieving emission reductions post-2013 in Table 3–2 and CARB regulations contributing to attainment in Table 3–3.

Table 3–6 of the 2016 $PM_{2.5}$ Plan presents target RFP emission levels, based on linear emission reductions from 2013 through 2022, and the RFP projected emissions, based on the plan's baseline emissions inventory and control strategy (*i.e.,* RACM/RACT and additional reasonable measures) for each quantitative milestone year (2019 and 2022).[173] We reproduce Table 3–6, in part, along with the plan's 2013 base year inventory from Table 3–5, in Table 4. Based on these analyses, the District and CARB conclude that their adopted control strategy will achieve sufficient reductions in emissions of direct $PM_{2.5}$ and NO_X to result in emission levels at or below the RFP and quantitative milestone target emission levels for 2019 and 2022.[174]

TABLE 4—2016 $PM_{2.5}$ PLAN: ANNUAL $PM_{2.5}$ EMISSIONS INVENTORY FOR BASE YEAR AND MODERATE AREA PLAN MILESTONE YEARS

[Annual average, tpd]

Pollutant	2013 baseline	2019 RFP target emissions level	2019 projected emissions level	2022 RFP target emissions level	2022 projected emissions level
Direct $PM_{2.5}$	63.4	60.8	60.2	59.5	59.5
NO_X	318.1	229.5	219.4	185.2	185.2

Source: 2016 $PM_{2.5}$ Plan, tables 3–5 and 3–6. We corrected the 2019 RFP Target Emissions Level for NO_X in Table 3–6 to reflect the value in Table 3–5 that was transcribed incorrectly as 229.1 tpd.

The 2016 $PM_{2.5}$ Plan documents the State's conclusion that all RACM/RACT and additional reasonable measures for these pollutants are being implemented as expeditiously as practicable and identifies projected levels of direct $PM_{2.5}$ and NO_X emissions that reflect full implementation of the State, District, and SJV MPOs' RACM/RACT and additional reasonable measure control strategy for these pollutants.[175] The control strategy that provides the basis for these emission projections is described in attachments 1 and 2 of the 2016 $PM_{2.5}$ Plan.

[163] 40 CFR 51.1012(a).

[164] 81 FR 58010, 58056.

[165] Id. at 58056, 58057.

[166] General Preamble Addendum, 42016–42017.

[167] General Preamble, 13539 and General Preamble Addendum, 42016.

[168] 40 CFR 51.1013(a)(1).

[169] 80 FR 2206.

[170] General Preamble Addendum, 42016.

[171] 2016 $PM_{2.5}$ Plan, Table 3–6. We note that Appendix B (''Emissions Inventory'') of the plan indicates that emissions of ammonia, SO_X, and VOC will also generally decline from the 2013 base year, but the RFP plan does not address these three precursor pollutants given the State's conclusion that they do not contribute significantly to $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV. 2016 $PM_{2.5}$ Plan, 3–10.

[172] 2016 $PM_{2.5}$ Plan, App. B.

[173] Table 3–6 identifies only emission levels for milestone years that must be addressed by the Moderate area plan (*i.e.,* 2019 and 2022).

[174] 2016 $PM_{2.5}$ Plan, 3–10, and CARB 2016 Staff Report, 13.

[175] 2016 $PM_{2.5}$ Plan, 3–5 through 3–7; see also evaluation of RACM/RACT and additional reasonable control measures in section IV.D of this proposed rule.

For quantitative milestones, the 2016 $PM_{2.5}$ Plan identifies 2019 and 2022 as the applicable milestone years and includes milestones to track the State's and District's implementation of control measures and to document updated emissions data.[176] For 2019, the milestone includes a ''list of measures in the SIP control strategy and key implementation requirements,'' including compliance milestones in CARB's Truck and Bus Regulation and in the District's Rule 4901 on residential wood burning. For 2022, the milestone includes a ''list of measures in the SIP control strategy and key implementation requirements,'' including compliance milestones in CARB's Truck and Bus Regulation.

b. 2018 $PM_{2.5}$ Plan RFP and Quantitative Milestones

Appendix H of the 2018 $PM_{2.5}$ Plan provides the State's updated RFP demonstration and quantitative milestones, based on updated data (*e.g.,* updated emissions inventories, as discussed in section IV.A of this proposed rule) for the 2019 and 2022 milestone years. Following the identification of a transcription error in the RFP tables of Appendix H, the State submitted a revised version of Appendix H that corrects the transcription error and provides additional information on the RFP demonstration.[177] Given the State's conclusions that ammonia, SO_X, and VOC emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV, as discussed in section IV.B of this proposed rule, the RFP demonstration provided by the State addresses emissions of direct $PM_{2.5}$ and NO_X.[178] Similarly, the State developed quantitative milestones based upon the 2018 $PM_{2.5}$ Plan's strategy for reducing emissions of direct $PM_{2.5}$ and NO_X.[179]

Like the 2016 $PM_{2.5}$ Plan, the 2018 $PM_{2.5}$ Plan estimates that emissions of direct $PM_{2.5}$ and NO_X will generally decline from the 2013 base year to the 2022 RFP milestone year and beyond, and that direct $PM_{2.5}$ and NO_X are emitted by a large number and range of sources in the SJV. The 2018 $PM_{2.5}$ Plan relies on the same set of identified control measures as the 2016 $PM_{2.5}$ Plan to demonstrate RFP through 2022, *i.e.,* the baseline measures reflected in each plan's emissions inventory.[180]

In addition to these baseline measures, the 2018 $PM_{2.5}$ Plan's control strategy includes specific control measure commitments for purposes of attaining the 2012 $PM_{2.5}$ NAAQS by 2025, including commitments by the State and District to develop and propose to their respective boards specific regulatory and incentive-based measures identified in the plan by specific years leading up to 2025, including 2019 and 2022.[181] Although the attainment demonstration does not rely on these control measure commitments for emission reductions until 2024,[182] the RFP and quantitative milestone elements of the 2018 $PM_{2.5}$ Plan rely on these control measure commitments to demonstrate that the plan requires RFP toward attainment.[183]

Specifically, for the 2019 milestone year, Appendix H of the 2018 $PM_{2.5}$ Plan describes the District's quantitative milestone as a report on ''[t]he status of SIP measures adopted between 2017 and 2019 as per the schedule included in the adopted Plan, including *Residential Wood Burning Strategy* and *Commercial Under-Fired Charbroiler* incentive-based strategy.'' [184] The schedule for development of new or revised SIP measures is in Chapter 4 of the 2018 $PM_{2.5}$ Plan and identifies an ''action date'' between 2017 and 2019 for one District measure: ''Rule 4901, Wood Burning Fireplaces and Wood Burning Heaters (Hot-spot Strategy).'' [185]

Appendix H describes CARB's quantitative milestones as a report on three measure-specific milestones: (1) Actions taken between 2017 and 2019 to implement the Truck and Bus Regulation that required particulate filters and cleaner engine standards on existing heavy-duty diesel trucks and buses in California; (2) implementation of the ''In-Use Off-Road Diesel-Fueled Fleets Regulation'' (the ''Off-Road Regulation'') that began in 2014 for large fleets and in 2017 for medium fleets and limited emissions from existing off-road diesel vehicles operated in California; and (3) the ''status of SIP measures adopted between 2017 and 2019, including the California *Low-NO_X Engine Standard* for new on-road heavy-duty engines used in medium- and heavy-duty trucks purchased in California.'' [186] The schedule for development of new or revised CARB measures is in Chapter 4 of the 2018 $PM_{2.5}$ Plan and identifies ''action'' dates between 2017 and 2019 for eight CARB measures: ''Lower Opacity Limits for Heavy-Duty Vehicles,'' ''Amended Warranty Requirements for Heavy-Duty Vehicles,'' the ''Low-NO_X Engine Standard,'' ''Innovative Clean Transit,'' ''Advanced Clean Local Trucks (Last Mile Delivery),'' ''Zero-Emission Airport Shuttle Buses,'' ''Zero-Emission Airport Ground Support Equipment,'' and ''Transport Refrigeration Units Used for Cold Storage.'' [187]

For the 2022 milestone year, Appendix H of the 2018 $PM_{2.5}$ Plan describes the District's quantitative milestone as a report on ''[t]he status of SIP measures adopted between 2019 and 2022 as per the schedule included in the adopted Plan, including *Residential Wood Burning Strategy* and *Commercial Under-Fired Charbroiler* incentive-based strategy.'' [188] The schedule for development of new or revised SIP measures in the 2018 $PM_{2.5}$ Plan identifies ''action dates'' between 2019 and 2022 for 12 District measures listed in tables 4–4 and 4–5 of Chapter 4, including, for example, ''Rule 4311, Flares,'' ''Rule 4702, Internal Combustion Engines,'' and ''Rule 4354,

[176] 2016 $PM_{2.5}$ Plan, 3–13.

[177] Appendix H to 2018 $PM_{2.5}$ Plan, submitted February 11, 2020, via the EPA State Planning Electronic Collaboration System. This revised version of Appendix H replaces the version submitted with the 2018 $PM_{2.5}$ Plan on May 10, 2019. All references to Appendix H in this proposed rule are to the revised version of Appendix H submitted February 11, 2020.

[178] 2018 $PM_{2.5}$ Plan, App. H, H–1.

[179] Id. at H–23 to H–24 (for State milestones) and H–20 to H–21 (for District milestones).

[180] 2018 $PM_{2.5}$ Plan, App. H, H–4 to H–15.

[181] CARB Resolution 18–49 (October 25, 2018), 5; 2018 $PM_{2.5}$ Plan, Ch. 4, Table 4–8; email dated November 12, 2019, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX, ''RE: SJV $PM_{2.5}$ information'' (attaching ''Valley State SIP Strategy Progress''); CARB 2018 Staff Report, 14; SJVUAPCD Governing Board Resolution 18–11–16 (November 15, 2018), 10–11; 2018 $PM_{2.5}$ Plan, Ch. 4, tables 4–4 and 4–5; and email dated November 12, 2019, from Jon Klassen, SJVUAPCD to Wienke Tax, EPA Region IX, ''RE: follow up on aggregate commitments in SJV $PM_{2.5}$ plan'' (attaching ''District Progress In Implementing Commitments with 2018 $PM_{2.5}$ Plan'').

[182] 2018 $PM_{2.5}$ Plan, Ch. 4, Table 4–3 (''Emission Reductions from District Measures'') and Table 4–9 (''San Joaquin Valley Expected Emission Reductions from State Measures'').

[183] 2018 $PM_{2.5}$ Plan, App. H, H–4 to H–10 (describing commitments by CARB and SJVUAPCD to adopt additional measures to fulfill tonnage commitments for 2024 and 2025, including ''action'' and ''implementation'' dates occuring before 2024 to ensure expeditious progress toward attainment).

[184] 2018 $PM_{2.5}$ Plan, App. H, H–20.

[185] Id. at Ch. 4, 4–12 (Table 4–4). See also email dated November 12, 2019, from Jon Klassen, SJVUAPCD to Wienke Tax, EPA Region IX, ''RE: follow up on aggregate commitments in SJV $PM_{2.5}$ plan'' (attaching ''District Progress In Implementing Commitments with 2018 $PM_{2.5}$ Plan,'' stating the District's intent to take action on the listed rules and measures by beginning the public process on each measure and then proposing the rule or measure to the SJVUAPCD Governing Board).

[186] Id. at H–23.

[187] Id. at 4–28 (Table 4–8). See also email dated November 12, 2019, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX, ''RE: SJV $PM_{2.5}$ information'' (attaching ''Valley State SIP Strategy Progress'') and CARB 2018 Staff Report, 14–15 (stating CARB's intent to ''bring to the Board or take action on the list of proposed State measures for the Valley'' by the action dates specified in Table 2).

[188] 2018 $PM_{2.5}$ Plan, App. H, H–20.

Glass Melting Furnaces.'' [189] Appendix H describes CARB's quantitative milestone as a report on two measure-specific milestones: (1) Actions taken between 2019 and 2022 to implement the Truck and Bus Regulation that required particulate filters and cleaner engine standards on existing heavy-duty diesel trucks and buses in California, and (2) the ''status of SIP measures adopted between 2019 and 2022, including *Advanced Clean Cars 2* and the *Heavy-Duty Vehicle Inspection and Maintenance Program.*'' The schedule for development of new or revised CARB measures in the 2018 $PM_{2.5}$ Plan identifies ''action'' dates between 2019 and 2022 for 13 CARB measures listed in Table 4–8 of Chapter 4, including, for example, the ''Heavy-Duty Vehicle Inspection and Maintenance Program,'' ''Small Off-Road Engines,'' and the ''Low-Emission Diesel Fuel Requirement.'' [190]

Appendix H of the 2018 $PM_{2.5}$ Plan identifies October 15, 2019, and October 15, 2022, as applicable milestone dates for the 2012 $PM_{2.5}$ NAAQS.[191] Table H–11 in Appendix H presents the RFP projected emissions levels for 2019 and 2022, based on the plan's emissions inventory and baseline measures. We reproduce Table H–11, in part, along with the 2018 $PM_{2.5}$ Plan's base year inventory for 2013 from Appendix B, in Table 5.

TABLE 5—2018 $PM_{2.5}$ PLAN: ANNUAL $PM_{2.5}$ EMISSIONS INVENTORY FOR BASE YEAR AND MODERATE AREA PLAN MILESTONE YEARS

[Annual average, tpd]

Pollutant	2013 Base year	2019 RFP target emissions level [a]	2019 projected emissions level	2022 RFP target emissions level	2022 projected emissions level
Direct $PM_{2.5}$	62.5	59.2	59.2	58.4	58.4
NO_X	317.2	214.5	214.5	179.8	179.8

Source: 2018 $PM_{2.5}$ Plan, App. B, tables B–1 and B–2, and App. H, Table H–11.

The majority of the NO_X and $PM_{2.5}$ reductions from 2013 to 2019 and 2022 result from CARB's current mobile source control program, which provides significant ongoing reductions in emissions of direct $PM_{2.5}$ and NO_X from on-road and non-road mobile sources, such as light duty vehicles, heavy-duty trucks and buses, non-road equipment, and fuels. The District has also adopted numerous stationary and area source rules for direct $PM_{2.5}$ and NO_X emission sources that are projected to contribute to RFP towards attainment of the $PM_{2.5}$ standards. These include control measures for stationary internal combustion engines, residential fireplaces and woodstoves, glass manufacturing facilities, agricultural burning sources, and various sizes of boilers, steam generators, and process heaters used in industrial operations. CARB's mobile source BACM and MSM analysis in Appendix D of the 2018 $PM_{2.5}$ Plan and the District's stationary and area source BACM and MSM analysis in Appendix C of the 2018 $PM_{2.5}$ Plan provide a more comprehensive overview of each of these programs and regulations, among many others.[192]

3. EPA Evaluation and Proposed Action

a. Reasonable Further Progress

The EPA has evaluated the RFP demonstrations in the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan (Appendix H) and proposes to find that they satisfy the statutory and regulatory requirements for RFP. Because the RFP demonstration in Appendix H of the 2018 $PM_{2.5}$ Plan is based on updated emissions data and updated information about the control strategies being implemented in the SJV, we focus our evaluation on Appendix H of the 2018 $PM_{2.5}$ Plan.

First, the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan document the State's, District's, and MPOs' conclusions that they are implementing all RACM/RACT and additional reasonable measures for direct $PM_{2.5}$ and NO_X emissions in the SJV as expeditiously as practicable.[193] The 2018 $PM_{2.5}$ Plan also identifies the State's and District's schedules for developing and proposing certain new or revised control measures listed in their respective control measure commitments. These schedules are found in tables 4–4, 4–5, and 4–8 of the 2018 $PM_{2.5}$ Plan and in Table H–2 of Appendix H.

Second, the RFP demonstration contains projected emission levels for direct $PM_{2.5}$ and NO_X for each applicable milestone year. These projections are based on continued implementation of the existing control measures in the area (*i.e.,* baseline measures) and reflect full implementation of the State, District, and MPOs' RACM/RACT and additional reasonable measures control strategy for these pollutants.

As shown in tables 4 and 5 of this proposed rule, the projected RFP emission levels in each plan for 2019 and 2022 are equal to the target RFP emission levels in 2019 and 2022, respectively. We note that the 2013 base year emissions in the 2018 $PM_{2.5}$ Plan's emissions inventory are 0.9 tpd lower for both direct $PM_{2.5}$ and NO_X compared to the base year emissions in the 2016 $PM_{2.5}$ Plan's emissions inventory, and that the 2018 $PM_{2.5}$ Plan's projected RFP emission levels for the 2019 and 2022 milestone years represent emission reductions that exceed those of the 2016 $PM_{2.5}$ Plan's projected RFP levels by 0.1 tpd direct $PM_{2.5}$ and 4.0 tpd NO_X in 2019, and by 0.2 tpd direct $PM_{2.5}$ and 4.5 tpd NO_X in 2022. In other words, the 2018 $PM_{2.5}$ Plan's RFP demonstration indicates a slightly faster pace of emission reductions relative to those in the 2016 $PM_{2.5}$ Plan's RFP demonstration, and thus represents a slightly more stringent RFP demonstration than that in the 2016

[189] Id. at Ch. 4, 4–12 and 4–13 (tables 4–4 and 4–5). See also email dated November 12, 2019, from Jon Klassen, SJVUAPCD to Wienke Tax, EPA Region IX, ''RE: follow up on aggregate commitments in SJV $PM_{2.5}$ plan'' (attaching ''District Progress In Implementing Commitments with 2018 $PM_{2.5}$ Plan,'' stating the District's intent to take action on the listed rules and measures by beginning the public process on each measure and then proposing the rule or measure to the SJVUAPCD Governing Board).

[190] Id. at 4–28 (Table 4–8). See also email dated November 12, 2019, from Sylvia Vanderspek, CARB to Anita Lee, EPA Region IX, ''RE: SJV $PM_{2.5}$ information'' (attaching ''Valley State SIP Strategy Progress'') and CARB 2018 Staff Report, 14–15 (stating CARB's intent to ''bring to the Board or take action on the list of proposed State measures for the Valley'' by the action dates specified in Table 2).

[191] 2018 $PM_{2.5}$ Plan, App. H, Table H–12.

[192] 2018 $PM_{2.5}$ Plan, App. D, Ch. IV, and App. C.

[193] The RACM/RACT and additional reasonable measures control strategy that provides the basis for the RFP demonstration is described in attachments 1 and 2 of the 2016 $PM_{2.5}$ Plan.

$PM_{2.5}$ Plan. These projected emissions levels demonstrate that the RACM/RACT and additional reasonable measures control strategy in the 2016 $PM_{2.5}$ Plan will achieve RFP toward attainment.

Finally, the RFP demonstration shows that overall pollutant emissions in each milestone year will be at levels that reflect generally linear progress toward attainment. The RFP target emissions levels for 2019 and 2022 identified in both the 2016 $PM_{2.5}$ Plan and the 2018 $PM_{2.5}$ Plan reflect consistent progress in emission reductions from the 2013 base year to the 2022 post-attainment milestone year for the 2012 $PM_{2.5}$ NAAQS, based on the implementation of the RACT/RACT and additional reasonable measures control strategy.

For these reasons, we propose to determine that the 2016 $PM_{2.5}$ Plan, as revised and supplemented by Appendix H of the 2018 $PM_{2.5}$ Plan, satisfies the requirements for RFP in CAA section 172(c)(2) and 40 CFR 51.1012 for the 2012 $PM_{2.5}$ NAAQS in the SJV.

b. Quantitative Milestones

The 2016 $PM_{2.5}$ Plan identifies the appropriate years (2019 and 2022) for quantitative milestones and Appendix H of the 2018 $PM_{2.5}$ Plan identifies specific quantitative milestone dates (*i.e.,* October 15, 2019, and October 15, 2022) that are consistent with the requirements of 40 CFR 51.1013(a)(4). Both plans also identify the target emission levels for direct $PM_{2.5}$ and NO_X to be achieved by these milestone dates through implementation of the control strategy. Finally, Appendix H of the 2018 $PM_{2.5}$ Plan identifies commitments by the State and the District to develop and propose new or revised control measures on a fixed timeframe, for purposes of attaining the 2012 $PM_{2.5}$ NAAQS as expeditiously as practicable. These target emission levels and associated control requirements, together with the State's and District's commitments to develop and propose new or revised control measures on a fixed timeframe, provide for objective evaluation of the area's progress towards attainment of the 2012 $PM_{2.5}$ NAAQS.

The State's quantitative milestones in Appendix H are to implement specific baseline measures identified in the plan (*i.e.,* the Truck and Bus Regulation and the Off-Road Regulation) and to develop and propose several new or revised measures listed in the State's control measure commitments that apply to heavy-duty trucks and buses and non-road equipment sources.[194] These commitments to develop and propose additional direct $PM_{2.5}$ and NO_X control measures for mobile sources are part of CARB's strategy for attaining the 2012 $PM_{2.5}$ NAAQS in the SJV. Similarly, the District's quantitative milestones in Appendix H are to develop and propose several new or revised measures listed in the District's control measure commitments that apply to sources such as residential wood burning, conservation management practices, glass melting furnaces, and internal combustion engines. These commitments to develop and propose additional direct $PM_{2.5}$ and NO_X control measures for stationary and area sources are part of the District's strategy for attaining the 2012 $PM_{2.5}$ NAAQS in the SJV. Thus, the State's and District's obligations to implement the identified baseline control measures and to fulfil their respective commitments to develop and propose new or revised control measures for purposes of attaining the 2012 $PM_{2.5}$ NAAQS provide objective means for evaluating the SJV's progress toward timely attainment.

For these reasons, we propose to determine that the 2016 $PM_{2.5}$ Plan, as revised and supplemented by Appendix H of the 2018 $PM_{2.5}$ Plan, satisfies the requirements for quantitative milestones in CAA section 189(c) and 40 CFR 51.1013 for the 2012 $PM_{2.5}$ NAAQS in the SJV.

We note that on January 13, 2020, CARB submitted the SJV ''2019 Quantitative Milestone Report for the 2012 $PM_{2.5}$ NAAQS'' (''2019 QM Report'') to the EPA.[195] The EPA is currently reviewing the SJV 2019 QM Report and will determine, as part of its action on the submitted report, whether the State and District have met their identified quantitative milestones for 2019.

H. Contingency Measures

We are presenting our review of the SIP submittals for compliance with contingency measure requirements in two different sections of this document. In this section, we present our review of the submittals with respect to the contingency measure requirements for the SJV as a Moderate area for the 2012 $PM_{2.5}$ NAAQS for which the state has submitted an impracticability demonstration. In section VII of this document, we present our review of the submittals with respect to the contingency measure requirements for the SJV for the 2006 $PM_{2.5}$ NAAQS.

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), states required to make an attainment plan SIP submission must include contingency measures that they will implement if the area fails to meet RFP (''RFP contingency measures'') or fails to attain the NAAQS by the applicable attainment date (''attainment contingency measures''). Under the $PM_{2.5}$ SIP Requirements Rule, states must include contingency measures that will be implemented following a determination by the EPA that the state has failed: (1) To meet any RFP requirement in the approved SIP; (2) to meet any quantitative milestone in the approved SIP; (3) to submit a required quantitative milestone report; or (4) to attain the applicable $PM_{2.5}$ NAAQS by the applicable attainment date.[196] Contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly upon failure to meet RFP or failure of the area to meet the relevant NAAQS by the applicable attainment date.[197]

The EPA does not interpret the requirement for contingency measures for failing to attain the NAAQS by the applicable attainment date to apply to a Moderate area that a state adequately demonstrates cannot practicably attain the NAAQS by the statutory attainment date. Rather, the EPA believes it is appropriate for the state to identify and adopt these contingency measures in a timely way as part of the Serious area attainment plan that it will develop once the EPA reclassifies such an area. However, if a state with a Moderate area that the EPA has found cannot practicably attain the NAAQS by the attainment date fails to meet RFP, when reviewed as part of the quantitative milestone either 4.5 or 7.5 years after designation, then the requirement to implement contingency measures would be triggered as required by CAA section 172(c)(9).[198]

The purpose of contingency measures is to continue progress in reducing emissions while a state revises its SIP to meet the missed RFP requirement or to correct ongoing nonattainment. Neither the CAA nor the EPA's implementing regulations establish a specific level of

[194] The EPA is excluding the ''Advanced Clean Cars 2'' measure from the milestones because this measure is scheduled for implementation in 2026, well after both the 2022 post-attainment RFP milestone year and the projected 2025 attainment year for the 2012 $PM_{2.5}$ NAAQS in the 2018 $PM_{2.5}$ Plan. Valley State SIP Strategy, Table 7.

[195] Letter dated January 13, 2020, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, with enclosures.

[196] 40 CFR 51.1014(a).

[197] 81 FR 58010, 58066 and General Preamble Addendum, 42015.

[198] 81 FR 58010, 58067.

emission reductions that implementation of contingency measures must achieve, but the EPA recommends that contingency measures should provide for emission reductions equivalent to approximately one year of reductions needed for RFP in the nonattainment area, calculated as the overall level of reductions needed to demonstrate attainment divided by the number of years from the base year to the attainment year. In general, we expect all actions needed to effect full implementation of the measures to occur within 60 days after the EPA notifies the state of a failure to meet RFP or to attain.[199]

To satisfy the requirements of 40 CFR 51.1014, the contingency measures adopted as part of a $PM_{2.5}$ attainment plan must consist of control measures for the area that are not otherwise required to meet other attainment plan requirements (*e.g.,* to meet RACM/RACT requirements) and must specify the timeframe within which their requirements become effective following any of the EPA determinations specified in 40 CFR 51.1014(a). In a 2016 decision called *Bahr* v. *EPA* (''*Bahr*''),[200] the Ninth Circuit Court of Appeals rejected the EPA's interpretation of CAA section 172(c)(9) to allow approval of already-implemented control measures as contingency measures. In *Bahr,* the Ninth Circuit concluded that contingency measures must be measures that are triggered and implemented only after the EPA determines that an area fails to meet RFP requirements or to attain by the applicable attainment date, and the state must not have begun to implement such measures before this determination is made. Thus, already implemented measures cannot serve as contingency measures under CAA section 172(c)(9). To comply with section 172(c)(9), as interpreted in the *Bahr* decision, a state must develop, adopt, and submit one or more contingency measures to be triggered upon a failure to meet any RFP requirement, failure to meet a quantitative milestone requirement, or failure to attain the NAAQS by the applicable attainment date regardless of the extent to which already-implemented measures would achieve surplus emission reductions beyond those necessary to meet RFP or quantitative milestone requirements and beyond those predicted to achieve attainment of the NAAQS.

2. Summary of State's Contingency Measures

a. 2016 $PM_{2.5}$ Plan Contingency Measures

The 2016 $PM_{2.5}$ Plan includes a contingency measure element that is intended to address a potential failure to meet RFP but, consistent with the plan's demonstration that it is impracticable to attain the 2012 $PM_{2.5}$ NAAQS by December 31, 2021, that does not address a potential failure to attain the NAAQS by the applicable attainment date.[201] Rather, the State and District conclude that they intend to identify and adopt contingency measures for failure to attain as part of the Serious area attainment plan (and, in fact, have done so in the 2018 $PM_{2.5}$ Plan). The State and District use the plan's RFP analysis through 2022 to calculate the amount of direct $PM_{2.5}$ and NO_X emission reductions that represents one year's worth of RFP. Specifically, the State and District divided the difference in emissions in 2022 and 2013 by nine to estimate one year's worth of RFP. The 2016 $PM_{2.5}$ Plan estimates that one year's worth of RFP is 0.4 tpd of direct $PM_{2.5}$ and 14.8 tpd of NO_X.[202] The contingency measure element does not address ammonia, SO_X, and VOC in light of the State and District's conclusion that each of these three pollutants does not contribute significantly to exceedances of the 2012 $PM_{2.5}$ NAAQS in the SJV. In addition, the contingency measure element in the 2016 $PM_{2.5}$ Plan only addresses the potential failure to meet the 2019 RFP milestone, not the potential failure to meet the 2022 RFP milestone.

CARB and the District prepared the 2016 $PM_{2.5}$ Plan prior to the *Bahr* decision, and thus did not include any contingency measures that would only be triggered conditionally and prospectively, upon a future failure to meet RFP or other relevant event. Instead, CARB and the District relied only on emissions reductions from already-implemented measures to satisfy the contingency measure requirement. To demonstrate sufficient reductions for contingency purposes, the 2016 $PM_{2.5}$ Plan relies on three types of emission reductions: (1) 0.6 tpd direct $PM_{2.5}$ and 9.7 tpd NO_X emission reductions that are surplus to those needed by 2019 to meet that year's linear RFP target emissions, (2) 0.3 tpd NO_X emission reductions from the January 2015 amendment to Rule 4905 (''Natural Gas-Fired, Fan-Type Central Furnaces'') as being surplus to those captured in the 2016 $PM_{2.5}$ Plan's emissions inventory, and (3) 3.0 tpd NO_X of incentive-based emission reductions in conjunction with Rule 9610 (''State Implementation Plan Credit for Emission Reductions Generated Through Incentive Programs'').[203]

CARB and the District then established a ratio of 1:8.8 to trade direct $PM_{2.5}$ emissions for NO_X emissions based on the 2016 $PM_{2.5}$ Plan's precursor sensitivity analysis for the traditional high design value sites in Bakersfield.[204] After accounting for the 0.4 tpd direct $PM_{2.5}$ emission reductions that would meet the 2019 RFP target emission reductions, per the 2019 RFP target emission reductions, the contingency measure element relies on this trading ratio to convert 0.2 tpd of additional direct $PM_{2.5}$ emission reductions in 2019 into 1.8 tpd of NO_X emission reductions equivalent (after rounding to the tenths place).[205] Then, after accounting for NO_X emission reductions that would meet the 2019 RFP target emissions reductions, the contingency measure element sums 9.7 tpd of surplus NO_X emission reductions with 0.3 tpd from the 2015 amendment to Rule 4905, 1.8 tpd from the surplus direct $PM_{2.5}$ conversion, and 3.0 tpd from the incentive-based emission reductions. The sum of these four types of reductions equals 14.8 tpd NO_X, which matches the State's estimate of one year's worth of RFP.

Therefore, the 2016 $PM_{2.5}$ Plan concludes that these emission reductions (equivalent to one year's worth of progress, *i.e.,* 0.4 tpd direct $PM_{2.5}$ and 14.8 tpd NO_X) are sufficient to satisfy the contingency measure requirements for the 2012 $PM_{2.5}$ NAAQS in the SJV.

b. 2018 $PM_{2.5}$ Plan Contingency Measures

The 2018 $PM_{2.5}$ Plan addresses the contingency measure requirement for the 2012 $PM_{2.5}$ NAAQS by reference to the contingency measure portion of a December 2018 SIP submission that involved enhanced enforcement of CARB regulations in the SJV, a commitment to amend the District's residential wood burning rule (District Rule 4901) to include contingent provisions, and emissions estimates for the year following the attainment year for use in evaluating whether the emissions reductions from the

[199] 81 FR 58010, 58066. See also General Preamble 13512, 13543–13544, and General Preamble Addendum, 42014–42015.

[200] *Bahr* v. *EPA,* 836 F.3d 1218, 1235–1237 (9th Cir. 2016).

[201] 2016 $PM_{2.5}$ Plan, 3–13 to 3–17.

[202] 2016 $PM_{2.5}$ Plan, Table 3–8.

[203] 2016 $PM_{2.5}$ Plan, 3–15 and 3–16. See also 2016 $PM_{2.5}$ Plan, App. C (''SIP Creditable Incentive-Based Emission Reductions'').

[204] 2016 $PM_{2.5}$ Plan, 3–17.

[205] Id. at Table 3–7.

contingency measures are sufficient.[206] Recently, CARB withdrew the enhanced enforcement contingency measure of the December 2018 SIP submission as it pertained to the 2012 $PM_{2.5}$ NAAQS in the SJV.[207] In addition, the 2018 $PM_{2.5}$ Plan does not include updated emissions estimates for the years following the 2019 and 2022 RFP milestone years with which to evaluate the sufficiency of contingency measure intended to address the applicable Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS. Rather, with respect to the 2012 $PM_{2.5}$ NAAQS, the contingency measure element of the 2018 $PM_{2.5}$ Plan only includes estimates for the year (2026) following the Serious area attainment year (2025), and thus, these estimates are not relevant for evaluating the sufficiency of contingency measures submitted to comply with the Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS.

Accordingly, we have evaluated the relevant portions of the 2018 $PM_{2.5}$ Plan and District Rule 4901 (specifically, section 5.7.3 of Rule 4901), and the contingency measure element in the 2016 $PM_{2.5}$ Plan as discussed above, for compliance with the applicable requirements for Moderate areas for the 2012 $PM_{2.5}$ NAAQS. However, while the 2018 $PM_{2.5}$ Plan does not provide updated emissions estimates for the years following the 2019 and 2022 RFP milestone years, the updated emission estimates in the 2018 $PM_{2.5}$ Plan do provide the basis for an updated estimate of one year's worth of RFP for the purposes of evaluating the sufficiency of contingency measures to meet the applicable Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS. The updated estimates of emissions one year's worth of RFP based on the updated emissions estimates in the 2018 $PM_{2.5}$ Plan are 0.5 tpd direct $PM_{2.5}$ and 15.3 tpd NO_X.[208] This is slightly more reductions than the 0.4 tpd direct $PM_{2.5}$ and 14.8 tpd NO_X emission reductions estimated as one year's RFP within the 2016 $PM_{2.5}$ Plan, consistent with the slightly faster pace of emission reductions reflected in the 2018 $PM_{2.5}$ Plan and discussed in section IV.G.3 of this proposed rule.

With respect to the District contingency measure, the 2018 $PM_{2.5}$ Plan calls for the District to amend District Rule 4901 (Wood Burning Fireplaces and Wood Burning Heaters) to include a requirement in the rule with a trigger that would be activated should the EPA issue a final rulemaking that the SJV failed to meet a regulatory requirement necessitating implementation of a contingency measure. In response to the commitment made in the 2018 $PM_{2.5}$ Plan, in June 2019, the District adopted amendments to Rule 4901 including a contingency measure (in section 5.7.3 of the amended rule), and, as an attachment to a letter dated July 19, 2019, CARB submitted the amended rule to the EPA for approval.[209] The EPA has taken final action to approve amended Rule 4901, but in that approval, we noted that we were not evaluating the contingency measure in section 5.7.3 of revised Rule 4901 for compliance with all requirements of the CAA and the EPA's implementing regulations that apply to such measures.[210] Rather, we approved the measure into the SIP because it strengthened the rule by providing a possibility of additional curtailment days, and thus potentially additional emissions reductions. We indicated that we would evaluate whether this provision, in conjunction with other submitted provisions, meets the statutory and regulatory requirements for contingency measures in future actions. In this proposal, we are now evaluating District Rule 4901, specifically, section 5.7.3, for compliance with the requirements for contingency measures for Moderate areas that cannot practicably attain the 2012 $PM_{2.5}$ NAAQS by the applicable Moderate area attainment date.

District Rule 4901 is designed to limit emissions generated by the use of wood burning fireplaces, wood burning heaters, and outdoor wood burning devices. The rule establishes requirements for the sale/transfer, operation, and installation of wood burning devices and for advertising the sale of seasoned wood consistent with a moisture content limit within the SJV.

The rule includes a two-tiered, episodic wood burning curtailment requirement that applies during four winter months, November through February. During a level one episodic wood burning curtailment, section 5.7.1 prohibits any person from operating a wood burning fireplace or unregistered wood burning heater but permits the use of a properly operated wood burning heater that meets certification requirements and has a current registration with the District. Sections 5.9 through 5.11 impose specific registration requirements on any person operating a wood burning fireplace or wood burning heater and section 5.12 imposes specific certification requirements on wood burning heater professionals. During a level two episodic wood burning curtailment, operation of any wood burning device is prohibited by section 5.7.2.

Prior to the 2019–2020 wood burning season, the District imposed a level one curtailment when the $PM_{2.5}$ concentration was forecasted to be between 20–65 μg/m³ and imposed a level two curtailment when the $PM_{2.5}$ concentration was forecasted to be above 65 μg/m³ or the PM_{10} concentration was forecasted to be above 135 μg/m³. In 2019 the District adopted revisions to Rule 4901 to lower the wood burning curtailment thresholds in the ''hot spot'' counties of Madera, Fresno, and Kern. The District lowered the level one $PM_{2.5}$ threshold for these three counties from 20 μg/m³ to 12 μg/m³, and the level two $PM_{2.5}$ threshold from 65 μg/m³ to 35 μg/m³. The District did not modify the curtailment thresholds for other counties (*i.e.,* Kings, Merced, San Joaquin, Stanislaus, and Tulare counties) in the SJV, and those levels remained at 20 μg/m³ for level one and 65 μg/m³ for level two.

The District's 2019 revision to Rule 4901 also included the addition of a contingency measure in section 5.7.3 of the rule, requiring that 60 days following the effective date of an EPA final rulemaking that the SJV has failed to attain the 1997, 2006, or 2012 $PM_{2.5}$ NAAQS by the applicable attainment date, the $PM_{2.5}$ curtailment levels for any county that has failed to attain the applicable standard will be lowered to the curtailment levels in place for hot spot counties.

3. EPA Evaluation and Proposed Action

We have evaluated the contingency measure element in the 2016 $PM_{2.5}$ Plan, as amended in the 2018 $PM_{2.5}$ Plan, and we find that the fact that the element focuses only on direct $PM_{2.5}$ and NO_X (and not ammonia, SO_2, and VOC) is acceptable in light of our proposed approval of the precursor demonstration in section IV.B of this document.

$PM_{2.5}$ attainment plan SIP submission for Moderate areas that cannot practicably attain by the Moderate area attainment date must include

[206] 2018 $PM_{2.5}$ Plan, App. H (revised February 11, 2020), H–24 to H–26.

[207] Letter dated March 19, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX, with enclosures.

[208] The estimate of one year's RFP is based on difference between the annual average base year (2013) emissions and the corresponding emissions in the 2022 RFP milestone year, per Appendix B of the 2018 $PM_{2.5}$ Plan, divided by nine (*i.e.,* the number of years between 2013 and 2022).

[209] Letter from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, July 19, 2019.

[210] 85 FR 44206 (July 22, 2020) (final approval of District Rule 4901); 85 FR 1131, 1132–33 (January 9, 2020) (proposed approval of District Rule 4901).

contingency measures for potential failures to meet RFP, submit a quantitative milestone report or meet the quantitative milestones associated with the period 4.5 and 7.5 years after designation (in this case, the 2019 and 2022 RFP milestone years). With respect to both RFP milestone years, we find that the contingency measure element is inadequate to meet the Moderate area contingency measure requirements for several reasons.

First, the emission reductions relied upon in the contingency measure element to show compliance with the contingency measure requirement (*i.e.,* those surplus to RFP, reductions from the 2015 amendments to Rule 4905, and incentive-based emission reductions from projects in 2011–2016 in conjunction with District Rule 9610) come from measures that are not prospective (*i.e.,* to-be-triggered) but rather come from measures that have already been implemented, and thus would not constitute contingency measures under CAA section 172(c)(9) consistent with the *Bahr* decision.[211]

We recognize that the District has taken action to fulfill the commitment in the 2018 $PM_{2.5}$ Plan to revise District Rule 4901 to include specific to-be-triggered contingency provisions. However, the contingency measure provision (section 5.7.3) added to the rule is only triggered by a finding of failure to attain the $PM_{2.5}$ NAAQS by the applicable attainment date and not by failures to meet a quantitative milestone, submit a quantitative milestone report, or failure to meet an RFP requirement. Thus, the rule does not include contingency provisions to address the types of failures that are the triggering events for contingency measures for Moderate areas that cannot practicably attain the $PM_{2.5}$ NAAQS by the applicable attainment date. Therefore, section 5.7.3 of District Rule 4901 does not meet the contingency measure requirements of CAA section 172(c)(9) and 40 CFR 51.1014 for the SJV with respect to Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS.

Second, as a general matter, we find that surplus emissions reductions in the years following RFP milestone years can be taken into account in determining whether a contingency measure or contingency measures are adequate for a given area for a given pollutant notwithstanding the fact that the contingency measure or contingency measures would not achieve reductions equivalent to one year's worth of RFP. However, the contingency measure element in the 2016 $PM_{2.5}$ Plan provides no emissions estimates for the year following the 2022 RFP milestone year for such an evaluation. The contingency measure element of the nonattainment area plan only provides estimates of surplus emissions reductions in 2019.

Furthermore, with respect to the emissions analysis for 2019, neither Rule 9610 (''State Implementation Plan Credit for Emission Reductions Generated Through Incentive Programs'') nor the list of Carl Moyer incentive projects in Appendix C of the 2016 $PM_{2.5}$ Plan may be relied upon as a source for surplus emissions reductions because Rule 9610 is not an emission reduction measure[212] and because the Carl Moyer incentive projects listed in Appendix C of the 2016 $PM_{2.5}$ Plan do not satisfy CAA requirements for SIP emission reduction credit, as interpreted in the EPA's guidance.[213] In addition, the emission reductions that might otherwise be considered surplus due to the 2015 adoption of tighter emissions limits in District Rule 4905 would not be considered surplus without additional documentation because of the option in Rule 4905 to pay mitigation fees in lieu of compliance with emissions limits.[214]

Third, as a general matter, we agree that the use of trading ratios established through modeling techniques to convert surplus reductions of direct $PM_{2.5}$ emissions to equivalent $PM_{2.5}$ precursor emissions may be appropriate as part of the explanation for why a given contingency measure or measures are sufficient in an area with respect to a specific NAAQS. In this instance, however, we note that reliance on trading surplus direct $PM_{2.5}$ reductions for NO_X reductions at a ratio of 1:8.8 may overestimate the amount of equivalent NO_X reductions based on the information in the 2018 $PM_{2.5}$ Plan. For the 2018 $PM_{2.5}$ Plan, the State conducted further analysis of the sensitivity of ambient $PM_{2.5}$ to emission reductions in $PM_{2.5}$ precursors, as discussed in section IV.I.2 of this proposal. Based on this updated analysis for Bakersfield and Fresno sites, the State proposes to use a 1:6.5 trading ratio between direct $PM_{2.5}$ and NO_X for purposes of the 2018 $PM_{2.5}$ Plan's MVEBs. This suggests that, while for a different CAA purpose (*i.e.,* MVEB rather than contingency measures), any excess direct $PM_{2.5}$ used for evaluation of contingency measures would be equivalent to fewer NO_X emissions reductions than assumed for the 2016 $PM_{2.5}$ Plan.

Therefore, in light of the deficiencies described in the preceding paragraphs, we are proposing to disapprove the contingency measure element of the 2016 $PM_{2.5}$ Plan, as amended in the 2018 $PM_{2.5}$ Plan, for failure to meet the requirements for contingency measures under CAA section 172(c)(9) and 40 CFR 51.1014(a) in the SJV with respect to Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS. More specifically, we are proposing to disapprove the contingency measure element for failure to provide for the implementation of specific measures to be undertaken if the area fails, with respect to the 2019 and 2022 RFP milestone years, to meet RFP, to submit a quantitative milestone report (2022 RFP milestone year only),[215] or to meet the quantitative milestones and that, once triggered, provide sufficient emissions reductions to meet the purposes of contingency measures under the CAA and EPA's implementing regulations.

I. Motor Vehicle Emissions Budgets

1. Requirements for Motor Vehicle Emissions Budgets

Section 176(c) of the CAA requires federal actions in nonattainment and

[211] We note that the Ninth Circuit's decision in *Bahr* v. *EPA* was published on September 12, 2016, just three days before the SJVUAPCD adopted the 2016 $PM_{2.5}$ Plan on September 15, 2016. Subsequently, the District and CARB addressed the *Bahr* decision within their discussion of contingency measures for the Serious area plan for the 2012 $PM_{2.5}$ NAAQS in the San Joaquin Valley (*i.e.,* the 2018 $PM_{2.5}$ Plan).

[212] 80 FR 19020 (April 9, 2015) (final approval of Rule 9610), 79 FR 28652 (May 19, 2014) (proposed approval noting that ''[Rule 9610] does not establish any emission limitation, control measure, or other requirement that applies directly to an emission source''), and EPA, Region IX Air Division, ''Technical Support Document for EPA's Notice of Proposed Rulemaking for the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District's Rule 9610, State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs,'' May 2014, 4–5 (noting that Rule 9610 ''does not apply to any emission source and does not directly impact emissions'').

[213] The EPA's longstanding position with respect to incentive-based control measures is that SIP credit may be allowed for such measures only where the State submits enforceable mechanisms to ensure that the emission reductions necessary to meet applicable CAA requirements are achieved—*e.g.,* an enforceable commitment to monitor and report on emission reductions achieved and to rectify any shortfall in a timely manner. See, *e.g.,* 80 FR 19020, 19026. The 2016 $PM_{2.5}$ Plan does not contain such enforceable mechanisms addressing the Carl Moyer projects listed in Appendix C.

[214] EPA, Region IX Air Division, ''Technical Support Document for EPA's Proposed Rulemaking for the California State Implementation Plan (SIP), San Joaquin Valley Unified Air Pollution Control District's Rule 4905, Natural Gas-Fired, Fan-Type Central Furnaces,'' October 5, 2015, fn. 8. The EPA approved the 2015 amended version of District Rule 4905 at 81 FR 17390 (March 29, 2016).

[215] CARB and the District have prepared and submitted the 2019 quantitative milestone report and we are currently reviewing it for adequacy.

maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving timely attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, MPOs in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, the FHWA, and the FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the MVEBs contained in all control strategy SIPs. An attainment, maintenance, or RFP SIP should include budgets for the attainment year, each required RFP milestone year, and the last year of the maintenance plan, as appropriate. Budgets are generally established for specific years and specific pollutants or precursors and must reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations.[216]

Under the $PM_{2.5}$ SIP Requirements Rule, each attainment plan submittal for a Moderate $PM_{2.5}$ nonattainment area must contain quantitative milestones to be achieved no later than 4.5 years and 7.5 years after the date the area was designated nonattainment.[217] The second of these milestone dates, October 15, 2022,[218] falls after the latest permissible Moderate area attainment date for the SJV, which is December 31, 2021. As the EPA explained in the preamble to the $PM_{2.5}$ SIP Requirements Rule, it is important to include a post-attainment year quantitative milestone to ensure that, if the area fails to attain by the attainment date, the EPA can continue to monitor the area's progress toward attainment while the state develops a new attainment plan.[219] Moderate area plans demonstrating that attainment by the Moderate area attainment date is impracticable must, therefore, include budgets for both of the milestone dates. States that submit impracticability demonstrations for Moderate areas under CAA section 189(a)(1)(B)(ii), however, are not required to submit budgets for the attainment year because the submitted SIP does not demonstrate attainment.[220]

$PM_{2.5}$ plans should identify budgets for direct $PM_{2.5}$, NO_X, and all other $PM_{2.5}$ precursors for which on-road emissions are determined to contribute significantly to $PM_{2.5}$ levels in the area for each RFP milestone year and the attainment year, if the plan demonstrates attainment. All direct $PM_{2.5}$ SIP budgets should include direct $PM_{2.5}$ motor vehicle emissions from tailpipes, brake wear, and tire wear. With respect to $PM_{2.5}$ from re-entrained road dust and emissions of VOC, SO_2, and/or ammonia, the transportation conformity provisions of 40 CFR part 93, subpart A, apply only if the EPA Regional Administrator or the director of the state air agency has made a finding that transportation-related emissions of these pollutants within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and Department of Transportation (DOT), or if the applicable implementation plan (or implementation plan submission) includes any of these pollutants in the approved (or adequate) budget as part of the RFP, attainment, or maintenance strategy.[221] Additionally, as the EPA explained in its May 6, 2005 transportation conformity rule amendments for the $PM_{2.5}$ NAAQS, it is not necessary for a SIP to explicitly state that VOC, SO_2, and/or ammonia are insignificant precursors. Instead, states should consider the on-road contribution of all four precursors to the $PM_{2.5}$ problem as they develop their SIPs and establish emissions budgets for those precursors for which on-road emissions need to be addressed in order to attain the $PM_{2.5}$ standard as expeditiously as practicable. Conformity determinations must address all precursors for which the SIP establishes a budget and need not address those precursors for which the state has not established a budget because the emissions of that precursor are insignificant.[222]

By contrast, transportation conformity requirements apply with respect to emissions of NO_X unless both the EPA Regional Administrator and the director of the state air agency have made a finding that transportation-related emissions of NO_X within the nonattainment area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and have so notified the MPO and DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the RFP, attainment, or maintenance strategy.[223]

The criteria for insignificance determinations are provided in 40 CFR 93.109(f). In order for a pollutant or precursor to be considered an insignificant contributor, the control strategy SIP must demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Insignificance determinations are based on factors such as air quality, SIP motor vehicle control measures, trends and projections of motor vehicle emissions, and the percentage of the total SIP inventory that is comprised of motor vehicle emissions. The EPA's rationale for providing for insignificance determinations is described in the July 1, 2004, revision to the transportation conformity rule.[224]

The EPA's process for determining the adequacy of a budget consists of three basic steps: (1) Notifying the public of a SIP submittal; (2) providing the public the opportunity to comment on the budget during a public comment period; and (3) making a finding of adequacy or inadequacy. The EPA can notify the public by either posting an announcement that the EPA has received SIP budgets on the EPA's adequacy website (40 CFR 93.118(f)(1)), or through a **Federal Register** notice of proposed rulemaking when the EPA reviews the adequacy of an implementation plan budget simultaneously with its review and action on the SIP itself (40 CFR 93.118(f)(2)).

For budgets to be approvable, they must meet, at a minimum, the EPA's adequacy criteria (40 CFR 93.118(e)(4)). To meet these requirements, the budgets must be consistent with the attainment and RFP requirements and reflect all of the motor vehicle control measures

[216] 40 CFR 93.118(e)(4)(v).

[217] 40 CFR 51.1013(a)(1).

[218] Because the SJV was designated nonattainment effective April 15, 2015, the first milestone date is October 15, 2019, and the second milestone date is October 15, 2022. 80 FR 2206.

[219] 81 FR 58010, 58058 and 58063–58064.

[220] Id. at 58055.

[221] 40 CFR 93.102(b)(3), 93.102(b)(2)(v), and 93.122(f); see also transportation conformity rule preambles at 69 FR 40004, 40031–40036 (July 1, 2004), 70 FR 24280, 24283–24285 (May 6, 2005) and 70 FR 31354 (June 1, 2005).

[222] 70 FR 24280, 24287 (May 6, 2005).

[223] 40 CFR 93.102(b)(2)(iv).

[224] 69 FR 40004.

contained in the attainment and RFP demonstrations.[225]

2. Summary of State's Motor Vehicle Emissions Budgets

The 2016 $PM_{2.5}$ Plan includes budgets for direct $PM_{2.5}$ and NO_X for 2019 (RFP milestone year) and 2022 (post-attainment RFP milestone year) and no other year given the plan's demonstration of the impracticability of attaining the 2012 $PM_{2.5}$ NAAQS by 2021.[226] Similarly, for the Moderate area timeframe, the 2018 $PM_{2.5}$ Plan includes budgets for direct $PM_{2.5}$ and NO_X for 2019 and 2022 RFP milestone years.[227] We consider the 2019 and 2022 RFP milestone budgets from the 2018 $PM_{2.5}$ Plan as superseding the corresponding budgets from the 2016 $PM_{2.5}$ Plan.

The budgets in both the 2016 $PM_{2.5}$ Plan and the 2018 $PM_{2.5}$ Plan were calculated using EMFAC2014 and the latest modeled vehicle activity data (vehicle miles traveled and speed distributions) available at the time of plan development. In the case of the 2016 $PM_{2.5}$ Plan, vehicle activity data are derived from the draft 2017 Federal-Statewide Transportation Improvement Program (2017 FSTIP) from each of the SJV's eight MPOs. The 2018 $PM_{2.5}$ Plan budgets are based on updated motor vehicle activity data from the most recently amended 2017 FSTIP (as of January 2018) from each of the SJV's eight MPOs. The budgets reflect annual average emissions consistent with the annual averaging period of the 2012 $PM_{2.5}$ NAAQS and the 2018 $PM_{2.5}$ Plan's RFP demonstration.

As with the 2016 $PM_{2.5}$ Plan, the 2018 $PM_{2.5}$ Plan includes direct $PM_{2.5}$ budgets for tailpipe, brake wear, and tire wear emissions, but does not include paved road dust, unpaved road dust, and road construction dust emissions. The 2018 $PM_{2.5}$ Plan also includes budgets for NO_X, as a regulated precursor under the plan, but does not include budgets for VOC, SO_2, or ammonia.[228] The budgets included in the 2018 $PM_{2.5}$ Plan with respect to the Moderate area timeframe are shown in Table 6.

TABLE 6—2019 AND 2022 SAN JOAQUIN VALLEY MVEBS FOR THE 2012 $PM_{2.5}$ NAAQS

[Annual average, tpd]

County	2019 (RFP year)		2022 (post-attainment year)	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
Fresno	0.9	27.6	0.9	21.2
Kern (San Joaquin Valley portion)	0.8	25.1	0.8	19.4
Kings	0.2	5.1	0.2	4.1
Madera	0.2	4.6	0.2	3.5
Merced	0.3	9.4	0.3	7.6
San Joaquin	0.6	12.7	0.6	10.0
Stanislaus	0.4	10.5	0.4	8.1
Tulare	0.4	9.3	0.4	6.9

Source: 2018 $PM_{2.5}$ Plan, App. D, Table 3–3. Budgets are rounded up to the nearest tenth.

The 2018 $PM_{2.5}$ Plan also includes a proposed trading mechanism for transportation conformity analyses that would allow future decreases in NO_X emissions from on-road mobile sources to offset any on-road increases in direct $PM_{2.5}$ emissions. For the 2012 $PM_{2.5}$ NAAQS, the State is proposing to use the 6.5:1 NO_X:$PM_{2.5}$ ratio. The ratio is based on a sensitivity analysis based on a 30% reduction of NO_X or $PM_{2.5}$ emissions and the corresponding impact on design values at sites in Bakersfield and Fresno (*i.e.,* updated analysis relative to the 2008 $PM_{2.5}$ Plan for the 1997 $PM_{2.5}$ NAAQS). For the sake of comparison, in approving the budgets for the SJV 2008 $PM_{2.5}$ Plan for the 1997 $PM_{2.5}$ NAAQS, the EPA approved a trading mechanism for transportation conformity analyses that allowed for such one-way trades (*i.e.,* only excess NO_X can be used to offset $PM_{2.5}$, not vice versa) at a 9:1 NO_X:$PM_{2.5}$ ratio.[229]

To ensure that the trading mechanism does not affect the ability of the SJV to meet the NO_X budget, the NO_X emission reductions available to supplement the $PM_{2.5}$ budget would only be those remaining after the NO_X budget has been met.[230] The Plan also provides that the SJV MPOs shall clearly document the calculations used in the trading, along with any additional reductions of NO_X and $PM_{2.5}$ emissions in the conformity analysis.

In the submittal letter for the 2018 $PM_{2.5}$ Plan, CARB requested that we limit the duration of our approval of the budgets to the period before the effective date of the EPA's adequacy finding for any subsequently submitted budgets.[231]

3. EPA Evaluation and Proposed Action

For the reasons discussed in section IV.F of this proposed rule, we are proposing to approve the State's demonstration that it is impracticable to attain the 2012 $PM_{2.5}$ standard in the SJV by the applicable Moderate area attainment date of December 31, 2021, and are proposing to reclassify the area as Serious. Accordingly, we are proposing action on the Moderate post-attainment year budgets for 2022 for the 2012 $PM_{2.5}$ NAAQS in the SJV. The EPA is not reviewing the submitted motor vehicle emissions budgets for 2019 because that year will not be an applicable conformity analysis year in the next conformity analysis for the SJV MPOs. Also, as noted above, we consider the 2022 RFP milestone budgets from the 2018 $PM_{2.5}$ Plan as superseding the corresponding budgets from the 2016 $PM_{2.5}$ Plan and thus are proposing action only on the former.[232]

The EPA generally first conducts a preliminary review of budgets submitted with an attainment or maintenance plan for $PM_{2.5}$ for

[225] 40 CFR 93.118(e)(4)(iii), (iv) and (v). For more information on the transportation conformity requirements and applicable policies on MVEBs, please visit our transportation conformity website at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

[226] 2016 $PM_{2.5}$ Plan, Table 3–11.

[227] 2018 $PM_{2.5}$ Plan, App. D, Table 3–3.

[228] 2018 $PM_{2.5}$ Plan, App. D, D–121 to D–123.

[229] 76 FR 69896, at 69923 (November 9, 2011).

[230] 2018 $PM_{2.5}$ Plan, App. D, D–126 and D–127.

[231] Letter dated May 9, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, 3.

[232] The differences between the two sets of budgets are minor. For 2019, there is no difference between the budgets in the 2016 $PM_{2.5}$ Plan and the 2018 $PM_{2.5}$ Plan. For 2022, there is no difference between the two sets of budgets for direct $PM_{2.5}$, and, with the exception of San Joaquin County, the difference between the two sets of budgets for NO_X is less than or equal to 0.1 tpd. For San Joaquin County, the 2022 NO_X budget is 0.7 tpd higher under the 2018 $PM_{2.5}$ Plan than the corresponding budget from the 2016 $PM_{2.5}$ Plan.

adequacy, prior to taking action on the plan itself, and did so with respect to the $PM_{2.5}$ budgets in the 2018 $PM_{2.5}$ Plan. On June 18, 2019, the EPA announced the availability of the 2018 $PM_{2.5}$ Plan with MVEBs and a 30-day public comment period. This announcement was posted on the EPA's adequacy website at: *https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa.* The comment period for this notification ended on July 18, 2019. We did not receive any comments during this comment period.

The 2018 $PM_{2.5}$ Plan establishes budgets for the 2022 RFP milestone year for direct $PM_{2.5}$ and NO_X, but not for the other $PM_{2.5}$ precursor emissions (*i.e.,* VOC, SO_2, and ammonia). We propose to find that it is not necessary to establish motor vehicle emissions budgets for transportation-related emissions of VOC, SO_2, and ammonia to attain the 2012 annual $PM_{2.5}$ NAAQS in the SJV based on our proposal to approve the State's demonstration that emissions of VOC, SO_2, and ammonia do not contribute significantly to $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV, as discussed in section IV.B of this proposed rule. Our finding in this regard is also supported by information about VOC, SO_2, and ammonia in the 2018 $PM_{2.5}$ Plan documenting the small contribution by motor vehicles to regional precursor inventories and to $PM_{2.5}$ design values within the SJV.[233] In addition, based on similar documentation about re-entrained road dust and construction-related fugitive dust in the 2018 $PM_{2.5}$ Plan and in accordance with 40 CFR 93.102(b)(3) and 93.122(f), the EPA proposes to find that it is not necessary to include re-entrained road dust emissions or road construction dust in the direct $PM_{2.5}$ budgets for 2012 $PM_{2.5}$ NAAQS in the SJV.[234]

For the reasons discussed in sections IV.G of this proposed rule, the EPA proposes to approve the RFP demonstration in the 2018 $PM_{2.5}$ Plan. The 2022 RFP budgets, as shown in Table 6 of this proposed rule, are consistent with this demonstration, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements including the adequacy criteria in 40 CFR 93.118(e)(4) and (5). For these reasons, the EPA proposes to approve the budgets listed in Table 6. We provide a more detailed discussion in the EPA's memo to file regarding MVEB.[235] We are not proposing to approve the 2018 $PM_{2.5}$ Plan's budgets that pertain solely to the Serious area time frame (*i.e.,* 2025 attainment year budget or the post-attainment year 2028 budget for the 2012 $PM_{2.5}$ NAAQS) at this time. The budgets that the EPA is proposing to approve relate to the 2012 annual $PM_{2.5}$ NAAQS only, and our proposed approval does not affect the status of the previously-approved MVEBs for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS and related trading mechanisms that remain in effect for that $PM_{2.5}$ NAAQS.

As noted above, the State included a trading mechanism to be used in transportation conformity analyses that would be used in conjunction with the budgets in the 2018 $PM_{2.5}$ Plan, as allowed for under 40 CFR 93.124(b). Furthermore, the trading ratio in the 2018 $PM_{2.5}$ Plan is based on updated air quality modeling and analysis relative to the analysis that the 2016 $PM_{2.5}$ Plan relies on (*i.e.,* analysis and trading ratio in the 2008 $PM_{2.5}$ Plan for the 1997 $PM_{2.5}$ NAAQS). The trading mechanism in the 2018 $PM_{2.5}$ Plan would allow future decreases in annual NO_X emissions from on-road mobile sources to offset any on-road increases in annual direct $PM_{2.5}$ emissions using a 6.5:1 NO_X:$PM_{2.5}$ ratio for conformity for the 2012 annual $PM_{2.5}$ NAAQS. To ensure that the trading mechanism does not affect the ability to meet the NO_X budget, the plan provides that the NO_X emission reductions available to supplement the $PM_{2.5}$ budget would only be those remaining after the NO_X budget has been met. The SJV MPOs will have to document clearly the calculations used in the trading when demonstrating conformity, along with any additional reductions of NO_X and $PM_{2.5}$ emissions in the conformity analysis. The trading calculations must be performed prior to the final rounding to demonstrate conformity with the budgets.

The EPA has reviewed the trading mechanism as described on pages D–125 through D–127 in Appendix D of the 2018 $PM_{2.5}$ Plan and finds it is appropriate for transportation conformity purposes in the SJV for the 2012 annual $PM_{2.5}$ NAAQS. The methodology for estimating the trading ratio for conformity purposes is essentially an update (based on newer modeling) of the approach that the EPA previously approved for the 2008 $PM_{2.5}$ Plan for the 1997 $PM_{2.5}$ NAAQS[236] and the 2012 $PM_{2.5}$ Plan for the 2006 24-hour $PM_{2.5}$ NAAQS.[237] The State's approach in the previous plans was to model the ambient $PM_{2.5}$ effect of areawide NO_X emissions reductions and of areawide direct $PM_{2.5}$ reductions, and to express the ratio of these modeled sensitivities as an interpollutant trading ratio.

In the updated analysis for the 2018 $PM_{2.5}$ Plan, the State completed separate sensitivity analyses for the annual and 24-hour standards and modeled only transportation-related sources in the nonattainment area. The ratio the State is proposing to use for transportation conformity purposes is derived from air quality modeling that evaluated the effect of reductions in transportation-related NO_X and $PM_{2.5}$ emissions in the SJV on ambient concentrations at the Bakersfield-California Avenue, Bakersfield-Planz, Fresno-Garland, and Fresno-Hamilton & Winery monitoring sites. The modeling that the State performed to evaluate the effectiveness of NO_X and $PM_{2.5}$ reductions on ambient 24-hour concentrations showed NO_X:$PM_{2.5}$ ratios that range from a high of 7.1 at the Bakersfield-California Avenue monitor to a low of 6.0 at the two Fresno monitors.[238] We find that the State's approach is a reasonable method to use to develop ratios for transportation conformity purposes. We therefore propose to approve the 6.5:1 NO_X for $PM_{2.5}$ trading mechanism as enforceable components of the transportation conformity program for the SJV for the 2012 annual $PM_{2.5}$ NAAQS.

Under the transportation conformity rule, once budgets are approved, they cannot be superseded by revised budgets submitted for the same CAA purpose and the same year(s) addressed by the previously approved SIP until the EPA approves the revised budgets as a

[233] 2018 $PM_{2.5}$ Plan, App. D. pages D–121, D–122 and D–123. Motor vehicle emissions of VOC represent approximately 10% of the total VOC emissions in the SJV, but VOC controls are generally ineffective at reducing ambient $PM_{2.5}$ levels. Motor vehicle emissions of SO_2 are less than one tpd, and motor vehicle emissions of ammonia represent approximately 1% of total ammonia emissions in the SJV.

[234] Id. Paved and unpaved road dust emissions represent less than 17% of the total $PM_{2.5}$ emissions in the SJV but contribute only approximately 4% to the design values. Construction dust emissions are less than 5% of the total $PM_{2.5}$ emissions in the SJV. In addition, the 2018 $PM_{2.5}$ Plan does not include additional control measures for these sources.

[235] Memorandum of July 30, 2021, from Rory Mays and Karina O'Connor, Air Planning Office, Air and Radiation Division, Region IX, EPA, ''EPA Review of 2018 $PM_{2.5}$ Plan Transportation Conformity Emission Budgets for the 2012 Annual $PM_{2.5}$ NAAQS (Moderate Area Requirements).''

[236] 80 FR 1816, 1841 (January 13, 2015) (noting the EPA's prior approval of MVEBs for the 1997 annual and 24-hour $PM_{2.5}$ standards in the 2008 $PM_{2.5}$ Plan at 76 FR 69896).

[237] 81 FR 59876 (August 31, 2016).

[238] 2018 $PM_{2.5}$ Plan, App. D, D–126.

SIP revision. As a general matter, such approved budgets cannot be superseded by revised budgets found adequate, but rather only through approval of the revised budgets, unless the EPA specifies otherwise in its approval of a SIP by limiting the duration of the approval to last only until subsequently submitted budgets are found adequate.[239]

In the submittal letter for the 2018 $PM_{2.5}$ Plan, CARB requested that we limit the duration of our approval of the budgets to the period before the effective date of the EPA's adequacy finding for any subsequently submitted budgets.[240] The transportation conformity rule allows us to limit the approval of budgets.[241] However, we will consider a state's request to limit an approval of its MVEBs only if the request includes the following elements:[242] (1) An acknowledgement and explanation as to why the budgets under consideration have become outdated or deficient; (2) a commitment to update the budgets as part of a comprehensive SIP update; and (3) a request that the EPA limit the duration of its approval to the period before new budgets have been found to be adequate for transportation conformity purposes.

CARB's request includes an explanation for why the budgets have become, or will become, outdated or deficient. In short, CARB has requested that we limit the duration of the approval of the budgets in light of the EPA's approval of EMFAC2017, an updated version of the EMFAC2014 used for the budgets in the 2018 $PM_{2.5}$ Plan.[243] EMFAC2017 updates vehicle mix and emissions data of the previously approved version of the EMFAC2014.

In light of the EPA's approval of EMFAC2017, CARB explains that the budgets in the 2018 $PM_{2.5}$ Plan, which we are proposing to approve in this action, will become outdated and will need to be revised using EMFAC2017. In addition, CARB states that, without the ability to replace the budgets using the budget adequacy process, the benefits of using the updated data may not be realized for a year or more after the updated SIP (with the EMFAC2017-derived budgets) is submitted, due to the length of the SIP approval process. We find that CARB's explanation for limiting the duration of the approval of the budgets is appropriate and provides us with a reasonable basis for limiting the duration of the approval of the budgets.

We note that CARB has not committed to update the budgets as part of a comprehensive SIP update, but as a practical matter, CARB must submit a SIP revision that includes updated demonstrations as well as the updated budgets to meet the adequacy criteria in 40 CFR 93.118(e)(4).[244] Therefore, we do not need a specific commitment for such a plan at this time. For the reasons provided above, and in light of CARB's explanation for why the budgets will become outdated and should be replaced upon an adequacy finding for updated budgets, we propose to limit the duration of our approval of the budgets in the 2018 $PM_{2.5}$ Plan to the period before we find revised budgets based on EMFAC2017 to be adequate.

Lastly, in section IV.H of this proposed rule, the EPA is proposing to disapprove the contingency measure element of the 2016 $PM_{2.5}$ Plan, as amended in the 2018 $PM_{2.5}$ Plan, with respect to Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS. If the EPA were to finalize the proposed disapproval of the 2012 $PM_{2.5}$ NAAQS Moderate area contingency measure element, the area would be eligible for a protective finding under the transportation conformity rule because the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan reflect adopted control measures that fully satisfy the emissions reductions requirements for RFP for years 2019 and 2022.[245]

V. Reclassification as Serious Nonattainment and Serious Area SIP Requirements

A. Reclassification as Serious and Applicable Attainment Date

Section 188 of the Act outlines the process for classification of $PM_{2.5}$ nonattainment areas and establishes the applicable attainment dates. Under section 188(b)(1) of the Act, the EPA has general authority to reclassify at any time before the applicable attainment date any area that the EPA determines cannot practicably attain the standard by such date. Accordingly, section 188(b)(1) of the Act is a general expression of delegated rulemaking authority. In addition, subparagraphs (A) and (B) of section 188(b)(1) mandate that the EPA reclassify ''appropriate'' PM_{10} nonattainment areas at specified time frames (*i.e.,* by December 31, 1991, for the initial PM_{10} nonattainment areas, and within 18 months after the SIP submittal due date for subsequent nonattainment areas). These subparagraphs do not restrict the EPA's general authority but simply specify that, at a minimum, it must be exercised at certain times.[246]

We have reviewed the air quality modeling and impracticability demonstration in the 2016 $PM_{2.5}$ Plan, as well as the air quality modeling in the 2018 $PM_{2.5}$ Plan. Based on our review, we agree with the District's conclusion that implementation of the State/District's SIP control strategy, including RACM/RACT and additional reasonable measures, is insufficient to bring the SJV into attainment of the 2012 $PM_{2.5}$ NAAQS by the December 31, 2021 Moderate area attainment deadline. See sections IV.C and IV.F of this proposed rule. In addition, we have reviewed recent $PM_{2.5}$ monitoring data for SJV available in the EPA's Air Quality System (AQS) database. These data show that annual $PM_{2.5}$ levels in the SJV continue to be above 12.0 $\mu g/m^3$, the numerical level of the 2012 $PM_{2.5}$ standard, and the recent trends in the SJV annual $PM_{2.5}$ levels indicate that the SJV will not attain by the end of 2021.[247]

In accordance with section 188(b)(1) of the Act, the EPA is proposing to reclassify the SJV from Moderate to Serious nonattainment for the 2012 annual $PM_{2.5}$ standard of 12.0 $\mu g/m^3$, based on the EPA's determination that the SJV cannot practicably attain the standard by the applicable attainment date of December 31, 2021.

Under section 188(c)(2) of the Act, the attainment date for a Serious area ''shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment . . .'' The EPA designated the SJV as nonattainment for the 2012 $PM_{2.5}$ NAAQS effective April 15, 2015.[248] Therefore, upon final reclassification of

[239] 40 CFR 93.118(e)(1).

[240] Letter dated May 9, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, 3.

[241] 40 CFR 93.118(e)(1).

[242] 67 FR 69141 (November 15, 2002), limiting our prior approval of MVEBs in certain California SIPs.

[243] On August 15, 2019, the EPA approved and announced the availability of EMFAC2017, the latest update to the EMFAC model for use by the State and local governments to meet CAA requirements. 84 FR 41717.

[244] Under 40 CFR 93.118(e)(4), the EPA will not find a budget in a submitted SIP to be adequate unless, among other criteria, the budgets, when considered together with all other emissions sources, are consistent with applicable requirements for RFP and attainment. 40 CFR 93.118(e)(4)(iv).

[245] 40 CFR 93.120(a)(3).

[246] For a general discussion of the EPA's interpretation of the reclassification provisions in section 188(b)(1) of the Act, see the General Preamble, 13537–13538.

[247] EPA design value workbook dated May 24, 2021, ''pm25_designvalues_2018_2020_final_05_24_21.xlsx,'' worksheets ''Table1a'' and ''Table5a,'' and EPA, 2010–2020 AQS Design Value Report, AMP480, June 30, 2021.

[248] 80 FR 2206.

the SJV as a Serious nonattainment area, the latest permissible attainment date under section 188(c)(2) of the Act, for purposes of the 2012 $PM_{2.5}$ NAAQS in this area, will be December 31, 2025.

Under section 188(e) of the Act, a state may apply to the EPA for a single extension of the Serious area attainment date of up to five additional years, which the EPA may grant if the state satisfies certain statutory conditions. Before the EPA may extend the attainment date for a Serious area under section 188(e), the state must: (1) Apply for an extension of the attainment date beyond the statutory attainment date; (2) demonstrate that attainment by the statutory attainment date is impracticable; (3) demonstrate that it has complied with all requirements and commitments pertaining to the area in the implementation plan; (4) demonstrate to the satisfaction of the Administrator that the plan for the area includes the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area; and (5) submit a demonstration of attainment by the most expeditious alternative date practicable.[249]

B. Clean Air Act Requirements for Serious Area Plans

Upon reclassification as a Serious nonattainment area for the 2012 $PM_{2.5}$ NAAQS, California will be required to submit additional SIP revisions to satisfy the statutory requirements that apply to Serious $PM_{2.5}$ nonattainment areas, including the requirements of subpart 4 of part D, title I of the Act.

The Serious area SIP elements that California will be required to submit are as follows:

1. Provisions to assure that BACM,[250] including BACT for stationary sources, for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than four years after the area is reclassified (CAA section 189(b)(1)(B));

2. a demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but not later than December 31, 2025, or where the state is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2025, is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable and not later than December 31, 2030 (CAA sections 189(b)(1)(A), 188(c)(2), and 188(e));

3. plan provisions that require RFP (CAA section 172(c)(2));

4. quantitative milestones that are to be achieved every three years until the area is redesignated to attainment and that demonstrate RFP toward attainment by the applicable date (CAA section 189(c));

5. provisions to assure that control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area (CAA section 189(e));

6. a comprehensive, accurate, current inventory of actual emissions from all sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the area (CAA section 172(c)(3));

7. contingency measures to be implemented if the area fails to meet RFP (including quantitative milestones and related reports) or to attain by the applicable attainment date (CAA section 172(c)(9)); and

8. a revision to the NNSR program to lower the applicable ''major stationary source'' [251] thresholds from 100 tpy to 70 tpy (CAA section 189(b)(3)) and to satisfy the subpart 4 control requirements for major stationary sources of $PM_{2.5}$ precursors (CAA section 189(e)).

As discussed in section IV.E of this proposed rule, California submitted NNSR SIP revisions for the SJV to address the subpart 4 NNSR requirements for Serious $PM_{2.5}$ nonattainment areas on November 20, 2019. The EPA is evaluating this SIP submission and will act on it in a separate rulemaking.

Finally, reclassification of the SJV as Serious nonattainment for the 2012 annual $PM_{2.5}$ NAAQS would lower the de minimis threshold under the CAA's general conformity requirements (40 CFR part 93, subpart B) from 100 tpy to 70 tpy for $PM_{2.5}$ and $PM_{2.5}$ precursors.[252] In this case, however, reclassification would have no impact on the applicable general conformity de minimis thresholds, because the SJV is already subject to the 70 tpy de minimis threshold for $PM_{2.5}$ and all $PM_{2.5}$ precursors as a result of the EPA's previous actions reclassifying the area as Serious nonattainment for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS.[253]

C. Statutory Deadline for Submission of Serious Area Plan

When the EPA reclassifies a nonattainment area to a higher classification, the CAA sets the parameters for establishing deadlines for attainment plan SIP submissions for that higher classification. The State has already made submissions intended to address the Serious area attainment plan requirements for the 2012 $PM_{2.5}$ NAAQS for the SJV, yet the EPA reclassification rulemaking must still establish the submission deadlines, as discussed in the following paragraphs. Among other things, such deadlines make clear the time frame for any future SIP submission should the State find the need to withdraw any particular element of the Serious area plan requirements (*i.e.,* without the submittal of a replacement element meeting the completeness criteria).

For an area reclassified as a Serious nonattainment area before the applicable attainment date under CAA section 188(b)(1), section 189(b)(2) requires the state to submit the required BACM provisions ''no later than 18 months after reclassification of the area as a Serious Area'' and to submit the required attainment demonstration ''no later than 4 years after reclassification of the area to Serious.'' Section 189(b)(2) establishes outer bounds on the SIP submission deadlines as necessary or appropriate to assure consistency among the required submissions and to implement the statutory requirements.

The Act provides the state with up to 18 months after final reclassification of an area to Serious to submit the required BACM provisions. Because an up-to-date emissions inventory serves as the foundation for a state's BACM/BACT determination, the $PM_{2.5}$ SIP Requirements Rule requires the state to submit the emissions inventory required under CAA section 172(c)(3) within 18

[249] For a discussion of the EPA's interpretation of the requirements of section 188(e), see General Preamble Addendum, 42002; 65 FR 19964 (April 13, 2000) (proposed action on PM_{10} Plan for Maricopa County, Arizona); 67 FR 48718 (July 25, 2002) (final action on PM_{10} Plan for Maricopa County, Arizona); and *Vigil* v. *EPA,* 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004) (remanding EPA action on PM_{10} Plan for Maricopa County, Arizona but generally upholding the EPA's interpretation of CAA section 188(e)).

[250] The EPA defines BACM as, among other things, the maximum degree of emission reduction achievable for a source or source category, which is determined on a case-by-case basis considering energy, environmental, and economic impacts. (General Preamble Addendum, 42010 and 42014). BACM must be implemented for all categories of sources in a Serious $PM_{2.5}$ nonattainment area unless the State adequately demonstrates that a particular source category does not contribute significantly to nonattainment of the $PM_{2.5}$ standard. (Id. at 42011, 42012).

[251] For any Serious area, the terms ''major source'' and ''major stationary source'' include any stationary source that emits or has the potential to emit at least 70 tpy of PM_{10} (CAA sections 189(b)(3)).

[252] 40 CFR 93.153(b), 81 FR 58010, 58126.

[253] 80 FR 18528 and 81 FR 1514, respectively.

months after the effective date of final reclassification.[254] Similarly, because an effective evaluation of BACM/BACT measures requires evaluation of the precursor pollutants that must be controlled to provide for expeditious attainment in the area, if the state chooses to submit an optional precursor insignificance demonstration to support a determination to exclude a $PM_{2.5}$ precursor from the required control measure evaluations for the area, the EPA requires that the state submit any such demonstration by this same date. An 18-month time frame for submission of these plan elements is consistent with both the time frame for submission of BACM/BACT provisions under CAA section 189(b)(2) and the time frame for submission of subpart 1 plan elements under section 172(b) of the Act.[255]

The $PM_{2.5}$ SIP Requirements Rule also establishes a specific deadline for submission of the attainment demonstration and attainment-related plan elements following discretionary reclassification, which is the earlier of four years from the date of reclassification, or the end of the eighth calendar year after designation.[256] In this case, the earlier of these two dates will be the end of the eighth calendar year after designation—*i.e.,* December 31, 2023. The attainment-related plan elements required within the same timeframe as the attainment demonstration are as follows: (1) The RFP demonstration required under section 172(c)(2); (2) the quantitative milestones required under section 189(c); (3) any additional control measures necessary to meet the requirements of section 172(c)(6); and (4) the contingency measures required under section 172(c)(9). Although section 189(b)(2) generally provides for up to four years after a discretionary reclassification for the state to submit the required attainment demonstration, given the timing of this reclassification action less than two years before the Moderate area attainment date, it is appropriate in this case for the EPA to establish an earlier SIP submission deadline to assure timely implementation of the statutory requirements.

Finally, the $PM_{2.5}$ SIP Requirements Rule establishes a regulatory requirement that the state submit revised NNSR program requirements no later than 18 months after final reclassification.[257] The Act does not specify a deadline for the state's submission of SIP revisions to meet NNSR program requirements to lower the ''major stationary source'' threshold from 100 tpy to 70 tpy (CAA section 189(b)(3)) and to address the control requirements for major stationary sources of $PM_{2.5}$ precursors (CAA section 189(e)) [258] following reclassification of a Moderate $PM_{2.5}$ nonattainment area as Serious nonattainment under subpart 4. Pursuant to the EPA's gap-filling authority in CAA section 301(a) and to effectuate the statutory control requirements in section 189 of the Act, the $PM_{2.5}$ SIP Requirements Rule requires the state to submit these NNSR SIP revisions, as well as any necessary analysis of and additional control requirements for major stationary sources of $PM_{2.5}$ precursors, no later than 18 months after the effective date of final reclassification of the SJV as Serious nonattainment for the 2012 $PM_{2.5}$ standard. This due date will ensure that necessary control requirements for major sources are established in advance of the required attainment demonstration. An 18-month timeframe for submission of the NNSR SIP revisions also aligns with the statutory deadline for submission of BACM and BACT provisions and the broader analysis of $PM_{2.5}$ precursors for potential controls on existing sources in the area.

Accordingly, if we finalize our proposal to reclassify the SJV as a Serious nonattainment area for the 2012 $PM_{2.5}$ NAAQS, California would be required to submit the emissions inventory required under CAA section 172(c)(3), the BACM/BACT provisions required under CAA section 189(b)(1)(B), and any NNSR SIP revisions required to satisfy the requirements of CAA sections 189(b)(3) and 189(e) for the 2012 $PM_{2.5}$ NAAQS no later than 18 months after the effective date of a final reclassification action. Additionally, California would be required to submit the Serious area attainment demonstration and all attainment-related plan elements no later than the end of the eighth calendar year after designation—*i.e.,* by December 31, 2023.

We note that the 2018 $PM_{2.5}$ Plan submitted on May 10, 2019, includes a Serious area plan containing an attainment demonstration, emissions inventory, attainment-related plan elements, and BACM/BACT provisions. Also, the State submitted a SIP revision for the Serious area NNSR requirements on November 20, 2019. The EPA intends to evaluate and act on the Serious area plan and NNSR SIP submissions for the 2012 $PM_{2.5}$ NAAQS in the SJV through separate rulemakings, as appropriate.

VI. Reclassification of Areas of Indian Country

Eight Indian tribes are located within the boundaries of the SJV nonattainment area for the 2012 $PM_{2.5}$ NAAQS. These tribes include Big Sandy Rancheria of Western Mono Indians of California, Cold Springs Rancheria of Mono Indians of California, Northfork Rancheria of Mono Indians of California, Picayune Rancheria of Chukchansi Indians of California, Santa Rosa Indian Community of the Santa Rosa Rancheria, California, Table Mountain Rancheria, Tejon Indian Tribe, and Tule River Indian Tribe of the Tule River Reservation, California.

We have considered the relevance of our proposal to reclassify the SJV as Serious nonattainment for the 2012 $PM_{2.5}$ standard for each tribe located therein. We believe that the same facts and circumstances that support the proposal for the non-Indian country lands also support the proposal for reservation areas of Indian country [259] and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within the SJV nonattainment area. The EPA is therefore proposing to exercise our authority under CAA section 188(b)(1) to reclassify areas of Indian country geographically located in the SJV nonattainment area. Section 188(b)(1) broadly authorizes the EPA to reclassify a nonattainment area—including any Indian country located within such an area—that the EPA determines cannot practicably attain the relevant standard by the applicable attainment date.

[254] 81 FR 58010, 58077.

[255] Section 172(b) requires the EPA to establish, concurrent with nonattainment area designations, a schedule extending no later than three years from the date of the nonattainment designation for states to submit plans or plan revisions meeting the applicable requirements of sections 110(a)(2) and 172(c) of the CAA.

[256] 81 FR 58010, 58077.

[257] Id. at 58078.

[258] Section 189(e) requires that the control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area.

[259] ''Indian country'' as defined at 18 U.S.C. 1151 refers to the following: ''(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.''

Directly-emitted $PM_{2.5}$ and its precursor pollutants (*i.e.,* NO_X, SO_2, VOC, and ammonia) are emitted throughout a nonattainment area and can be transported throughout that nonattainment area. Therefore, boundaries for nonattainment areas are drawn to encompass both areas with direct sources of the pollutant problem as well as nearby areas in the same airshed. Initial classifications apply to the entire nonattainment area, *i.e.,* they exactly match the nonattainment area boundaries. The EPA believes this approach best ensures public health protection from the adverse effects of $PM_{2.5}$ pollution. Therefore, it is generally counterproductive from an air quality and planning perspective to have a disparate classification for a land area located within the boundaries of a nonattainment area, such as the reservation areas of Indian country contained within the SJV $PM_{2.5}$ nonattainment area. Violations of the 2012 $PM_{2.5}$ standard, which are measured and modeled throughout the nonattainment area, as well as shared meteorological conditions, would dictate the same conclusion. Furthermore, emission increases in portions of a $PM_{2.5}$ nonattainment area that are left classified as Moderate could counteract the effects of efforts to attain the standard within the overall area because less stringent requirements would apply in those Moderate portions relative to those that would apply in the portions of the area reclassified to Serious.

Uniformity of classification throughout a nonattainment area is thus a guiding principle and premise when an area is being reclassified. In this particular case, we are proposing to determine, based on the State's demonstration and current ambient air quality trends, that the entire SJV nonattainment area, including all reservations areas of Indian country and any other area located within the SJV where a tribe has jurisdiction, cannot practicably attain the 2012 $PM_{2.5}$ standard by the applicable Moderate area attainment date of December 31, 2021.

In light of the considerations outlined above that support retention of a uniformly-classified $PM_{2.5}$ nonattainment area, and our proposal to find that it is impracticable for the area to attain by the applicable attainment date, we propose to reclassify the entire SJV nonattainment area, including reservation areas of Indian country and any other area of Indian country located within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction, as Serious nonattainment for the 2012 $PM_{2.5}$ standard.

Generally, the effect of reclassification is to lower the applicable ''major source'' threshold for purposes of the NNSR program and the Title V operating permit program from 100 tpy to 70 tpy,[260] thus subjecting additional new or modified stationary sources to these requirements. Reclassification also lowers the de minimis threshold under the CAA's general conformity requirements from 100 tpy to 70 tpy.[261] In this case, however, reclassification would not change the ''major source'' thresholds because, as a result of the EPA's January 2016 reclassification of the SJV as a Serious nonattainment area for the 2006 $PM_{2.5}$ NAAQS, the area is already subject to the 70 tpy major source threshold for Serious $PM_{2.5}$ nonattainment areas in CAA section 189(b)(3).[262] Likewise, reclassification would have no impact on the applicable general conformity de minimis thresholds, because the SJV is already subject to the 70 tpy de minimis threshold for $PM_{2.5}$ and all $PM_{2.5}$ precursors as a result of the EPA's previous reclassification of the area as Serious for the 2006 $PM_{2.5}$ NAAQS.[263]

The EPA has contacted tribal officials to invite government-to-government consultation on this rulemaking effort.[264] The EPA specifically solicits additional comment on this proposed rule from tribal officials. We note that although eligible tribes may seek EPA approval of relevant tribal programs under the CAA, none of the affected tribes will be required to submit an implementation plan as a result of this reclassification.

VII. Review of Contingency Measure Element for the 2006 $PM_{2.5}$ NAAQS

A. Requirements for Contingency Measures

With one exception, the SIP requirements for contingency measures that apply to areas classified as Serious for the 2006 $PM_{2.5}$ NAAQS are the same as those described in section IV.H.1 of this document for areas that are classified as Moderate for the 2012 $PM_{2.5}$ NAAQS and cannot practicably attain the NAAQS by the statutory attainment date, and thus, are not repeated here. However, in addition to the contingency measures requirements that apply to Moderate areas with adequate impracticability demonstrations, states with areas classified as Serious must identify and adopt contingency measures to address the potential for the area to fail to attain the NAAQS by the applicable attainment date.

B. Summary of State's Contingency Measure Element for 2006 $PM_{2.5}$ NAAQS

The EPA deferred action on the contingency measure element of the 2018 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS when we took final action on the other elements in the 2018 $PM_{2.5}$ Plan for that NAAQS.[265] In this section of this document, we are proposing action on the contingency measure element of the 2018 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS.

The 2018 $PM_{2.5}$ Plan addresses the contingency measure requirement for the 2006 24-hour $PM_{2.5}$ NAAQS by reference to the contingency measure portion of a December 2018 SIP submission that involved enhanced enforcement of CARB regulations in the SJV, a commitment to amend the District's residential wood burning rule (*i.e.,* District Rule 4901) to include contingent provisions, and updated emissions estimates for the year following the attainment year for use in evaluating whether the emissions reductions from the contingency measures are sufficient.[266] Recently, CARB withdrew the enhanced enforcement portion of the December 2018 SIP submission as it pertained to the 2006 $PM_{2.5}$ NAAQS in the SJV.[267]

Accordingly, we have evaluated the relevant portions of the 2018 $PM_{2.5}$ Plan and District Rule 4901 (specifically, section 5.7.3 of Rule 4901) for compliance with the applicable requirements for Serious areas for the 2006 $PM_{2.5}$ NAAQS.

With respect to the District contingency measure, the 2018 $PM_{2.5}$ Plan calls for the District to amend District Rule 4901 to include a requirement in the rule with a trigger that that would be activated should the EPA issue a final rulemaking that the SJV failed to meet a regulatory requirement necessitating

[260] CAA sections 189(b)(3) and 501(2)(B).

[261] 40 CFR part 93, subpart B.

[262] 81 FR 2993.

[263] Id. and 40 CFR 93.153(b).

[264] We sent letters dated March 3, 2021, to tribal officials offering government-to-government consultation. See also a summary of the EPA's outreach to tribes in the San Joaquin Valley; memorandum dated August 3, 2021, from Rory Mays, Air Planning Office, Air and Radiation Division, EPA Region IX, to Docket No. EPA–R09–OAR–2021–0543. We did not receive any request for consultation.

[265] 85 FR 44192, at 44193 (July 22, 2020).

[266] 2018 $PM_{2.5}$ Plan, App. H (revised February 11, 2020), H–24 to H–26.

[267] Letter dated March 19, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX, with enclosures.

implementation of a contingency measure. In response to the commitment made in the 2018 $PM_{2.5}$ Plan, in June 2019, the District adopted amendments to Rule 4901 including a contingency measure (in section 5.7.3 of the amended rule), and CARB submitted the amended rule to the EPA for approval as an attachment to a letter dated July 19, 2019.[268] The EPA has taken final action to approve amended Rule 4901, but in that approval, we noted that we were not evaluating the contingency measure in section 5.7.3 of revised Rule 4901 for compliance with all requirements of the CAA and the EPA's implementing regulations that apply to such measures.[269] Rather, we approved the measure into the SIP because it strengthened the rule by providing a possibility of additional curtailment days, and thus potentially additional emissions reductions. We indicated that we would evaluate whether this provision, in conjunction with other submitted provisions, meets the statutory and regulatory requirements for contingency measures in future actions. In this proposal, we are now evaluating District Rule 4901, specifically, section 5.7.3, for compliance with the requirements for contingency measures for purposes of the 2006 $PM_{2.5}$ NAAQS.

District Rule 4901 is designed to limit emissions generated by the use of wood burning fireplaces, wood burning heaters, and outdoor wood burning devices. The rule establishes requirements for the sale/transfer, operation, and installation of wood burning devices and for advertising the sale of seasoned wood consistent with a moisture content limit within the SJV.

The rule includes a two-tiered, episodic wood burning curtailment requirement that applies during four winter months, November through February. During a level one episodic wood burning curtailment, section 5.7.1 prohibits any person from operating a wood burning fireplace or unregistered wood burning heater but permits the use of a properly operated wood burning heater that meets certification requirements and has a current registration with the District. Sections 5.9 through 5.11 impose specific registration requirements on any person operating a wood burning fireplace or wood burning heater and section 5.12 imposes specific certification requirements on wood burning heater professionals. During a level two episodic wood burning curtailment, operation of any wood burning device is prohibited by section 5.7.2.

Prior to the 2019–2020 wood burning season, the District imposed a level one curtailment when the $PM_{2.5}$ concentration was forecasted to be between 20–65 μg/m³ and imposed a level two curtailment when the $PM_{2.5}$ concentration was forecasted to be above 65 μg/m³ or the PM_{10} concentration was forecasted to be above 135 μg/m³. In 2019, the District adopted revisions to Rule 4901 to lower the wood burning curtailment thresholds in the ''hot spot'' counties of Madera, Fresno, and Kern. The District lowered the level one $PM_{2.5}$ threshold for these three counties from 20 μg/m³ to 12 μg/m³, and the level two $PM_{2.5}$ threshold from 65 μg/m³ to 35 μg/m³. The District did not modify the curtailment thresholds for other counties in the SJV, and those levels remained at 20 μg/m³ for level one and 65 μg/m³ for level two.

The District's 2019 revision to Rule 4901 also included the addition of a contingency measure in section 5.7.3 of the rule, requiring that 60 days following the effective date of an EPA final rulemaking that the SJV has failed to attain the 1997, 2006, or 2012 $PM_{2.5}$ NAAQS by the applicable attainment date, the $PM_{2.5}$ curtailment levels for any county that has failed to attain the applicable standard will be lowered to the curtailment levels in place for hot spot counties. The District estimates that the potential emissions reduction in direct $PM_{2.5}$ would be in the range of 0.014 tpd (if the contingency is triggered in Kings County but not the other non-hot-spot counties) to 0.387 tpd (if the contingency is triggered in all five of the non-hot-spot counties), but there would be no emissions reduction if, at the time of the determination of failure to attain the 2006 $PM_{2.5}$ NAAQS by the attainment date, violations of the 2006 $PM_{2.5}$ NAAQS were only observed at monitors in the hot-spot counties.[270] Corresponding potential emissions reduction in NO_X would be in the range of 0.002 tpd to 0.060 tpd, respectively, but as noted in the preceding paragraphs there may be no emissions reduction if the violations are monitored in the hot-spot counties only.[271]

The 2018 $PM_{2.5}$ Plan also provides estimates of regional emissions in the year following the attainment year with which to evaluate the sufficiency of the emissions reductions from the contingency measure (*i.e.,* section 5.7.3 of Rule 4901). For the 2006 $PM_{2.5}$ NAAQS, the attainment year is 2024 and the year after the attainment year is therefore 2025.[272] Based on Table H–5 in the 2018 $PM_{2.5}$ Plan, the annual average emission reductions from 2024 to 2025 due to baseline measures and CARB and the District's aggregate tonnage commitment are estimated to be 0 tpd direct $PM_{2.5}$ and 5.2 tpd NO_X. For comparison purposes, one year's worth of RFP (based on emissions estimates in the 2018 $PM_{2.5}$ Plan) is approximately 0.6 tpd direct $PM_{2.5}$ and 18.4 tpd NO_X.[273]

C. EPA Evaluation and Proposed Action

For the 2006 $PM_{2.5}$ NAAQS, we have similarly evaluated the contingency measure demonstration in the 2018 $PM_{2.5}$ Plan and associated contingency provision of the 2019 amendment to Rule 4901. Specifically, we have evaluated the contingency provision in District Rule 4901 (*i.e.,* section 5.7.3 of the rule) against the requirements of CAA section 172(c)(9) and 40 CFR 51.1014 for both attainment and RFP contingency measures, the latter of which also includes submittal of quantitation milestone reports and compliance with quantitative milestones.

As noted in our summary of the State's submission, the contingency provision in District Rule 4901 is structured to provide for implementation if the area fails to attain the 2006 $PM_{2.5}$ NAAQS, not before, and is therefore consistent with CAA section 172(c)(9). However, as structured by the District, the contingency provision of Rule 4901 (*i.e.,* section 5.7.3) would provide for emissions reductions only in Kings, Merced, San Joaquin, Stanislaus, and/or Tulare counties, not the ''hot spot'' counties of Fresno, Kern, and Madera, and only if a violating monitoring site (*i.e.,* a site where the collected data represent a violation of the NAAQS) is located in said county. In other words, if the EPA's determination of failure to attain the NAAQS by the applicable attainment date indicates violations at monitoring location sites in Fresno and Kern (''hot spot'' counties) and Tulare (non-hot-spot county) counties, the contingency

[268] Letter dated July 19, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

[269] 85 FR 44206 (July 22, 2020) (final approval of District Rule 4901); 85 FR 1131, 1132–33 (January 9, 2020) (proposed approval of District Rule 4901).

[270] See Table B–13 in Appendix B from the District's Final Staff Report (June 20, 2019) for revisions to Rule 4901.

[271] NO_X emissions reductions from the contingency measure are based on the District's estimates for direct $PM_{2.5}$ emissions using the ratio of direct $PM_{2.5}$ to NO_X in Table 1 of the District's Final Staff Report (June 20, 2019) for revisions to Rule 4901.

[272] 85 FR 44192, 44192.

[273] One year's worth of RFP is based on the difference between the emissions estimates for 2013 and 2024 in Table H–6 of Appendix H, divided by 11 (*i.e.,* the number of years from 2013 to 2024).

provision would provide for emissions reductions by lowering the wood burning curtailment thresholds in only Tulare County. The ''hot spot'' counties are already subject to the lower wood burning curtailment thresholds in the rule and thus would not be affected by the finding of failure to attain determination and the other non-''hot spot'' counties (*i.e.,* other than Tulare County in this example) would not be subject to the lower wood burning curtailment thresholds.

In accordance with 40 CFR 51.1014, the contingency provision in District Rule 4901 identifies a specific triggering mechanism. In this case, the triggering mechanism in the rule is the EPA's final determination that the SJV has failed to attain the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date.[274] The rule also specifies a timeframe within which its requirements become effective after a failure-to-attain determination (*i.e.,* on and after 60 days from the effective date of the EPA's final determination), and would take effect with minimal further action by the state or the EPA. However, the contingency provision in District Rule 4901 does not address the potential for State failures to meet a quantitative milestone, submit a quantitative milestone report, or failure to meet an RFP requirement.[275]

In addition, the contingency measure provision of Rule 4901 is not structured to achieve any additional emissions reductions if the EPA finds that the monitoring locations in the ''hot spot'' counties (*i.e.,* Fresno, Kern, or Madera Counties) are the only ones in the SJV that are violating the 2006 $PM_{2.5}$ NAAQS as of the attainment date. To qualify as a contingency measure, a measure must be structured to achieve emissions reductions, if triggered, and the contingency provision of District Rule 4901 provides for such reductions only under certain circumstances and should be revised to provide for additional emissions reductions in the SJV (if triggered) regardless of which monitoring site(s) is determined to be violating the 2006 $PM_{2.5}$ NAAQS as of the attainment date.[276]

Next, we considered the adequacy of the section 5.7.3 of District Rule 4901 from the standpoint of the magnitude of emissions reductions the measures would provide (if triggered). Neither the CAA nor the EPA's implementing regulations for the $PM_{2.5}$ NAAQS establish a specific amount of emissions reductions that implementation of contingency measures must achieve, but we generally expect that contingency measures should provide for emissions reductions approximately equivalent to one year's worth of RFP, which amounts to reductions of approximately 0.6 tpd of direct $PM_{2.5}$ and 18.4 tpd of NO_X for the 2006 $PM_{2.5}$ NAAQS in the SJV.[277] As noted in our summary of the State's submission, the emissions reductions from the contingency provisions in District Rule 4901 would amount to approximately 0.00 tpd to 0.387 tpd of direct $PM_{2.5}$, which equates to approximately 0% to 67% of one year's worth of RFP for direct $PM_{2.5}$. With respect to NO_X emissions reductions, the contingency provisions in District Rule 4901 would amount to approximately 0.00 tpd to 0.06 tpd, which equates to approximately 0% to 0.3% of one year's worth of RFP for NO_X.

The State's contingency measure element in the 2018 $PM_{2.5}$ Plan provides the larger SIP planning context in which to judge the adequacy of the amount of emission reductions resulting from the contingency measure by calculating the surplus emissions reductions estimated to be achieved in the year after the attainment year. More specifically, the 2018 $PM_{2.5}$ Plan identifies additional NO_X reductions in the year following the attainment year of 2024. For the SJV, the estimates of additional reductions in the post-attainment year (2025) are 0 tpd direct $PM_{2.5}$ and 5.2 tpd NO_X.[278] Generally, we will consider such surplus emissions reductions in evaluating the sufficiency of the emissions reductions from contingency measures identified by the state, however, in this case, because the identified contingency measure may result in no emissions reductions, the larger planning context is not relevant to our review of the sufficiency of the contingency measure.

For these reasons, we propose to disapprove the contingency measure element of the 2018 $PM_{2.5}$ Plan under CAA section 179(c)(9) and 40 CFR 51.1014 with respect to the State's Serious area attainment plan for the 2006 $PM_{2.5}$ NAAQS in the SJV. While the contingency measure provision of the 2019 amendment to Rule 4901 has an adequate triggering mechanism for failure to attain, we propose to disapprove it because it may result in no emissions reductions if the area fails to attain the NAAQS by the applicable attainment date. Furthermore, as the contingency measure element and the contingency provision of Rule 4901 lack any to-be-triggered measure for failure to meet a quantitative milestone, submit a quantitative milestone report, or failure to meet an RFP requirement, we propose that the submission is also inadequate for RFP contingency measures.

Lastly, if the EPA finalizes the proposed disapproval of the contingency measure element for the 2006 $PM_{2.5}$ NAAQS, the area would be eligible for a protective finding under the transportation conformity rule because the 2018 $PM_{2.5}$ Plan reflects adopted control measures and contains enforceable commitments that fully satisfy the emissions reductions requirements for RFP and attainment for the 2006 $PM_{2.5}$ NAAQS.[279]

[274] Section 5.7.3 of Rule 4901 states that ''the District shall notify the public of an Episodic Curtailment for the $PM_{2.5}$ curtailment levels described in Sections 5.7.1.2 and 5.7.2.2 *for any county that has failed to attain the applicable standard.*'' (emphasis added) We interpret this to mean that the District would apply the more stringent curtailment provisions for any county identified in the EPA's final rule making the determination that the San Joaquin Valley failed to attain the applicable $PM_{2.5}$ NAAQS.

[275] We note that section 5.7.3 of District Rule 4901 applies the lower thresholds ''on and after sixty days following the effective date of EPA final rulemaking,'' which is appropriate as a contingency measure trigger for a failure to attain by the applicable attainment date given that the EPA conducts rulemaking to make such determinations. However, for the three other contingency triggers, *i.e.,* State failures to meet a quantitative milestone, submit a quantitative milestone report, or failure to meet an RFP requirement, the EPA may not conduct rulemaking but instead make the determinations through correspondence directly to the state. Thus, we recommend that section 5.7.3 of District Rule 4901 be amended to refer to ''EPA final determinations'' rather than to ''EPA final rulemaking'' when the rule is amended to include the additional contingency measure triggers.

[276] The EPA believes that the most straightforward remedy under these circumstances would be for the District to amend section 5.7.3 of Rule 4901 to extend the lower wood burning curtailment thresholds region-wide if the EPA determines that the area has failed to attain the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date.

[277] The calculation of one year's worth of RFP is based on dividing the values in column E of table H–6 of Appendix H (updated February 11, 2020) of the 2018 $PM_{2.5}$ Plan by 11, *i.e.,* the number of years between 2013 and 2024. As part of the EPA's final approval of the State's attainment plan for the 2006 $PM_{2.5}$ NAAQS, we concluded that ammonia, SO_X, and VOC emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley. 85 FR 17382, at 17390–17396 (March 27, 2020) (proposed rule); finalized at 85 FR 44192 (July 22, 2020).

[278] These estimates are based on the annual average emission reductions from 2024 to 2025 due to baseline measures and CARB and the District's aggregate tonnage commitment in Table H–5 of Appendix H (updated February 11, 2020) of the 2018 $PM_{2.5}$ Plan. We also note that Table H–13 of Appendix H indicates that the year-over-year reductions for purposes of the 2006 $PM_{2.5}$ NAAQS is 0.1 tpd direct $PM_{2.5}$ and 4.2 tpd NO_X. However, the estimates in Table H–13 reflect emissions changes associated only with mobile sources whereas the appropriate comparison includes the entire emissions inventory.

[279] 40 CFR 93.120(a)(3).

VIII. Summary of Proposed Actions and Request for Public Comment

Under CAA section 110(k)(3), the EPA is proposing to approve the following elements of the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan submitted by California to address the CAA's Moderate area planning requirements for the 2012 $PM_{2.5}$ NAAQS in the SJV nonattainment area:

1. The 2013 base year emissions inventories in the 2016 $PM_{2.5}$ Plan, as revised in the 2018 $PM_{2.5}$ Plan, as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008(a);
2. The reasonably available control measures/reasonably available control technology demonstration in the 2016 $PM_{2.5}$ Plan, as supplemented in the 2018 $PM_{2.5}$ Plan, as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(C);
3. The demonstration in the 2016 $PM_{2.5}$ Plan that attainment by the Moderate area attainment date of December 31, 2021, is impracticable as meeting the requirements of CAA section 189(a)(1)(B)(ii) and 40 CFR 51.1011(a);
4. The reasonable further progress demonstration in the 2016 $PM_{2.5}$ Plan, as revised in 2018 $PM_{2.5}$ Plan, as meeting the requirements of CAA section 172(c)(2) and 40 CFR 51.1012(a);
5. The quantitative milestones in the 2016 $PM_{2.5}$ Plan, as revised in the 2018 $PM_{2.5}$ Plan and the Valley State SIP Strategy, as meeting the requirements of CAA section 189(c) and 40 CFR 51.1013(a)(1); and
6. The motor vehicle emissions budgets for 2022 in the 2018 $PM_{2.5}$ Plan as shown in Table 6 of this proposed rule because they are derived from an approvable RFP demonstration and meet the requirements of CAA section 176(c) and 40 CFR part 93, subpart A. With respect to the budgets, we are proposing to limit the duration of the approval of the budgets to last only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets. We are proposing to do so at CARB's request and in light of the benefits of using EMFAC2017-derived budgets prior to our taking final action on the future SIP revision that includes the updated budgets.

Pursuant to CAA section 110(k)(3), the EPA proposes to disapprove the contingency measure element of the 2016 $PM_{2.5}$ Plan for the 2012 $PM_{2.5}$ NAAQS, as revised in the 2018 $PM_{2.5}$ Plan and supplemented by section 5.7.3 of District Rule 4901, and the contingency measure element of the 2018 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS, as supplemented by section 5.7.3 of District Rule 4901, because, among other reasons, the elements include no specific measures to be undertaken if the state fails to submit a quantitative milestone report for the area, or if the area fails to meet RFP or a quantitative milestone. In addition, with respect to the contingency measure element in the 2018 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS (as supplemented by section 5.7.3 of District Rule 4901), the element includes a specific measure that may not result in any emissions reductions following a failure to attain the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date under certain circumstances.

If we finalize the disapproval of the contingency measure elements as proposed, the offset sanction in CAA section 179(b)(2) would apply in the SJV 18 months after the effective date of a final disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed.[280] Neither sanction will be imposed under the CAA if the State submits and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies that we identify in our final action. The EPA intends to work with CARB and the SJVUAPCD to correct the deficiencies in a timely manner.

In addition to the sanctions, CAA section 110(c)(1) provides that the EPA must promulgate a federal implementation plan (FIP) addressing any disapproved elements of the plan two years after the effective date of disapproval unless the State submits, and the EPA approves, the required SIP submittal. As a result of the EPA's December 6, 2018 determination that California had failed to submit the required contingency measures for the 2006 $PM_{2.5}$ NAAQS and the 2012 $PM_{2.5}$ NAAQS, among other required SIP submissions for the SJV,[281] the EPA is already subject to a statutory deadline to promulgate a FIP for this purpose no later than two years after the effective date of that determination.[282]

Also, because we previously approved the Serious area plan RFP and attainment demonstrations and the motor vehicle emissions budgets for the 2006 $PM_{2.5}$ NAAQS,[283] and because in this proposed rule we are proposing to approve the Moderate area plan RACM, additional reasonable measures, and RFP demonstrations, and motor vehicle emission budgets for the 2012 $PM_{2.5}$ NAAQS, we are proposing to issue a protective finding under 40 CFR 93.120(a)(3) to the disapproval of the contingency measures elements. Without a protective finding, the final disapprovals would result in a conformity freeze, under which only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Programs (TIP) can proceed. Generally, during a freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, the EPA finds its motor vehicle emissions budget(s) adequate pursuant to § 93.118 or approves the submission, and conformity to the implementation plan revision is determined.[284] Under a protective finding, the final disapproval of the contingency measures elements would not result in a transportation conformity freeze in the SJV $PM_{2.5}$ nonattainment area and the MPOs may continue to make transportation conformity determinations.

Finally, pursuant to CAA section 188(b)(1), the EPA is proposing to reclassify the SJV $PM_{2.5}$ nonattainment area, including reservation areas of Indian country and any other area where the EPA or a tribe has demonstrated that a tribe has jurisdiction within the SJV, as Serious nonattainment for the 2012 $PM_{2.5}$ standard based on the agency's determination that the SJV cannot practicably attain the standard by the Moderate area attainment date of December 31, 2021. Upon final reclassification as a Serious area, California will be required to submit, within 18 months after the effective date of the reclassification, an emissions inventory, provisions to assure that BACM shall be implemented no later than four years after the date of reclassification, and any NNSR SIP revisions required to satisfy the requirements of CAA sections 189(b)(3) and 189(e). California will also be required to submit, by December 31, 2023, a Serious area plan that satisfies the requirements of part D of title I of the Act. This plan must include a demonstration that the SJV will attain the 2012 $PM_{2.5}$ standard as expeditiously as practicable but no later than December 31, 2025, or by the most expeditious alternative date practicable and no later than December 31, 2030, in accordance with the requirements of CAA sections 189(b) and 188(e).

We note that the 2018 $PM_{2.5}$ Plan, submitted concurrently with the 2016 $PM_{2.5}$ Plan on May 10, 2019, includes a Serious area attainment demonstration, emissions inventory, attainment-related plan elements, and BACM/BACT provisions. The State also submitted a SIP submission for the Serious area NNSR requirements on November 20,

[280] 40 CFR 52.31.

[281] 83 FR 62720.

[282] Id.

[283] 85 FR 44192.

[284] 40 CFR 93.120(a)(2).

2019. The EPA intends to evaluate and act on the Serious area plan and NNSR SIP submissions for the 2012 $PM_{2.5}$ NAAQS in the SJV through separate rulemakings, as appropriate.[285]

In addition, because the EPA is proposing to similarly reclassify reservation areas of Indian country and any other area of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction within the SJV $PM_{2.5}$ nonattainment area as Serious nonattainment for the 2012 $PM_{2.5}$ standard, consistent with our proposed reclassification of the surrounding non-Indian country lands, the EPA has invited consultation with interested tribes concerning this issue. Although eligible tribes may seek the EPA's approval of relevant tribal programs under the CAA, none of the affected tribes will be required to submit an implementation plan as a result of this reclassification.

We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this proposed rule.

IX. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www.epa.gov/lawsregulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

The proposed actions are not a significant regulatory action and were therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

The proposed actions do not impose an information collection burden under the PRA because they do not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that the proposed actions will not have a significant economic impact on a substantial number of small entities under the RFA. The proposed actions will not impose any requirements on small entities. This proposed rule would approve or disapprove State plans as meeting federal requirements and would not impose additional requirements beyond those imposed by State law. Additionally, the proposed rule would reclassify the SJV nonattainment area as Serious nonattainment for the 2012 $PM_{2.5}$ NAAQS and would not itself regulate small entities.

D. Unfunded Mandates Reform Act (UMRA)

The proposed actions do not contain an unfunded mandate of $100 million or more as described in UMRA, and does not significantly or uniquely affect small governments. This proposed rule would approve or disapprove State plans as meeting federal requirements and would not impose additional requirements beyond those imposed by State law. Additionally, the proposed rule would reclassify the SJV nonattainment area as Serious nonattainment for the 2012 $PM_{2.5}$ NAAQS and would not itself impose any federal intergovernmental mandate. The proposed actions would not require any tribe to submit implementation plans.

E. Executive Order 13132: Federalism

The proposed actions do not have federalism implications. They will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

Eight Indian tribes are located within the boundaries of the SJV nonattainment area for the 2012 $PM_{2.5}$ NAAQS: The Big Sandy Rancheria of Western Mono Indians of California, the Cold Springs Rancheria of Mono Indians of California, the Northfork Rancheria of Mono Indians of California, the Picayune Rancheria of Chukchansi Indians of California, the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, the Table Mountain Rancheria, the Tejon Indian Tribe, and the Tule River Indian Tribe of the Tule River Reservation, California.

The EPA's proposed actions on the SIP elements submitted by California to address the Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS and the contingency measure requirement for the 2006 $PM_{2.5}$ NAAQS would not have tribal implications because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed actions on the SIP submittals do not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

The EPA has concluded that the proposed reclassification might have tribal implications for the purposes of Executive Order 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. The proposed reclassification from Moderate to Serious for a $PM_{2.5}$ NAAQS would typically affect the EPA's implementation of the new source review program because of the lower ''major source'' threshold triggered by reclassification (70 tons per year for direct $PM_{2.5}$ and precursors to $PM_{2.5}$). However, because the SJV nonattainment area is already classified as Serious for the 1997 and 2006 $PM_{2.5}$ NAAQS, the lower thresholds already apply within the nonattainment area, and the proposed reclassification from Moderate to Serious for the 2012 $PM_{2.5}$ NAAQS would have no additional effect. The same is true for any tribal projects that require federal permits, approvals, or funding. Such projects are subject to the requirements of the EPA's general conformity rule, and federal permits, approvals, or funding for the projects would typically become more difficult to obtain because of the lower de minimis thresholds triggered by reclassification but, in this case, the lower de minimis thresholds already apply within the SJV.

Given the potential implications, the EPA contacted tribal officials during the process of developing this proposed rule to provide an opportunity to have meaningful and timely input into its development. On March 3, 2021, we sent letters to leaders of the eight tribes with areas of Indian country in the SJV nonattainment area inviting government-to-government consultation on the rulemaking effort. We requested that the tribal leaders, or their

[285] We are establishing deadlines for submittal of SIP revisions that have already been submitted to timely address any elements that may be withdrawn in the future.

designated consultation representatives, notify us of their interest in government-to-government consultation by April 5, 2021. We intend to continue communicating with all eight tribes located within the boundaries of the SJV nonattainment area for the 2012 $PM_{2.5}$ NAAQS as we move forward in developing a final rule. The EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. The proposed rule is not subject to Executive Order 13045 because it would approve or disapprove a State plan implementing a federal standard, and reclassify the SJV nonattainment area as Serious nonattainment for the 2012 $PM_{2.5}$ NAAQS, triggering Serious area planning requirements under the CAA. This proposed action does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA has determined that the proposed actions will not have potential disproportionately high and adverse human health or environmental effects on minority or low-income populations because they do not affect the level of protection provided to human health or the environment. The proposed actions would only approve or disapprove State plans implementing a federal standard, and reclassify the SJV nonattainment area as Serious nonattainment for the 2012 $PM_{2.5}$ NAAQS, triggering additional Serious area planning requirements under the CAA.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, Particulate matter.

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

Dated: August 25, 2021.

Elizabeth Adams,

Acting Regional Administrator, Region IX.

[FR Doc. 2021–18764 Filed 8–31–21; 8:45 am]

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Part III

Department of Energy

10 CFR Parts 429, 430, and 431

Energy Conservation Program: Test Procedures for Residential and Commercial Clothes Washers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429, 430 and 431

[EERE–2016–BT–TP–0011]

RIN 1904–AD95

Energy Conservation Program: Test Procedures for Residential and Commercial Clothes Washers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking, request for comment, and announcement of webinar.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedures for residential and commercial clothes washers to specify test conditions, instrument specifications, and test settings; address large clothes container capacities; add product-specific enforcement provisions; delete obsolete provisions; and consolidate all test cloth-related provisions and codify additional test cloth material verification procedures used by industry. DOE also proposes to create a new test procedure for residential and commercial clothes washers with additional modifications for certain test conditions, measurement of average cycle time, required test cycles, tested load sizes, semi-automatic clothes washer provisions, new performance metrics, and updated usage factors. The proposed new test procedure would be used for the evaluation and issuance of updated efficiency standards, as well as to determine compliance with the updated standards. As part of this proposal, DOE is announcing a webinar to collect comments and data on this proposal. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than November 1, 2021. See section V, ''Public Participation,'' for details. DOE will hold a webinar on Tuesday, September 14, 2021, from 10:00 a.m. to 3:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, by email to the following address: *ResClothesWasher2016TP0011@ee.doe.gov.* Include ''Energy Conservation Program: Test Procedures for Residential and Commercial Clothes Washers'' and docket number EERE–2016–BT–TP–0011 and/or RIN number 1904–AD95 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing corona virus 2019 (''COVID–19'') pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *www.regulations.gov/docket/EERE-2016-BT-TP-0011.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2002. Email: *Kathryn.McIntosh@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the webinar, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to incorporate by reference the following standards into part 430.

American Association of Textile Chemists and Colorists (''AATCC'') Test Method 79–2010, ''Absorbency of Textiles,'' Revised 2010.

AATCC Test Method 118–2007, ''Oil Repellency: Hydrocarbon Resistance Test,'' Revised 2007.

AATCC Test Method 135–2010, ''Dimensional Changes of Fabrics after Home Laundering,'' Revised 2010.

Copies of AATCC test methods can be obtained from AATC, P.O. Box 12215, Research Triangle Park, NC 27709, (919) 549–3526, or by going to *www.aatcc.org.*

International Electrotechnical Commission (''IEC'') 62301, ''Household electrical appliances—Measurement of standby power,'' (Edition 2.0, 2011–01).

Copies of IEC 62301 are available from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or by going to *webstore.ansi.org.*

For a further discussion of these standards, see section IV.M of this document.

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I. Authority and Background

Consumer (residential) clothes washers (''RCWs'') are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6292(a)(7)) DOE's energy conservation standards and test procedures for RCWs are currently prescribed at title 10 of the Code of Federal Regulations (''CFR''), part 430 section 23(j), and subpart B appendices J1 (''Appendix J1'') and J2 (''Appendix J2''). DOE also prescribes a test method for measuring the moisture absorption and retention characteristics of new lots of energy test cloth, which is used in testing clothes washers, at appendix J3 to subpart B (''Appendix J3''). Commercial clothes washers (''CCWs'') are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(H)) The test procedures for CCWs must be the same as those established for RCWs. (42 U.S.C. 6314(a)(8)) The following sections discuss DOE's authority to establish test procedures for RCWs and CCWs and relevant background information regarding DOE's consideration of test procedures for these products and equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B[2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include RCWs. (42 U.S.C. 6292(a)(7)) Title III, Part C[3] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment. This equipment includes CCWs. (42 U.S.C. 6311(1)(H)) Both RCWs and CCWs are the subject of this document.

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291; 42 U.S.C. 6311), test procedures (42 U.S.C. 6293; 42 U.S.C. 6314), labeling provisions (42 U.S.C. 6294; 42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6295; 42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6296; 42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s); 42 U.S.C. 6316(a)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c); 42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the products and equipment comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s); 42 U.S.C. 6316(a))

Federal energy efficiency requirements for covered products and equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297; 42 U.S.C. 6316(a) and (b)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d); 42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6293 and 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products and equipment, respectively. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product or equipment during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A))

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for and incorporate standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii)) [4] Any such amendment must consider the most current versions of the IEC Standard 62301 [5] and IEC Standard 62087 [6] as applicable. (42 U.S.C. 6295(gg)(2)(A))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including RCWs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. (42 U.S.C. 6293(b)(2)) The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days.[7] *Id.* In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. *Id.* If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

EPCA requires the test procedures for CCWs to be the same as the test procedures established for RCWs. (42 U.S.C. 6314(a)(8)) As with the test procedures for RCWs, EPCA requires that DOE evaluate, at least once every 7 years, the test procedures for CCWs to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

DOE is publishing this notice of proposed rulemaking (''NOPR'') in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A); 42 U.S.C.6314(a)(1))

B. Background

As discussed, DOE's existing test procedures for clothes washers appear in Appendix J1, Appendix J2, and Appendix J3.

DOE originally established its clothes washer test procedure, codified at 10 CFR part 430, subpart B, appendix J (''Appendix J''),[8] in a final rule published Sept. 28, 1977. 42 FR 49802 (''September 1977 Final Rule''). Since that time, the test procedure has undergone several amendments that are relevant to this rulemaking, summarized as follows and described in additional detail in a request for information (''RFI'') that DOE published on May 22, 2020. 85 FR 31065 (''May 2020 RFI'').

DOE amended Appendix J in August 1997 (62 FR 45484 (Aug. 27, 1997); ''August 1997 Final Rule'') and January 2001 (66 FR 3313 (Jan. 12, 2001); ''January 2001 Final Rule''). The August 1997 Final Rule also established an Appendix J1. 62 FR 45484. DOE amended Appendix J1 in the January 2001 Final Rule (66 FR 3313) and in March 2012. 77 FR 13887 (Mar. 7, 2012) (''March 2012 Final Rule''). The March 2012 Final Rule also established a new test procedure at Appendix J2 and removed the obsolete Appendix J–2001. *Id.*[9]

DOE most recently amended both Appendix J1 and Appendix J2 in a final rule published on August 5, 2015. 80 FR 46729 (''August 2015 Final Rule''). The August 2015 Final Rule also moved the test cloth qualification procedures from Appendix J1 and Appendix J2 to the newly created Appendix J3. 80 FR 46729, 46735.

The current version of the test procedure at Appendix J2 includes provisions for determining modified energy factor (''MEF'') and integrated modified energy factor (''IMEF'') in cubic feet per kilowatt-hour per cycle (''ft^3/kWh/cycle''); and water factor (''WF'') and integrated water factor (''IWF'') in gallons per cycle per cubic feet (''gal/cycle/ft^3''). RCWs manufactured on or after January 1, 2018, must meet current energy conservation standards, which are based on IMEF and IWF, determined using Appendix J2. 10 CFR 430.32(g)(4); 10 CFR 430.23(j)(2)(ii) and (4)(ii). CCWs manufactured after January 1, 2018 must meet current energy conservation standards, which are based on MEF and IWF, determined using Appendix J2. 10 CFR 431.154 and 10 CFR 431.156(b).

DOE published the May 2020 RFI to initiate an effort to determine whether to amend the current test procedures for clothes washers. 85 FR 31065. DOE requested comment on specific aspects of the current test procedure, including product definitions and configurations, testing conditions and instrumentation,

[4] EPCA does not contain an analogous provision for commercial equipment.

[5] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[6] IEC 62087, *Methods of measurement for the power consumption of audio, video, and related equipment* (Edition 3.0, 2011–04).

[7] DOE has historically provided a 75-day comment period for test procedure NOPRs, consistent with the comment period requirement for technical regulations in the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. § 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, Congress repealed the NAFTA Implementation Act and has replaced NAFTA with the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11, thereby rendering E.O. 12889 inoperable. Consequently, since the USMCA is consistent with EPCA's public comment period requirements and normally requires only a minimum comment period of 60 days for technical regulations, DOE now provides a 60-day public comment period for test procedure NOPRs.

[8] In this NOPR, to distinguish different versions of each test method, DOE uses the following nomenclature: Appendix [letter]-[year of amendment]. For example, the original version of Appendix J is referred to as Appendix J–1977. The version as amended by the August 1997 Final Rule is referred to as Appendix J–1997, and so forth.

[9] In that rulemaking, DOE also adopted procedures to measure standby mode and off mode energy consumption into the energy efficiency metrics in the then-newly created Appendix J2. Manufacturers were not required to incorporate those changes until the compliance date of an amended standard. 77 FR 13887, 13932. Amended standards were then adopted through a direct final rule that required the use of Appendix J2 for RCWs manufactured on or after the 2015 compliance date. 77 FR 32308, 32313 (May 31, 2012). The newly proposed Appendix J in this NOPR follows a similar approach because manufacturers would not be required to incorporate the amendments proposed in Appendix J until the compliance date of an amended standard.

measurement methods, representative usage and efficiency factors, and metric definitions. 85 FR 31065, 31067–31082 (May 22, 2020). In response to stakeholder requests, DOE re-opened the comment period for the May 2020 RFI. 85 FR 38106 (June 25, 2020).

On December 16, 2020, DOE established separate product classes for top-loading RCWs with a cycle time of less than 30 minutes and for front-loading RCWs with a cycle time of less than 45 minutes. 85 FR 81359 (''December 2020 Final Rule''). DOE is re-evaluating the new short-cycle product classes in response to Executive Order 13900, ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'' 86 FR 7037 (Jan. 25, 2021). In addition, stakeholders and interested parties filed multiple lawsuits challenging the December 2020 Final Rule, and DOE has received several petitions for reconsideration of the December 2020 Final Rule.

DOE received comments in response to the May 2020 RFI from the interested parties listed in Table I.1.

TABLE I.1—WRITTEN COMMENTS RECEIVED IN RESPONSE TO MAY 2020 RFI

Commenter(s)	Reference in this NOPR	Commenter type
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, National Consumer Law Center, Natural Resources Defense Council.	Joint Commenters	Efficiency Organizations.
Association of Home Appliance Manufacturers	AHAM	Trade Association.
Electrolux Home Products	Electrolux	Manufacturer.
GE Appliances	GEA	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	Efficiency Organization.
Pacific Gas and Electric Company, Southern California Edison, San Diego Gas & Electric Company.	California Investor-Owned Utilities (''CA IOUs'').	Utilities.
Samsung Electronics America	Samsung	Manufacturer.
Underwriters Laboratories	UL	Third-Party Test Laboratory.
Whirlpool Corporation	Whirlpool	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[10]

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to update Appendix J2 as follows:

(1) Further specify supply water temperature test conditions and water meter resolution requirements;

(2) Add specifications for measuring wash water temperature using submersible data loggers;

(3) Expand the load size table to accommodate clothes container capacities up to 8.0 cubic feet (''ft^3'');

(4) Define ''user-adjustable automatic water fill control;''

(5) Specify the applicability of the wash time setting for clothes washers with a range of wash time settings;

(6) Specify how the energy test cycle flow charts apply to clothes washers that internally generate hot water;

(7) Specify that the energy test cycle flow charts are to be evaluated using the Maximum load size;

(8) Specify that testing is to be conducted with any network settings disabled if instructions are available to the user to disable these functions;

(9) Further specify the conditions under which data from a test cycle would be discarded;

(10) Add product-specific enforcement provisions to accommodate the potential for test cloth lot-to-lot variation in remaining moisture content (''RMC'');

(11) Delete obsolete definitions, metrics, and the clothes washer-specific waiver section; and

(12) Move additional test cloth related specifications to Appendix J3.

In this NOPR, DOE is also proposing to update 10 CFR part 430, subpart B, appendix J3, ''Uniform Test Method for Measuring the Moisture Absorption and Retention Characteristics,'' as follows:

(1) Consolidate all test cloth-related provisions, including those proposed to be moved from Appendix J2;

(2) Reorganize sections for improved readability; and

(3) Codify the test cloth material verification procedure as used by industry.

In this NOPR, DOE is also proposing to create a new appendix J to 10 CFR part 430, subpart B, ''Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers,'' which would be used for the evaluation and issuance of any updated efficiency standards, as well as to determine compliance with the updated standards, should DOE determine that amended standards are warranted based on the criteria established by EPCA.[11] The proposed new Appendix J would include the following additional provisions beyond those proposed as amendments to Appendix J2:

(1) Modify the hot water supply target temperature and clothes washer pre-conditioning requirements;

(2) Modify the Extra-Hot Wash threshold temperature;

(3) Add measurement and calculation of average cycle time;

(4) Reduce the number of required test cycles by requiring the use of no more than two Warm Wash/Cold Rinse cycles, and no more than two Warm Wash/Warm Rinse cycles;

(5) Reduce the number of required test cycles by removing the need for one or more cycles used for measuring RMC;

(6) Reduce the number of load sizes from three to two for units with automatic water fill controls;

(7) Modify the load size definitions consistent with two, rather than three, load sizes;

(8) Update the water fill levels to be used for testing to reflect the modified load size definitions;

(9) Specify the installation of single-inlet clothes washers, and simplify the test procedure for semi-automatic clothes washers;

(10) Define new performance metrics that are functions of the weighted-average load size rather than clothes

[10] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for clothes washers. (Docket No. EERE–2016–BT–TP–0011, which is maintained at *www.regulations.gov/docket/EERE-2016-BT-TP-0011*). The references are arranged as follows: (Commenter name, comment docket ID number, page of that document).

[11] Information regarding the ongoing RCW and CCW energy conservation standards rulemakings can be found at docket numbers EERE–2017–BT–STD–0014 and EERE–2019–BT–STD–0044, respectively.

container capacity: ''energy efficiency ratio,'' ''active-mode energy efficiency ratio,'' and ''water efficiency ratio;''

(11) Update the number of annual clothes washer cycles from 295 to 234; and

(12) Update the number of hours assigned to low-power mode to be based on the clothes washer's measured cycle time rather than an assumed fixed value.

Finally, in this NOPR, DOE is proposing to remove Appendix J1 and to update the relevant sections of 10 CFR parts 429, 430 and 431 in accordance with the edits discussed previously, and to modify the product-specific enforcement provisions regarding the determination of RMC.

DOE's proposed actions are summarized in Table II.1 compared to the current test procedures as well as the reason for the proposed change.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURES RELATIVE TO CURRENT TEST PROCEDURES

Current DOE test procedure	Proposed test procedure	Attribution
Specifies a water meter resolution of no larger than 0.1 gallons.	Requires a water meter with a resolution no larger than 0.01 gallons if the hot water use is less than 0.1 gallons, in Appendices J and J2.	Improve representativeness of test results.
Does not specify how to install clothes washers with a single inlet.	Specifies installing clothes washers with a single inlet to the cold water inlet, in Appendix J.	Provide further direction for unaddressed feature.
Specifies a hot water supply temperature of 130–135 °F.	Specifies a hot water supply temperature of 120–125 °F, in Appendix J.	Improve representativeness of test results.
Defines the Extra-Hot Wash threshold as 135 °F	Specifies an Extra-Hot Wash threshold of 140 °F, in Appendix J.	Improve representativeness of test results.
Specifies a target water supply temperature at the high end of the water supply temperature range.	Removes the target water temperature specification, in Appendices J and J2.	Reduce test burden.
Specifically allows the use of temperature indicating labels for measuring wash water temperature.	Adds specification for using a submersible temperature logger to measure wash water temperature, in Appendices J and J2.	Reduce test burden.
Specifies different pre-conditioning requirements for water-heating and non-water-heating clothes washers.	Requires the same pre-conditioning requirements for all clothes washers, in Appendix J.	Improve reproducibility of test results.
Specifies the test load sizes for clothes container capacities up to 6.0 ft^3.	Specifies the test load sizes for clothes container capacities up to 8.0 ft^3, in Appendices J and J2.	Response to waiver.
Requires 3 tested load sizes on clothes washers with automatic water fill control systems.	Reduces the number of load sizes to test to 2, and specifies new load sizes, in Appendix J.	Reduce test burden.
Defines load sizes for each 0.1 ft^3 increment in clothes container capacity.	Redefines load sizes for each increment in clothes container capacity, consistent with reduction from 3 to 2 load sizes, in Appendix J.	Maintain representativeness.
Defines water fill levels to use with each tested load sizes on clothes washers with manual water fill control systems.	Changes the water fill levels consistent with the updated load sizes, in Appendix J.	Maintain representativeness.
Requires testing up to 3 Warm Wash temperature selections.	Requires testing a maximum of 2 Warm Wash temperature selections, in Appendix J.	Reduce test burden.
Specifies that the RMC is to be measured on separate cycle(s) from the energy test cycle.	Specifies that the RMC is to be measured on all energy test cycles, in Appendix J.	Reduce test burden, improve representativeness of test results.
Provides product-specific enforcement provisions to address anomalous RMC results that are not representative of a basic model's performance.	Provides additional product-specific enforcement provisions to accommodate differences in RMC values that may result from DOE using a different test cloth lot than was used by the manufacturer for testing and certifying the basic model, for Appendices J and J2.	Accommodate potential source of variation in enforcement testing.
Specifies that the starting weight of the test cloth may be up to 104 percent of bone-dry.	Requires that the test cloth be bone-dry at the start of every test cycle, in Appendix J.	Improve reproducibility of test results.
Does not specify a measure of cycle time	Specifies provisions for measuring cycle time, in Appendix J.	Improve representativeness of test results.
Specifies discarding data from a wash cycle that provides a visual or audio indicator to alert the user that an out-of-balance condition has been detected, or that terminates prematurely if an out-of-balance condition is detected.	Specifies discarding the test data if during a wash cycle the clothes washer signals the user by means of a visual or audio alert that an out-of-balance condition has been detected or terminates prematurely, in Appendices J and J2.	Response to test laboratory question.
Does not explicitly state how to test semi-automatic clothes washers.	Provides explicit test provisions for testing semi-automatic clothes washers, in Appendix J.	Provide further direction for unaddressed feature.
Does not explicitly address the required configuration for network-connected functionality.	Specifies that clothes washers with connected functionality shall be tested with the network-connected functions disabled if such settings can be disabled by the end-user, and the product's user manual provides instructions on how to do so, in Appendices J and J2.	Improve reproducibility of test results.
Defines metrics that are dependent on capacity (IMEF, MEF, IWF).	Specifies new metrics that are dependent on the weighted-average load size, in Appendix J.	Improve representativeness of test results.
Estimates the number of annual use cycles for clothes washers as 295, based on the 2005 Residential Energy Consumption Survey (''RECS'') data.	Updates the estimate to 234 cycles per year, based on the latest available 2015 RECS data, in Appendix J.	Update with more recent consumer usage data.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURES RELATIVE TO CURRENT TEST PROCEDURES—Continued

Current DOE test procedure	Proposed test procedure	Attribution
Estimates the number of hours spent in low-power mode as 8,465, based on 295 cycles per year and an assumed 1-hour cycle time.	Calculates the number of hours spent in low-power mode for each clothes washer based on 234 cycles per year and measured cycle time, in Appendix J.	Improve representativeness of test results.
Does not specify how to test a clothes washer that does not provide water inlet hoses.	Specifies using a water inlet hose length of no more than 72 inches, in Appendix J.	Response to test laboratory question.
Does not provide an explicit definition for ''user-adjustable automatic water fill controls'' or ''wash time''.	Provides a definition for ''user-adjustable automatic water fill controls,'' in Appendix J and for ''wash time,'' in Appendices J and J2.	Improve readability.
Specifies that user-adjustable automatic clothes washers must be tested with the water fill setting in the most or least energy-intensive setting without defining energy-intensive.	Changes the wording to specify selecting the setting based on the most, or least, amount of water used, in Appendices J and J2.	Response to test laboratory question.
Does not specify on which load size to evaluate the energy test cycle flow charts.	Specifies evaluating the flow charts using the maximum load size for Appendix J2 and the large load size for Appendix J.	Response to test laboratory question, improve reproducibility of test results.
Does not explicitly address how to evaluate the Cold/Cold energy test cycle flow chart for clothes washers that internally generate hot water.	Explicitly addresses clothes washers that internally generate hot water, in Appendices J and J2.	Response to test laboratory question.
Does not provide direction for all control panel styles on clothes washers that offer a range of wash time settings.	Clarifies how to test cycles with a range of wash time settings, in Appendices J and J2.	Improve readability.
Includes test cloth verification specifications in Appendix J2.	Moves all test cloth related provisions to Appendix J3.	Improve readability.
Does not include all aspects of test cloth verification procedures performed by industry.	Codifies additional test cloth verification procedures performed by industry, in Appendix J3.	Codify industry practice.
Contains obsolete provisions	Updates or deletes obsolete provisions, including Appendix J1 in its entirety.	Improve readability.

DOE has tentatively determined that the proposed amendments to Appendix J2 and Appendix J3 described in section III of this document would not alter the measured efficiency of clothes washers, and that the proposed test procedures would not be unduly burdensome to conduct.

DOE has tentatively determined that the proposed amendments in the new Appendix J would alter the measured efficiency of clothes washers, in part because the amended test procedures would adopt a different energy efficiency metric and water efficiency metric than in the current test procedure. Because the proposed new Appendix J would be used for the evaluation and issuance of updated efficiency standards, DOE is proposing that use of new Appendix J, if finalized, would not be required until the compliance date of any updated standards. Discussion of DOE's proposed actions are addressed in detail in section III of this document.

III. Discussion

In the following sections, DOE describes the proposed amendments to the test procedures for residential and commercial clothes washers. This NOPR includes issues identified in previous rulemakings and discusses additional issues that DOE has become aware of since the completion of the August 2015 Final Rule. DOE seeks input from the public to assist with its consideration of the proposed amendments presented in this document. In addition, DOE welcomes comments on other relevant issues that may not specifically be identified in this document.

A. General Comments

DOE received a number of general comments from stakeholders, as summarized below.

AHAM commented generally that no test can be considered ''reasonably designed'' under EPCA if the test is not accurate, repeatable, and reproducible. AHAM stated that test procedures with significant variation do not allow consumers to make informed purchase decisions based on energy use/efficiency and do not adequately serve the purpose of demonstrating compliance with energy conservation standards. (AHAM, No. 5 at p. 2) AHAM also claimed that as energy conservation standards become more stringent, minimizing variation in test procedure results becomes more important because of the need for manufacturers to conservatively rate their products. AHAM asserted that lack of uniform test results requires manufacturers to rate more conservatively, which effectively makes the standard more stringent in practice. *Id.*

AHAM commented that the clothes washer test procedure is one of the most burdensome DOE test procedures for consumer appliances. AHAM provided an example that a full-featured clothes washer (one that includes manual and user-adjustable automatic water fill control systems (''WFCS''), a heater, four warm wash temperatures, warm rinse, and selectable spin speeds) could require more than 70 test cycles per unit under Appendix J2. (AHAM, No. 5 at pp. 4–5) GEA similarly commented that DOE should work to reduce test burden for full-featured clothes washers, stating that requiring 70 individual cycles for a single test of certain clothes washers demonstrates that the clothes washer test procedure has become overly complicated and fails to fulfill the representativeness requirement under the EPCA. (GEA, No. 13 at p. 2)

AHAM requested that if DOE implements any changes that will significantly impact measured energy, DOE should require compliance with the revised test procedure on the same date as the next amended energy conservation standards for clothes washers. (AHAM, No. 5 at p. 16)

Electrolux, GEA, and Whirlpool support AHAM's comments to the RFI. (Electrolux, No. 11 at p. 1; GEA, No. 13 at p. 1; Whirlpool, No. 7 at p. 1) GEA incorporates them into its own comments by reference. (GEA, No. 13 at

p. 1) Whirlpool further supports a reasonable balancing of the DOE test procedure, considering repeatability, reproducibility, representativeness, and testing burden. (Whirlpool, No. 7 at p. 1)

As stated, EPCA requires that any test procedures be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product or equipment during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)) As described in this NOPR, DOE is proposing a number of changes to be implemented in a proposed new Appendix J that DOE has tentatively concluded would significantly reduce test burden while maintaining or improving the representativeness of test results. In addition, both the amendments to Appendix J2 and the proposed new Appendix J are intended to further improve the repeatability and reproducibility of test results, as described in the relevant sections of this document.

DOE is proposing to establish a new test procedure at a new Appendix J at 10 CFR part 430 subpart B. Any changes to the test procedure that would impact measured efficiency would be provided in this proposed new Appendix J, which DOE would use for the evaluation and issuance of updated efficiency standards. Therefore, DOE is proposing that use of new Appendix J would not be required until the compliance date of any updated standards that are based on new Appendix J. (42 U.S.C. 6295(gg)(2)(C)). DOE also proposes to state in the introductory text to both Appendix J2 and the proposed new Appendix J that Appendix J2 is required to determine compliance with energy conservation standards until any such amended standards are adopted.

B. Scope of Coverage

This NOPR covers those consumer products that meet the definition of ''clothes washer,'' as codified at 10 CFR 430.2.

EPCA does not define the term ''clothes washer.'' DOE has defined a ''clothes washer'' as a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement, that must be one of the following classes: Automatic clothes washers, semi-automatic clothes washers, and other clothes washers. 10 CFR 430.2.

An ''automatic clothes washer'' is a class of clothes washer that has a control system that is capable of scheduling a preselected combination of operations, such as regulation of water temperature, regulation of the water fill level, and performance of wash, rinse, drain, and spin functions without the need for user intervention subsequent to the initiation of machine operation. Some models may require user intervention to initiate these different segments of the cycle after the machine has begun operation, but they do not require the user to intervene to regulate the water temperature by adjusting the external water faucet valves. *Id.*

A ''semi-automatic clothes washer'' is a class of clothes washer that is the same as an automatic clothes washer except that user intervention is required to regulate the water temperature by adjusting the external water faucet valves. *Id.*

''Other clothes washer'' means a class of clothes washer that is not an automatic or semi-automatic clothes washer. *Id.*

This NOPR also covers commercial equipment that meets the definition of ''commercial clothes washer.'' ''Commercial clothes washer'' is defined as a soft-mount front-loading or soft-mount top-loading clothes washer that—

(A) Has a clothes container compartment that—

(i) For horizontal-axis clothes washers, is not more than 3.5 cubic feet; and

(ii) For vertical-axis clothes washers, is not more than 4.0 cubic feet; and

(B) Is designed for use in—

(i) Applications in which the occupants of more than one household will be using the clothes washer, such as multi-family housing common areas and coin laundries; or

(ii) Other commercial applications.

(42 U.S.C. 6311(21); 10 CFR 431.452)

DOE is not proposing any changes to the scope of products and equipment covered by its clothes washer test procedures, or to the relevant definitions.

C. Testing Conditions and Instrumentation

1. Water Meter Resolution

Section 2.5.5 of Appendix J2 requires the use of water meters (in the hot and cold water lines) with a resolution no larger than 0.1 gallons and a maximum error no greater than 2 percent of the measured flow rate. DOE has observed that some clothes washers use very small amounts of hot water on some temperature selections, on the order of 0.1 gallons or less. 85 FR 31065, 31069. For example, some clothes washers have both Cold and Tap Cold temperature selections, and the Cold selection may use a fraction of a gallon of hot water. 85 FR 31065, 31070. DOE believes that Appendix J2 may not provide the necessary resolution to accurately and precisely measure the hot water usage of such temperature selections. *Id.* In the May 2020 RFI, DOE requested input on whether to amend section 2.5.5 of Appendix J2 to require that water meters must have a resolution more precise than 0.1 gallons. *Id.*

The Joint Commenters encouraged DOE to require a water meter with greater precision than that of the current specification to ensure that the test procedures are accurately representing energy use. (Joint Commenters, No. 10 at p. 3)

AHAM commented that requiring more precise water meters could provide a benefit by increasing the accuracy of the measurements but could also increase the burden due to the cost of obtaining these meters that could become overly burdensome. (AHAM, No. 5 at p. 7)

GEA supported moving to a 0.01-gallon resolution for water meters. GEA stated that it uses water meters with this resolution and has encountered reproducibility issues when using a water meter with only 0.1-gallon resolution. (GEA, No. 13 at p. 2)

Whirlpool commented that requiring a more precise water meter is not justified. Whirlpool estimates that a manufacturer without these meters installed could face a cost of over $100,000 to purchase and install them, and cautioned that the need for a more precise water meter needs to be balanced with the cost burden. (Whirlpool, No. 7 at p. 1)

DOE has identified clothes washers on the market that use less than 0.1 gallons of hot water on certain temperature selections or load sizes required for testing. In DOE's experience with such clothes washers, the maximum load size typically uses more than 0.1 gallons of hot water on each of the available temperature selections (providing indication of which temperature selections use hot water), whereas the average and minimum load sizes may use a quantity less than 0.1 gallons. For these clothes washers, the existing water meter resolution of 0.1 gallons is insufficient to provide an accurate measurement of hot water consumption, *i.e.,* the volume of hot water measured is less than the resolution of the water meter. To improve the representativeness of the water measurement, DOE is proposing a requirement to use a water meter with greater precision for clothes washers that use less than 0.1 gallons of hot water. DOE's testing suggests that

clothes washers that use such low volumes of heated water represent a minority of units on the market. Requiring greater water meter precision for all clothes washers would represent an undue burden for those clothes washer models for which water meters with the currently required level of precision provide representative results. DOE is therefore proposing that the hot water meter must have a resolution no larger than 0.01 gallons only for clothes washers with hot water usage less than 0.1 gallons in any of the individual cycles within the energy test cycle. All other clothes washers may continue to be tested using a water meter with a resolution no larger than 0.1 gallons. As noted by GEA's comment, some manufacturers may already be using water meters with this greater resolution, and DOE's experience working with third-party laboratories indicates that at least some third-party laboratories already use water meters with this greater resolution.

DOE is proposing to include in section 2.5.5 of both the proposed new Appendix J and Appendix J2 the following specification: ''If the volume of hot water for any individual cycle within the energy test cycle is less than 0.1 gallons (0.4 liters), the hot water meter must have a resolution no larger than 0.01 gallons (0.04 liters).''

DOE requests comment on its proposal to require a hot water meter resolution no larger than 0.01 gallons for clothes washers that use less than 0.1 gallons in any of the individual cycles within the energy test cycle. DOE requests comment on the extent to which manufacturers and test laboratories already use water meters with this greater resolution. DOE also requests comment on whether proposing this requirement for Appendix J2 would require manufacturers to retest any basic models that have already been certified under the existing water meter resolution requirements.

2. Installation of Single-Inlet Machines

Section 2.10 of Appendix J2 provides specifications for installing a clothes washer, referencing both the hot water and cold water inlets. Additionally, section 2.5.5 of Appendix J2 specifies that a water meter must be installed in both the hot and cold water lines. DOE is aware of RCWs on the market that have a single water inlet rather than separate hot and cold water inlets. 85 FR 31065, 31070. DOE has observed two types of single-inlet RCWs: (1) Semi-automatic clothes washers, which are generally intended to be connected to a kitchen or bathroom faucet and which require user intervention to regulate the water temperature by adjusting the external water faucet valves; and (2) automatic clothes washers intended to be connected only to a cold water inlet, and which regulate the water temperature through the use of an internal heating element to generate any hot water used during the cycle. *Id.*

DOE stated in the May 2020 RFI that it understood that a ''Y''-shaped hose or other similar device may be provided by the manufacturer on some automatic models to allow separate cold and hot water supply lines to be connected to the single inlet on the unit; however, other models may not include such a connector. *Id.* In the May 2020 RFI, DOE inadvertently attributed the use of a Y-shaped hose to *automatic* single-inlet clothes washers (*emphasis added*)—rather, DOE intended to describe that *semi-automatic* single-inlet clothes washers may provide or accommodate the use of a Y-shaped hose, based on its experience with testing semi-automatic clothes washers.

For single-inlet semi-automatic clothes washers (*i.e.,* the first example described previously), DOE has observed that these clothes washers are most often designed to be connected to a kitchen or bathroom faucet, with a single hose connecting the faucet to the single inlet on the clothes washer (*i.e.,* both cold and hot water are supplied to the clothes washer through a single hose).[12] The user regulates the water temperature externally by adjusting the faucet(s) to provide cold, warm, or hot water temperatures for the wash and rinse portions of the cycle.

Section 3.2.3.2 of Appendix J2 provides setup instructions for semi-automatic clothes washers regarding the configuration of both cold and hot water faucets during testing. Specifically, the test procedure specifies that to obtain a hot inlet water temperature, open the hot water faucet completely and close the cold water faucet; for a warm inlet water temperature, open both hot and cold water faucets completely; and for a cold inlet water temperature, close the hot water faucet and open the cold water faucet completely. In the laboratory setup defined by section 2.2 of Appendix J2, the cold and hot water supplies are provided as separate hookups, in contrast to most faucets in residential settings, in which the cold and hot water supply lines combine internally within the faucet into a single output. Thus, the instructions in section 3.2.3.2 of Appendix J2 can be conducted only for either a semi-automatic clothes washer with both hot and cold water inlets (of which no such models are currently on the market, according to DOE research), or a single-inlet semi-automatic clothes washer installed with a Y-shaped hose or other similar device that combines the cold and hot water supply lines to connect to the single inlet on the unit (simulating most residential faucets, which combine the cold and hot water supply lines internally, as described). Appendix J2 does not, however, explicitly prescribe the use of a Y-shaped hose.

As described in the May 2020 RFI, without the use of a Y-shaped hose, connecting a single-inlet semi-automatic clothes washer to only a single water supply would limit the available water temperature to either 60 degrees Fahrenheit (''°F'') (provided by the cold water supply) or 135 °F (provided by the hot water supply), based on the supply water specifications currently provided in section 2.2 of Appendix J2. 85 FR 31065, 31070. In effect, only Cold Wash/Cold Rinse or Hot Wash/Hot Rinse could be tested with a single-hose installation. *Id.* As noted, Appendix J2 does not provide explicit direction on how to connect a single-inlet semi-automatic clothes washer to enable testing at other wash/rinse temperatures. *Id.* Therefore, DOE requested information on whether and how consumers using this type of clothes washer adjust their water temperature for the wash and rinse portions of the cycle and requested comments, data, and information on the typical connection and representative average use of single-inlet semi-automatic clothes washers. Additionally, DOE requested information on how manufacturers are currently testing single-inlet semi-automatic clothes washers under Appendix J2. *Id.*

No comments were received regarding installation or testing of single-inlet semi-automatic clothes washers.

Based on the previous discussion, DOE maintains that additional direction in the test procedure is warranted for single-inlet semi-automatic clothes washers to produce test results that reflect representative consumer usage of cold, warm, and hot wash/rinse temperatures. DOE considered three potential changes to address the installation of single-inlet semi-automatic clothes washers: (1) Require the use of a Y-shaped hose, which would be used to connect the single inlet of the clothes washer to both the cold and hot water supply connections; (2) connect the single inlet of the clothes washer to a single water supply

[12] As noted, some models may provide or accommodate a Y-shaped hose to connect the separate cold and hot water faucets or supply lines.

connection with a non-fixed temperature output that can be nominally set to 60 °F (for cold), 97.5 °F (for warm), or 135 °F (for hot), for example; or (3) require connection to only the cold water supply, enabling testing of only the Cold/Cold wash/rinse temperature, and calculate the energy and water performance at other wash/rinse temperatures formulaically from the Cold/Cold cycle data. As discussed in detail in the following paragraphs, DOE is proposing to adopt option 3 in this NOPR.

Regarding option 1, requiring the use of a Y-shaped hose would provide a simple and low-cost approach for testing of cold, warm, and hot wash/rinse temperatures on single-inlet semi-automatic clothes washers. The Y-shaped hose would mimic the functionality provided by most residential faucets, and thus would provide a representative installation setup. However, by connecting the cold and hot lines to each other, differences in water pressure [13] between the two sides can result in unequal and unrepeatable water flow rates through the cold and hot sides.

Regarding option 2, (requiring a non-fixed temperature supply line that can be set to the specified cold, warm, or hot temperature), DOE tentatively concludes that such a requirement could present undue test burden on laboratories that do not currently implement variable-temperature supply water controls and instrumentation, given the relatively low number of single-inlet semi-automatic models on the market that would be tested each year. In addition, because temperature sensors are typically calibrated around the target temperature being measured, varying the temperature of the supply line between 60 °F and 120 °F could result in less accurate inlet water temperature measurements.

Regarding option 3, (connecting to the cold water inlet only, testing only on the Cold/Cold cycle, and determining performance at other temperatures numerically), as discussed further in section III.D.8.b of this document, energy and water performance at temperatures other than Cold Wash/Cold Rinse can be calculated numerically using test data from the Cold/Cold cycle because the measured characteristics [14] of a semi-automatic clothes washer cycle do not depend on the inlet water temperature. Therefore, DOE tentatively concludes that representative test results can be obtained with a minimal number of test cycles using this approach, which DOE proposes to incorporate into the proposed new Appendix J.

DOE is proposing in this NOPR to make this change only in the proposed new Appendix J because connecting to only the cold water inlet may differ from how such units are currently being tested by manufacturers and laboratories under Appendix J2. DOE seeks information about implementing this change to Appendix J2 as well, specifically regarding how single-inlet semi-automatic clothes washers are being tested and any potential impact on the measured energy use of these clothes washers on the market.

See section III.D.8 of this document for a full discussion of other proposed edits to testing provisions for semi-automatic clothes washers and a list of related issues on which DOE seeks comment.

For a single-inlet *automatic* clothes washer, DOE discussed in the May 2020 RFI the use of a Y-shaped hose to allow both cold and hot water supply lines to be connected to the single inlet on the unit. 85 FR 31065, 31070 (*emphasis added*). DOE requested comments or information on how single-inlet automatic clothes washers are typically installed by consumers. *Id.*

AHAM commented that it is not aware of a Y-shaped hose connecter being used for typical installation of single-inlet automatic clothes washers. (AHAM, No. 5 at p. 7)

As described previously, DOE inadvertently attributed the use of a Y-shaped hose to *automatic,* rather than *semi-automatic,* single-inlet clothes washers. DOE is not aware of any single-inlet automatic clothes washers that require the use of a Y-shaped hose connector because such clothes washers internally generate any hot water needed for the cycle. Based on a review of models currently certified in DOE's compliance certification database, DOE is aware of three models of single-inlet automatic clothes washers currently available on the market.[15] DOE's examination of user manuals for each of these single-inlet automatic clothes washers indicates that the instructions accompanying these products direct that they be connected to the cold water supply.

Therefore, DOE is proposing in this NOPR to specify that all single-inlet automatic clothes washers be installed to the cold water supply only. As discussed above, DOE is proposing to include this provision in the proposed new Appendix J only. The proposed edit would specify in section 2.10.1 of the proposed new Appendix J that if the clothes washer has only one water inlet, connect the inlet to the cold water supply in accordance with the manufacturer's instructions.

DOE requests comment on its proposal to require all single-inlet clothes washers to be installed to the cold water supply only. DOE also requests comment on whether this requirement should be included in only the proposed new Appendix J, or whether, if adopted, it should be included as an amendment to Appendix J2.

3. Water Supply Temperatures

a. Hot Water Supply Temperature

Section 2.2 of Appendix J2 requires maintaining the hot water supply temperature between 130 °F (54.4 degrees Celsius (''°C'')) and 135 °F (57.2 °C), using 135 °F as the target temperature.

DOE has revised the hot water supply temperature requirements several times throughout the history of the clothes washer test procedures to remain representative of household water temperatures at the time of each analysis. When establishing the original clothes washer test procedure at Appendix J in 1977, DOE specified a hot water supply temperature of 140 °F ± 5 °F for clothes washers equipped with thermostatically controlled inlet water valves. 42 FR 49802, 49808. In the August 1997 Final Rule, DOE specified in Appendix J1 that for clothes washers in which electrical energy consumption or water energy consumption is affected by the inlet water temperatures,[16] the hot water supply temperature cannot exceed 135 °F (57.2 °C); and for other clothes washers, the hot water supply temperature is to be maintained at 135 °F ±5 °F (57.2 °C ± 2.8 °C). 62 FR 45484, 45497. DOE maintained these same requirements in the original version of Appendix J2. In the August 2015 Final Rule, DOE adjusted the allowable tolerance of the hot water

[13] Section 2.3 of Appendix J2 specifies maintaining water pressure of 35 pounds per square inch gauge (''psig'') ± 2.5 psig on both the cold and hot water supply lines. These tolerances could result in a pressure difference of up to 5 psig between the two lines.

[14] Measured characteristics of a semi-automatic clothes washer cycle include total water consumption, electrical energy consumption, cycle time, and bone-dry and cycle complete load weights. See section III.D.8.b of this document for more details.

[15] DOE's certification compliance database is available at *www.regulations.doe.gov/certification-data/CCMS-4-Clothes_Washers.html.* DOE identified the following single-inlet automatic models: WFW3090J**, WFW5090J**, WFC8090G**. Analysis conducted in March 2021.

[16] For example, water-heating clothes washers or clothes washers with thermostatically controlled water valves.

supply temperature in section 2.2 of Appendix J2 to between 130 °F (54.4 °C) and 135 °F (57.2 °C) for all clothes washers, but maintained 135 °F as the target temperature. 80 FR 46729, 46734–46735.

DOE analyzed household water temperatures as part of the test procedure final rule for residential and commercial water heaters published July 11, 2014. 79 FR 40541 (''July 2014 Water Heater Final Rule''). In the July 2014 Water Heater Final Rule, DOE revised the hot water delivery temperature from 135 °F to 125 °F based on an analysis of data showing that the average set point temperature for consumer water heaters in the field is 124.2 °F (51.2 °C), which was rounded to the nearest 5 °F, resulting in a test set point temperature of 125 °F. 79 FR 40541, 40554. Additionally, a 2011 compilation of field data across the United States and southern Ontario by Lawrence Berkeley National Laboratory (''LBNL'') [17] found a median daily outlet water temperature of 122.7 °F (50.4 °C). *Id.* Further, DOE noted in the July 2014 Water Heater Final Rule that water heaters are commonly set with temperatures in the range of 120 °F to 125 °F. *Id.*

Additionally, DOE's consumer dishwasher test procedure, codified at 10 CFR part 430 subpart B, appendix C1 (''Appendix C1''), specifies a hot water supply temperature of 120 °F ± 2 °F for water-heating dishwashers designed for heating water with a nominal inlet temperature of 120 °F, which includes nearly all consumer dishwashers currently on the U.S. market. Section 2.3.2 of Appendix C1. This water supply temperature is intended to be representative of household hot water temperatures.

Table III.1 summarizes the various hot water temperature data considered for the present rulemaking.

TABLE III.1—SUMMARY OF FIELD SURVEYS OF WATER HEATER TEMPERATURE

Source	Description	Temperature (°F)
May 2011 LBNL Report	Median daily outlet water temperature	122.7
July 2014 Water Heater Final Rule	Average set point temperature for consumer water heaters in the field	124.2
July 2014 Water Heater Final Rule	Common water heater setpoints	120–125
Appendix C1	Dishwasher test procedure supply temperature	120

In the May 2020 RFI, DOE requested comments on whether DOE should consider updating the hot water supply temperature specification for the clothes washer test procedures to be within the range of 120 °F to 125 °F, providing better consistency with DOE's test procedures for dishwashers and consumer water heaters. 85 FR 31065, 31069.

AHAM suggested that product design changes may be required if DOE amends the clothes washer test procedures to harmonize the hot water supply temperature with the dishwasher test procedure. AHAM stated that changing the hot water supply temperature specification would impact measured efficiency, and DOE would thus need to address that change in the accompanying standards rulemaking. (AHAM, No. 5 at p. 6)

GEA stated that there is little benefit to consumers by moving the target temperature to 120 °F. If DOE does change the target temperature, GEA is concerned about the change in measured hot water energy usage. (GEA, No. 13 at p. 2)

The CA IOUs recommended keeping the target temperature at 135 °F to prevent the growth of *Legionella* bacteria. The CA IOUs referenced the American Society of Sanitary Engineering (''ASSE'') Scald Awareness Task Group and Unified Plumbing Code (''UPC'') recommendations that hot water temperature should be 130–140 °F to eliminate the risk of *Legionella* growth. (CA IOUs, No. 8 at pp. 14–15)

The Joint Commenters stated that DOE should consider changing the target temperature to 120 °F, because 120 °F is the hot water supply temperature for the consumer dishwasher test procedure and is a common water heater set point. (Joint Commenters, No. 10 at p. 3) However, the Joint Commenters also stated that the 135 °F target temperature may be appropriate to maintain as average set points increase in the field due to *Legionella* concerns. The Joint Commenters encouraged DOE to investigate which hot water supply temperature would be most representative. *Id.*

UL supports specifying the hot water supply temperature to be consistent with hot water heater outlet temperatures, as supported by field data. (UL, No. 9 at p. 1)

Samsung recommended that DOE specify a hot water supply temperature of 120 ± 2 °F, consistent with the temperature specified in the consumer dishwasher test procedure. Samsung also commented that the U.S. Consumer Product Safety Commission recommends this temperature to consumers as the safest set point for water heaters to avoid scalds. (Samsung, No. 6 at p. 3)

NEEA encouraged DOE to investigate the hot water supply temperature that would be most representative of field use. NEEA added that water heater set points may increase closer to the Appendix J2-specified 135 °F in the future, due to concerns about *Legionella* bacteria growth. (NEEA, No. 12 at p. 26) NEEA also recommended that DOE consider heat losses in the pipes and static water in the supply line in the field, which are likely to lower clothes washer inlet hot temperatures relative to water heater set points. *Id.*

Based on the analysis of recent water temperature data summarized in Table III.1, DOE is proposing to update the hot water supply temperature in the proposed new Appendix J from 130–135 °F to 120–125 °F. DOE preliminarily concludes that an inlet temperature of 120–125 °F is more representative of consumer hot water temperatures than the range of 130–135 °F currently specified in Appendix J2.

In addition, section 4.1.2 of Appendix J2 calculates the hot water energy consumption for each tested load size, by multiplying the hot water consumption for each tested load size, by ''T,'' the temperature rise, and by ''K,'' the specific heat of water. In Appendix J2, T is defined as 75 °F, which represents the nominal difference between the hot and cold water inlet temperatures. In this NOPR, DOE is proposing to use a value for T of 65 °F in the proposed new Appendix J, consistent with the differential between the nominal values for the proposed hot

[17] Lutz, JD, Renaldi, Lekov A, Qin Y, and Melody M, ''Hot Water Draw Patterns in Single Family Houses: Findings from Field Studies,'' LBNL Report number LBNL–4830E (May 2011). Available at *www.escholarship.org/uc/item/2k24v1kj.*

water supply temperature (120–125 °F) and the cold water supply temperature (55–60 °F).

DOE agrees with AHAM and GEA that changing the hot water supply temperature would likely impact measured efficiency because hot water energy consumption is a significant component in the calculation of the IMEF metric. As a result, DOE is proposing to update the hot water supply temperature only in the proposed new Appendix J and not in existing Appendix J2. Therefore, DOE's proposal would not affect the measured efficiency of clothes washers currently tested using Appendix J2. The ongoing RCW and CCW energy conservation standards rulemakings would consider the impact of this proposed modification to the hot water supply temperature on measured efficiency.

DOE requests comment on its proposal to update the hot water supply temperature for the proposed new Appendix J from 130–135 °F to 120–125 °F. DOE seeks more recent data on hot water supply temperatures in consumer clothes washer installations. DOE also requests comment on any potential impact to testing costs that may occur by harmonizing temperatures between the clothes washer and dishwasher test procedures, and the impacts on manufacturer burden associated with any changes to the hot water supply temperature.

In the NOPR preceding the July 2014 Water Heater Final Rule, DOE cited a comment from Applied Energy Technology,[18] which stated that water temperatures in the range of 120 °F are adequate to prevent *Legionella* growth as long as the water is maintained at a temperature ''high enough, long enough, and often enough.'' 78 FR 66202, 66219 (Nov. 4, 2013). In that NOPR, DOE also cited the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') guideline[19] which states that hot water should be stored above 140 °F only for high-risk applications (such as health-care facilities and nursing homes). 78 FR 66202, 66218 (Nov. 4, 2013). Moreover, the specification of hot water supply temperature in the clothes washer test procedure is intended to be representative of consumer clothes washer installations, as supported by the data described previously. The target temperature defined in the clothes washer test procedure does not and would not introduce any regulatory requirement on water heater manufacturers, installers, or consumers regarding the set point temperature that can be chosen for any individual water heater installation.

b. Extra-Hot Wash Determination

Clothes washers are tested using an energy test cycle that is comprised of certain cycles taking into consideration all cycle settings available to the end user. Section 2.12 of Appendix J2. Figure 2.12.5 of Appendix J2 specifies that for the energy test cycle to include an Extra-Hot Wash/Cold Rinse, the clothes washer must have an internal heater and the Normal cycle[20] must, in part, contain a wash/rinse temperature selection that has a wash temperature greater than 135 °F. The 135 °F threshold matches the current hot water inlet target temperature, as specified in section 2.2 of Appendix J2.

DOE has revised the Extra-Hot wash temperature parameters previously. In the August 1997 Final Rule, DOE changed the minimum hot water supply temperature from 140 °F in Appendix J–1977 to 135 °F in Appendix J1–1997, and also revised the threshold temperature for Extra-Hot Wash from 140 °F to 135 °F accordingly. 62 FR 45484, 45497. As noted, Appendix J2 retains this threshold temperature of 135 °F for Extra-Hot Wash.

As described previously, DOE is proposing to update the hot water inlet temperature from 135 °F to 125 °F (see section III.C.3.a of this document). This proposed change to the hot water inlet temperature prompted DOE to reassess the threshold temperature for the Extra-Hot wash temperature. Because the inclusion of an Extra-Hot Wash/Cold Rinse in the energy test cycle requires the clothes washer to have an internal heater, the threshold temperature is not limited to the input temperature.

DOE testing of a broad range of clothes washers[21] indicates that over 70 percent of Extra-Hot cycles have a wash water temperature that exceeds 140 °F, despite the threshold temperature for Extra-Hot Wash changing to 135 °F in the August 1997 Final Rule. Furthermore, DOE research indicates that 140 °F is widely cited as a threshold for achieving sanitization by organizations including the World Health Organization and the United Kingdom's National Health Service.[22] [23] Based on DOE's data indicating that a majority of existing Extra-Hot cycles have wash water temperatures that exceed 140 °F, and based on the cited reports finding that washing textiles at 140 °F is an accepted sanitation threshold, DOE proposes specifying the Extra-Hot Wash threshold as 140 °F. Based on the research described above, DOE preliminarily concludes that a temperature threshold of 140 °F would align with 140 °F as an accepted temperature threshold for sanitization, and therefore may be more representative of consumer expectations and usage of the Extra-Hot Wash cycle, than the current 135 °F threshold.

In addition to improving representativeness, changing the Extra-Hot Wash temperature threshold to 140 °F could potentially reduce test burden. As discussed more fully in section III.C.4 of this document, a threshold of 140 °F would enable easier confirmation that an Extra-Hot temperature has been achieved when measuring wash temperature with non-reversible temperature indicator labels, as permitted by section 3.3 of Appendix J2. Temperature indicator labels are widely available with a 140 °F indicator, whereas DOE is not aware of any commercially available temperature indicator labels that provide a 135 °F indicator.

In summary, DOE is proposing to specify in the proposed new Appendix J that the minimum temperature threshold for the Extra-Hot Wash/Cold Rinse is 140 °F. This change would be reflected in the proposed Extra Hot Wash/Cold Rinse flowchart in section 2.12 of the proposed new Appendix J as well as any references to this temperature threshold elsewhere

[18] See comment number 22 in Docket number EERE–2011–BT–TP–0042. Available at *www.regulations.gov/docket/EERE–2011–BT–TP–0042.*

[19] ASHRAE Guideline 12, ''Minimizing the Risk of Legionellosis Associated with Building Water Systems,'' states that the temperature range most favorable for amplification of legionellae bacteria is 77 – 108 °F (25 – 42 °C) and recommends that when practical, hot water should be stored at temperatures of 120 °F (49 °C) or above. The guideline states that hot water should be stored above 140 °F (60 °C) for high-risk settings such as in health care facilities and nursing homes. For more information visit: *www.ashrae.org.*

[20] Section 1.25 of Appendix J2 defines the Normal cycle as the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing. For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF value.

[21] DOE analyzed test data from 2 top-loading and 15 front-loading models representing 7 different manufacturers and 9 different brands.

[22] World Health Organization. ''Boil Water.'' Available at: *www.who.int/water_sanitation_health/dwq/Boiling_water_01_15.pdf.*

[23] National Health Service. ''Can clothes and towels spread germs?'' Available at: *www.nhs.uk/common-health-questions/infections/can-clothes-and-towels-spread-germs/.*

throughout the proposed new Appendix J.

DOE recognizes that for the 30 percent of units with Extra-Hot Wash temperatures that do not exceed 140 °F, DOE's proposal to change the Extra-Hot Wash definition may impact measured efficiency. Therefore, in this NOPR, DOE is proposing to include the amended Extra-Hot Wash temperature parameter only in the proposed new Appendix J and not in existing Appendix J2. The ongoing RCW and CCW energy conservation standards rulemakings would consider the impact of any modifications to the Extra-Hot Wash definition on measured efficiency.

DOE requests comment on its proposal to specify in the proposed new Appendix J that the Extra-Hot Wash/Cold Rinse designation would apply to a wash temperature greater than or equal to 140 °F. DOE requests any additional data on the wash temperature of cycles that meet the Appendix J2 definition of Extra-Hot Wash/Cold Rinse. DOE is also interested in data and information on any potential impact to testing costs that may occur by changing the Extra-Hot Wash temperature threshold, and the impacts on manufacturer burden associated with any changes to the Extra-Hot Wash/Cold Rinse definition.

c. Target Water Supply Temperature

Section 2.2 of Appendix J2 specifies that the hot water supply temperature must be maintained between 130 °F (54.4 °C) and 135 °F (57.2 °C), using 135 °F as the target temperature. Based on experience working with third-party test laboratories, as well as its own testing experience, DOE recognizes that maintaining 135 °F as the target temperature for the hot water supply may be difficult given that the target temperature of 135 °F lies at the edge, rather than the midpoint, of the allowable temperature range of 130 °F to 135 °F. 85 FR 31065, 31069. On electronic temperature-mixing valves commonly used by test laboratories, the output water temperature is maintained within an approximately two-degree tolerance above or below a target temperature programmed by the user (*e.g.,* if the target temperature is set at 135 °F, the controller may provide water temperatures ranging from 133 °F to 137 °F). *Id.* To ensure that the hot water inlet temperature remains within the allowable range of 130 °F to 135 °F, such a temperature controller would need to be set to around the midpoint of the range, which conflicts with the test procedure requirement to use 135 °F as the target temperature. *Id.* An analogous difficulty exists for the cold water supply temperature. Section 2.2 of Appendix J2 specifies maintaining a cold water temperature between 55 °F and 60 °F, using 60 °F as the target.

In the May 2020 NOPR, DOE requested comments on whether it should consider changes to the target temperature or allowable range of temperature specified for the hot and cold water inlets, and if so, what alternate specifications should be considered. *Id.*

UL commented that it supports the change to an equal sided tolerance for the hot and cold water inlet temperature requirements. (UL, No. 9 at p. 1)

AHAM also supported DOE updating the target water temperature to have a tolerance and nominal value (rather than any temperature within the range) specified as the target, *i.e.,* X ± Y, with nominal (X) as the target. (AHAM, No. 5 at p. 6)

The CA IOUs supported a change in the water supply temperature tolerance to ± 2.5 °F around the target temperature, claiming that it may create a more repeatable test procedure and decrease the number of failed test runs. (CA IOUs, No. 8 at p. 15)

GEA supported a hot water target temperature adjustment to 132.5 ± 2.5 °F, stating that doing so would align the test procedure with engineering best practices. (GEA, No. 13 at p. 2)

DOE recognizes the widespread support for defining a temperature range centered around a target midpoint of the range. Although this would appear to reflect current test laboratory practice, DOE is concerned that specifying a cold water target temperature of 57.5 °F in Appendix J2 and the proposed new Appendix J, or specifying a hot water target temperature of 132.5 °F for Appendix J2 or 122.5 °F for the proposed new Appendix J, could imply that the test procedure requires a precision of 0.5 °F in temperature control, which could create undue test burden. Furthermore, DOE is concerned that defining a ''target'' temperature, whether as currently defined or defined as the midpoint of the range, could unintentionally imply that a test would be invalid if the water temperature remains within the allowable range, but not centered exactly around the target.

For these reasons, DOE is proposing to remove the ''target'' temperature associated with each water supply temperature range, and to instead define only the allowable temperature range. Specifically, the cold water supply temperature range would be defined as 55 °F to 60 °F in both Appendix J2 and the proposed new Appendix J; the hot water supply temperature range in Appendix J2 would be defined as 130 °F to 135 °F; and the hot water supply temperature range in the proposed new Appendix J would be defined as 120 °F to 125 °F. Defining allowable water supply temperature ranges instead of specific target temperatures at the upper end of the allowable ranges would reduce the difficulty of maintaining water supply temperatures within the desired ranges.

DOE requests comment on its proposal to remove the target temperatures and instead specify water supply temperature ranges as 55 °F to 60 °F for cold water in both Appendix J2 and the proposed new Appendix J, 130 °F to 135 °F for hot water in Appendix J2, and 120 °F to 125 °F for hot water in the proposed new Appendix J.

4. Wash Water Temperature Measurement

In the August 2015 Final Rule, DOE amended section 3.3 of Appendix J2, ''Extra-Hot Wash/Cold Rinse,'' to allow the use of non-reversible temperature indicator labels to confirm that a wash temperature greater than 135 °F had been achieved. 80 FR 46729, 46753. Since the publication of the August 2015 Final Rule, DOE has become aware that some third-party laboratories measure wash temperature using self-contained temperature sensors in a waterproof capsule placed inside the clothes washer drum during testing. 85 FR 31065, 31069. In the May 2020 RFI, DOE requested comments on manufacturers' or test laboratories' experience with these or any other methods for determining the temperature during a wash cycle that may reduce manufacturer burden, including the reliability and accuracy of those methods. *Id.*

UL commented that it has not found any temperature labels that read exactly 135 °F, but rather only labels that provide 10 °F increments between 130 °F and 140 °F. (UL, No 9 at p. 2) UL added that if a label does not change at 140 °F but does change at 130 °F, there is no way of knowing if the water temperature reached 135 °F without running an additional test run with a data logger. *Id.* UL also commented that if DOE requires temperature loggers for measuring the internal water temperature, DOE should prescribe a specific method, for increased lab-to-lab reproducibility. *Id.*

AHAM similarly commented that the non-reversible temperature indicator labels currently specified in the test procedure do not work well because the labels available on the market do not easily identify when 135 °F is reached, as they typically provide 10 °F

increments, and none are available in increments of 125 °F to 135 °F. (AHAM, No. 5 at pp. 6–7) According to AHAM, testers must estimate when 135 °F is reached on labels that are currently available. Thus, AHAM suggests that DOE consider permitting the use of submersible temperature loggers. *Id.*

As discussed by UL and AHAM, DOE is aware that none of the temperature indicator labels available on the market provide an indicator at 135 °F, the current Extra-Hot Wash water temperature threshold. Because of this, temperature indicator labels can be used to confirm that the water temperature reached 135 °F only if the water temperature exceeds 140 °F. The temperature indicator labels are unable to identify an Extra-Hot Wash/Cold Rinse cycle if the temperature of the cycle is greater than 135 °F but less than 140 °F. DOE recognizes the potential benefit of other methods of measurement to supplement or replace the temperature indicator labels.

DOE investigated submersible temperature loggers as suggested by AHAM. DOE found submersible temperature loggers available for less than $175 and available with a resolution of 0.5 °C (0.9 °F) or better and an accuracy of ±0.5 °C (0.9 °F) for water temperatures between –10 °C (14 °F) and +65 °C (149 °F).[24] In testing with such temperature loggers, DOE found them small enough in size to be able to embed within the test load during testing. However, DOE testing indicated a 5 to 10-minute time lag in measuring dynamically changing temperatures, which is likely due to the thermal mass of the waterproof capsule. As a result of this time lag, if a clothes washer's wash water temperature were to reach 135 °F only briefly, then a submersible temperature logger may not record that 135 °F had been reached. DOE concludes that, similar to temperature indicator labels, a submersible temperature logger indicating a temperature higher than 135 °F can provide confirmation that the water temperature reached 135 °F, but failure to record a temperature of 135 °F does not necessarily determine that the temperature threshold for the Extra-Hot Wash cycle has not been achieved. For clothes washers with sustained water temperatures greater than 135 °F but less than 140 °F, submersible temperature loggers may provide potentially reduced test burden, compared to using temperature indicator labels.

For Appendix J2, DOE is proposing to allow the use of a submersible temperature logger as an additional temperature measurement option to confirm that an Extra-Hot Wash temperature greater than 135 °F has been achieved during the wash cycle. DOE is proposing that the submersible temperature logger must have a time resolution of at least 1 data point every 5 seconds and a temperature measurement accuracy of ±1 °F. As described currently for temperature indicator labels, DOE would include a note that failure to measure a temperature of 135 °F would not necessarily indicate of the lack of an Extra-Hot Wash temperature. However, such a result would not be conclusive due to the lack of verification of that the required water temperature was achieved, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle.

Because DOE is proposing to change the Extra-Hot Wash water temperature threshold to 140 °F for the proposed new Appendix J, commercially available temperature indicator labels with indications at 140 °F would be able to be used more readily to determine whether the water temperature reached the Extra-Hot Wash temperature threshold. DOE is also proposing to allow the usage of a submersible temperature logger in the proposed new Appendix J as an option to confirm that an Extra-Hot Wash temperature greater than 140 °F has been achieved during the wash cycle. Like the temperature threshold of 135 °F in Appendix J2, failure to measure a temperature of 140 °F would not necessarily indicate the lack of an Extra-Hot Wash temperature. However, such a result would not be conclusive due to the lack of verification of that the required water temperature was achieved, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than 140 °F has been achieved during the wash cycle.

Lastly, DOE is proposing to move the description of allowable temperature measuring devices from section 3.3 of Appendix J2 to section 2.5.4 of both Appendix J2 and the proposed new Appendix J (''Water and air temperature measuring devices''), specifying the use of non-reversible temperature indicator labels in new section 2.5.4.1, and adding specifications for the use of submersible temperature loggers to new section 2.5.4.2 of both Appendix J2 and the proposed new Appendix J.

DOE requests comment on its proposal to allow the use of a submersible temperature logger in Appendix J2 and the proposed new Appendix J as an option to confirm that an Extra-Hot Wash temperature greater than the Extra-Hot Wash threshold has been achieved during the wash cycle. DOE requests data and information confirming (or disputing) DOE's discussion of the benefits and limitations of using a submersible temperature logger, including DOE's determination that a submersible logger's failure to measure a temperature greater than the Extra-Hot Wash threshold does not necessarily indicate that the cycle under test does not meet the definition of an Extra-Hot Wash/Cold Rinse cycle.

5. Pre-Conditioning Requirements

Section 2.11 of Appendix J2 specifies the procedure for clothes washer pre-conditioning. The current pre-conditioning procedure requires that any clothes washer that has not been filled with water in the preceding 96 hours, or any water-heating clothes washer that has not been in the test room at the specified ambient conditions for 8 hours, must be pre-conditioned by running it through a Cold Rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water. The purpose of pre-conditioning is to promote repeatability and reproducibility of test results by ensuring a consistent starting state for each test, as well as to promote the representativeness of test results by ensuring that the clothes washer is operated consistent with the defined ambient conditions. In particular, the additional specification for water-heating clothes washers was first suggested in a supplemental NOPR published on April 22, 1996, (''April 1996 SNOPR''), in which DOE expressed concern about the testing of water-heating clothes washers that may have been stored at a temperature outside of the specified ambient temperature range (75 °F ± 5 °F) prior to testing. 61 FR 17589, 17594–17595. DOE stated that the energy consumed in a water-heating clothes washer may be affected by the ambient temperature. *Id.* Thus, if the ambient temperature prior to and during testing is relatively hot, then less energy will be consumed than under typical operating conditions, *i.e.,* the test will understate the clothes washer's energy consumption. *Id.* Conversely, if the ambient temperature prior to and during the test is relatively cold, then the energy consumption will be overstated. *Id.* In the subsequent August 1997 Final Rule, DOE added the

[24] See *e.g., www.maximintegrated.com/en/products/ibutton-one-wire/data-loggers/DS1923.html/product-details/tabs-3, www.maximintegrated.com/en/products/ibutton-one-wire/ibutton/DS9107.html,* and *www.maximintegrated.com/en/products/interface/universal-serial-bus/DS9490.html.*

pre-conditioning requirement for water-heating clothes washers, which requires water-heating units to be pre-conditioned if they had not been in the test room at ambient conditions for 8 hours. 62 FR 45484, 45002, 45009, 45010.

DOE is concerned that the energy use of non-water-heating clothes washers could also be affected by the starting temperature of the clothes washer, particularly those that implement temperature control by measuring internal water temperatures during the wash cycle. For example, if the ambient temperature prior to testing is relatively hot, causing the internal components of the clothes washer to be at a higher temperature than the specified ambient temperature range, less hot water may be consumed during the test than otherwise would be if the starting temperature of the clothes washer is within the specified ambient temperature range. Noting that third-party test laboratories cannot necessarily identify whether a unit is a water-heating clothes washer or not, DOE is proposing to require the same pre-conditioning procedure for both water-heating and non-water-heating clothes washers, which would minimize the influence of ambient temperature on energy use and alleviate the need for third-party test laboratories to determine whether a clothes washer is water-heating or not. If adopted, this proposed change may impact the measured energy use of non-water-heating clothes washers that implement temperature control by measuring internal water temperatures during the wash cycle. Due to the potential impact on the measured energy use, DOE is proposing this change only for the proposed new Appendix J, which would be used for the evaluation and issuance of updated efficiency standards, and to determine compliance with those standards. DOE is therefore proposing that use of the proposed new Appendix J, if finalized, would not be required until the compliance date of any updated standards.

In addition, the proposed amendments to the pre-conditioning requirements would eliminate the differentiation between ''water-heating clothes washer'' and ''non-water heating clothes washer,'' which are defined terms in the test procedure. Therefore, DOE is also proposing to remove the definitions of ''water-heating clothes washer'' and ''non-water-heating clothes washer'' from section 1 of the proposed new Appendix J.

DOE requests comment on its proposal to specify the same pre-conditioning requirements for all clothes washers and to remove the ''water-heating clothes washer'' and ''non-water-heating clothes washer'' definitions in the proposed new Appendix J. DOE also requests information regarding whether test laboratories typically pre-condition water-heating and non-water-heating clothes washers using the same procedure.

D. Cycle Selection and Test Conduct

1. Tested Load Sizes

Table 5.1 of Appendix J2 provides the minimum, average, and maximum load sizes to be used for testing based on the measured capacity of the clothes washer. The table defines capacity ''bins'' in 0.1 ft^3 increments. The load sizes for each capacity bin are determined as follows:

☐ Minimum load is 3 pounds (''lb'') for all capacity bins;

☐ Maximum load (in lb) is equal to 4.1 times the mean clothes washer capacity of each capacity bin (in ft3); and

☐ Average load is the arithmetic mean of the minimum load and maximum load.

These three load sizes are used for testing clothes washers with automatic WFCS. Clothes washers with manual WFCS are tested with only the minimum and maximum load sizes.

a. Expanding the Load Size Table

DOE originally introduced the load size table in Appendix J1–1997, which accommodated clothes container capacities up to 3.8 ft^3. 62 FR 45484, 45513. In the March 2012 Final Rule, DOE expanded Table 5.1 in both Appendix J1 and Appendix J2 to accommodate clothes container capacities up to 6.0 ft^3. 77 FR 13887, 13910. DOE extrapolated the load sizes to 6.0 ft^3 using the same equations to define the maximum and average load sizes as described above.

On May 2, 2016 and April 10, 2017, DOE granted waivers to Whirlpool and Samsung, respectively, for testing RCWs [25] with capacities between 6.0 and 8.0 ft^3, by further extrapolating Table 5.1 using the same equations to define the maximum and average load sizes as described. 81 FR 26215; 82 FR 17229. DOE's regulations in 10 CFR 430.27 contain provisions allowing any interested person to seek a waiver from the test procedure requirements if certain conditions are met. A waiver allows manufacturers to use an alternate test procedure in situations where the DOE test procedure cannot be used to test the product or equipment, or where use of the DOE test procedure would generate unrepresentative results. 10 CFR 430.27(a)(1) DOE's regulations at 10 CFR 430.27(l) require that as soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a NOPR to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l).

In the May 2020 RFI, DOE requested comment on whether to extrapolate Table 5.1 of Appendix J2 to accommodate RCW capacities up to 8.0 ft^3, and if so, appropriate methods for extrapolation. 85 FR 31065, 31077. DOE received comments from multiple interested parties regarding the definition of load sizes more generally, which DOE addresses in section III.D.1.b of this document. DOE received no comments regarding the expansion of the load size table itself.

In this NOPR, DOE is proposing to expand Table 5.1 in both Appendix J2 and the proposed new Appendix J to accommodate clothes washers with capacities up to 8.0 ft^3. In Appendix J2, DOE proposes to expand Table 5.1 using the same equations as the current table, as described above, and consistent with the load size tables provided in the two granted waivers. For the proposed new Appendix J, DOE proposes a revised methodology for defining the load sizes in each capacity bin in Table 5.1, as further discussed in section III.D.1.b of this document.

DOE requests comment on its proposal to expand the load size table in both Appendix J2 and the proposed new Appendix J to accommodate RCWs with capacities up to 8.0 ft^3.

b. Defining New Load Sizes

As discussed in the previous section, Appendix J2 currently defines three load sizes for automatic clothes washers (minimum, average, and maximum) for each capacity bin in Table 5.1 of the appendix. In this NOPR, DOE is proposing for the proposed new Appendix J to define two load sizes for automatic clothes washers (small and large) for each capacity bin, which are intended to represent the same load size distribution underlying the existing three load sizes. DOE has tentatively concluded that this would substantially reduce test burden while maintaining or improving representativeness. The following paragraphs describe the development of the current load size definitions to provide context and

[25] As noted, CCWs are limited under the statutory definition to a maximum capacity of 3.5 cubic feet for horizontal-axis CCWs and 4.0 cubic feet for vertical-axis CCWs. (42 U.S.C. 6311(21))

justification for DOE's proposed changes.

The current load size definitions (*i.e.,* the defining of three load sizes, and the equations used to determine each of the three load sizes) are based on consumer usage data analyzed during the test procedure rulemaking that culminated in the August 1997 Final Rule. As part of that rulemaking, AHAM presented to DOE data from the Procter & Gamble Company (''P&G'') showing the distribution of consumer load sizes for 2.4 ft^3 and 2.8 ft^3 clothes washers, which represented typical clothes washer capacities at the time (1995).[26] The 1995 P&G data indicated that the distribution of consumer load sizes followed an approximate normal distribution slightly skewed towards the lower end of the size range. Figure III.1 shows the summarized data presented by AHAM.

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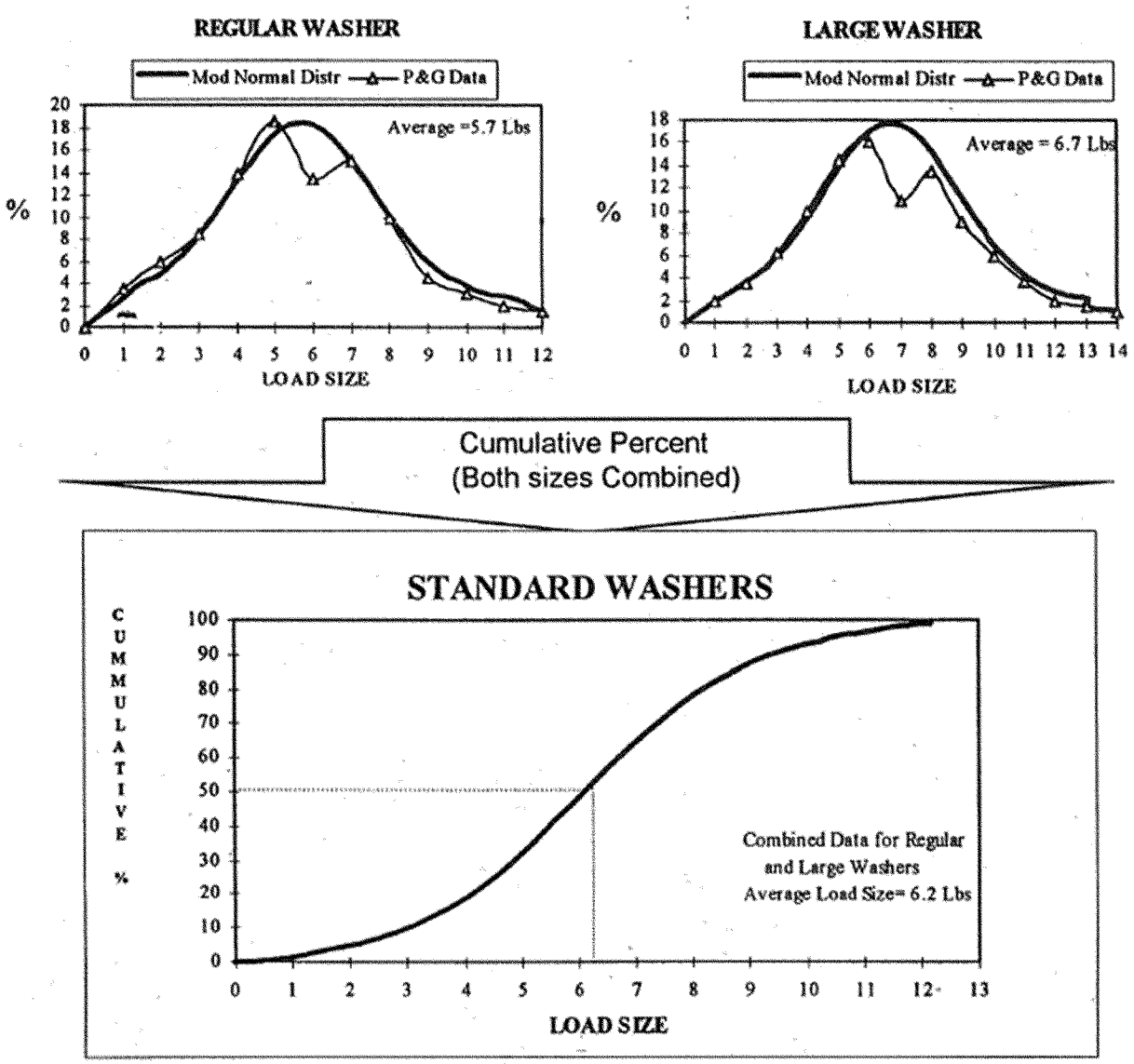

Figure III.1 1995 Procter & Gamble Consumer Load Size Distributions as Provided by AHAM

In the August 1997 Final Rule, DOE defined three load sizes—minimum, average, and maximum—to represent this normal distribution. 62 FR 45484, 45490. The minimum load size represented approximately the 14th percentile of the distribution (*i.e.,* the lower 14 percent of the cumulative distribution); the average load size represented approximately the 14th through 88th percentile (*i.e.,* the middle 74 percent of the cumulative distribution); and the maximum load size represented approximately the 88th through 100th percentile (*i.e.,* the upper 12 percent of the cumulative distribution).[27] Figure III.2 illustrates the boundaries representing the three defined load sizes overlaid with the P&G load distribution data.

[26] The full data set presented by AHAM is available at *www.regulations.gov/document/EERE-2006-TP-0065-0027.*

[27] See the table titled ''Relationship of Water Fill Factors to Cumulative Load Size Distribution'' on page 22 of the data presented by AHAM as part of the rulemaking that culminated in the August 1997 Final Rule, available at *www.regulations.gov/document/EERE-2006-TP-0065-0027.*

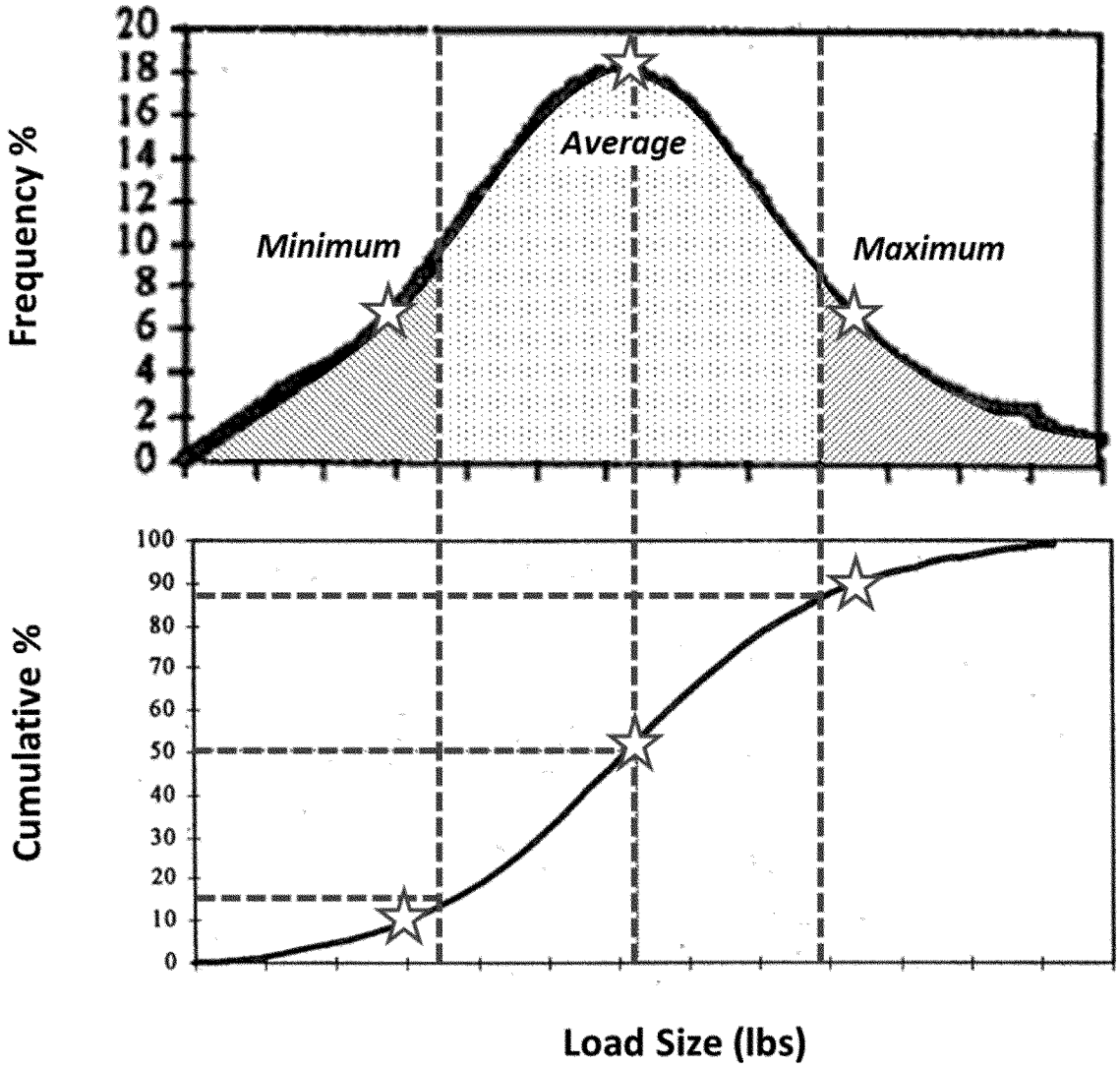

Figure III.2 Illustrative Depiction of the Three Load Sizes Representing the Normal Distribution of Consumer Loads from the 1995 Procter & Gamble Data

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In the August 1997 Final Rule, these load size relationships were scaled across the range of 0.8 ft^3 to 3.8 ft^3 capacities [28] using the equations described above: Minimum load size fixed at 3 lb for all capacity bins; maximum load size calculated as 4.1 times the mean clothes washer capacity of each capacity bin; and average load size calculated as the mean of the minimum and maximum load sizes. 62 FR 45484, 45504, 45513. Within each capacity bin, the three defined load sizes were intended to approximate a normal distribution of consumer load sizes. As noted, the load size table in Appendix J1–1997 was extrapolated to 6.0 ft^3 in the March 2012 Final Rule, applicable to both Appendix J1 and Appendix J2.

In the May 2020 RFI, DOE requested data and information on whether the minimum, average, and maximum load size definitions in Table 5.1 are representative of the range of load sizes used by consumers for each capacity bin in the table, particularly for larger-capacity RCWs. 85 FR 31065, 31078.

UL commented that in order to make load sizes more equitable for the widening range of clothes washer capacities, all three load sizes should be proportional to capacity, similar to the current definition of maximum load. UL suggested that minimum and average load sizes could be proportional to the maximum load size (*e.g.,* minimum and average load sizes could be 25 percent and 50 percent of maximum load size, respectively). (UL, No. 9 at p. 4)

Fixing the minimum load size at 3 lb represents the need for consumers to wash a small load of laundry (for example, a single outfit of clothing) regardless of the capacity of the clothes washer. The ''average'' load size as constructed in Appendix J2 represents the middle of the range of load sizes [29] washed by consumers (*i.e.,* the approximate peak of the roughly normal distribution of load sizes). As described below, DOE is proposing in the proposed new Appendix J to define two, rather than three, load sizes, and each of the two load sizes would be defined as a function of capacity.

The CA IOUs recommended that DOE amend the average and maximum load sizes in Table 5.1 of Appendix J2 to use

[28] For capacities in the range of 0.0 to 0.8 ft^3, a fixed load size of 3 lb was defined for all three test load sizes.

[29] In effect, the ''average'' load size is intended to represent the median load size washed by consumers.

a logarithmic relationship between capacity and load size. (CA IOUs, No. 8 at pp. 1–4) The CA IOUs presented data from a 2016 Pacific Gas and Electric Company (''PG&E'') field survey (''2016 PG&E survey'') that recorded load size and capacity data, and showed a logarithmic relationship between load size and capacity for clothes washers with capacities from 2–5 ft^3. In the range of 2 ft^3 to approximately 5 ft^3 capacity, the 2016 PG&E survey showed slightly higher average consumer load sizes than would be defined by Table 5.1 in Appendix J2 for a clothes washer of the same capacity. The CA IOUs commented that extrapolating this relationship to smaller and larger-capacity clothes washers, however, would result in a smaller consumer load sizes than would be defined by Table 5.1 of the current Appendix J2. *Id.* The CA IOUs also commented that a similar logarithmic trend was found in an Australian clothes dryer study.[30] Although the Australian study relates to residential clothes dryers, the CA IOUs asserted that the operation of clothes washers and clothes dryers are closely linked. *Id.* The CA IOUs commented that the 2016 PG&E survey excludes households outside of the ''hot-dry'' Southwestern region of the United States, as well as households that rely on CCWs to wash their clothes, and requested that DOE conduct a larger national survey or study existing surveys to explore the relationship between capacity and average load size before making any changes to Table 5.1 of Appendix J2 to ensure that the test procedure produces results that most represent an average use cycle. *Id.*

DOE appreciates the CA IOUs providing consumer usage data from the 2016 PG&E field survey. While the conclusions from this data may be instructive as a point of comparison, these data are limited in that they represent usage in a single season (summer), in a single state (California), and only around three wash cycles per participating household.[31] Notwithstanding these limitations, the results indicate that within the range of 2 to approximately 5 ft^3, which encompasses the large majority of units on the market, the load sizes defined by Appendix J2 are reasonably close to the load sizes observed in the 2016 PG&E field study. Regarding the Australian clothes dryer study, while these data provide a point of comparison, usage patterns of Australian consumers do not necessarily represent the usage patterns of U.S. consumers. DOE is not aware of, and the CA IOUs have not provided, any data or information that would suggest that Australian usage patterns are the same as U.S. usage patterns. Further, clothes dryer load sizes may differ from clothes washer loads for reasons which may depend on region or localized customs (for example, line drying clothing may be more common in hot, dry climates). DOE is not aware of, nor have the CA IOUs provided, any data to suggest how Australian dryer load sizes relate to Australian clothes washer load sizes. DOE also observes that a logarithmic trend may not represent the best characterization of the Australian data.

NEEA recommended that, if DOE were to adopt an efficiency metric that is a function of capacity, DOE should eliminate the current average load calculation method and replace it with a fixed 7.6 lb load, which it believes would be more representative. NEEA cited its 2014 laundry field study that found an average clothes washer load size of 7.6 lb, which NEEA characterized as being close to the average load size of 8.5 lb that corresponds with the 2010 market-weighted average capacity of 3.5 ft^3. NEEA stated, however, that the market-weighted average capacity as of 2019 has increased to 4.4 ft^3, for which Appendix J2 defines an average load size of 10.4 lb.[32] (NEEA, No. 12 at pp. 22–24) NEEA compared this 10.4 lb average load size to three Australian field studies that found an average load size of approximately 6.6 lb. NEEA further referenced another Australian research study conducted by Choice [33] in which consumers were instructed to fully fill the clothes container. The resulting average load size measured during the study was 8 lb, which NEEA described as significantly less than an amount that the clothes container could hold. *Id.* NEEA asserted that using a fixed average load size of 7.6 lb would increase representativeness, stating that the growing inconsistency between field-measured average load size and Appendix J2-calculated average load size indicates that average load size is independent of clothes washer capacity and is relatively small. *Id.* NEEA also stated that using a fixed average load size would reduce test burden, since less work would be required by the laboratory to build an inventory of custom Appendix J2-defined average loads for each clothes washer capacity. NEEA recommended that if DOE were to determine a field average load size for the United States, DOE could conduct a study similar to the referenced Choice study but with a representative group of consumers in the United States. *Id.*

DOE appreciates NEEA providing the consumer usage data from the 2014 laundry study. DOE does not agree with NEEA's conclusion that the 2014 laundry study confirms that the field average load size is independent of clothes container size and is relatively small. In support of its assertion, NEEA presented data indicating that current (2019) average capacity has increased to 4.4 ft^3, for which Appendix J2 defines an average load size of 10.4 lb. However, NEEA did not present any field data demonstrating average consumer load sizes for a sample of clothes washers with an average capacity of 4.4 ft^3. Therefore, no conclusions can be drawn from the 2014 laundry study regarding how consumer load sizes may have changed as average clothes washer capacity has increased from around 3.5 ft^3 in 2010 to 4.4 ft^3 in 2019. Regarding NEEA's summary of the three Australian field studies, DOE reiterates that the usage patterns of Australian consumers do not necessarily represent the usage patterns of U.S. consumers. DOE notes that the summaries of the Electrolux and Fisher & Paykel surveys provided by NEEA do not identify the average capacity of the clothes washers in the survey samples. Therefore, no conclusions can be drawn regarding how the average consumer load size of 6.6 lb from the surveys compares to the load size that Appendix J2 would prescribe for a U.S. clothes washer of the same size. While DOE agrees that using a fixed average load size could decrease test burden by avoiding the need to inventory different average load sizes for each possible capacity, for the reasons described above, DOE preliminarily concludes that the data provided by NEEA do not justify using a fixed average load size across all clothes container capacities.

The Joint Commenters also encouraged DOE to consider specifying an average load size that is a constant value independent of capacity. (Joint

[30] Lloyd Harrington of Energy Efficient Strategies, Australia. Supporting data and corresponding presentations: *eedal2017.uci.edu/wp-content/uploads/Thursday-17-Harrington.pdf.*

[31] According to CA IOUs, the data represent 310 wash cycles across 105 California households. (CA IOUs, No. 8 at p. 7)

[32] NEEA's estimate of 4.4 ft^3 average capacity in 2019 is based on NEEA's 2019 ENERGY STAR Retail Products Platform data.

[33] ''Washing machine user habits: A report on wash temperature and load size habits among CHOICE Members.'' 2011. Prepared for the Australian Department of Climate Change and Energy. Not publicly published, but can be made available upon request to Simon Newman, Residential Energy Efficiency Branch, Energy Security and Efficiency Division, Department of Industry, Science, Energy and Resources, PO Box 2013, Canberra, ACT 2601. 39 Personal Communication. Lloyd Harington, Energy Efficient Strategies. 17 June 2020.

Commenters, No. 10 at pp. 4–5) According to the Joint Commenters, the introduction of large-capacity clothes washers to the market, combined with the structure of Table 5.1 in Appendix J2, has led to the weighted-average load size for the largest clothes washers being significantly greater than that for small clothes washers. For example, the Joint Commenters stated that the weighted-average load size for a 6.0 ft^3 clothes washer (13.68 lb) is around 60 percent larger than the weighted-average load size for a 3.5 ft^3 clothes washer (8.68 lb). *Id.* The Joint Commenters also referenced NEEA's laundry field study, which the Joint Commenters characterized as finding no clear correlation between clothes washer capacity and load size. The Joint Commenters expressed concern that the current test procedure may not be representative of an average cycle use for large-capacity clothes washers. *Id.*

As noted previously, DOE preliminary concludes that the data provided by NEEA, as referenced by the Joint Commenters, do not demonstrate that using a fixed average load size would be representative of U.S. consumer usage. DOE also notes that the assertion made by NEEA and the Joint Commenters—that consumer average load sizes are *smaller* than DOE's Appendix J2 load sizes—conflicts with the data summarized above from the CA IOUs, which suggest consumer average load sizes for clothes washers in the range of 2 to 5 ft^3 capacity that are *larger* than the Appendix J2 load sizes. These conflicting conclusions, combined with the noted limitations of each data set, do not provide justification for DOE to change the average load sizes in Table 5.1 of Appendix J2.

As noted, DOE is proposing to replace the minimum, maximum, and average load sizes with two new load sizes in the proposed new Appendix J, designated as ''small'' and ''large.'' In the paragraphs that follow, DOE explains its rationale for (1) reducing the number of load sizes from three to two, and (2) defining the two load sizes for each capacity bin.

As discussed in section III.A of this document, AHAM and GEA commented on the current test burden associated with conducting the Appendix J2 test procedure. While DOE acknowledges the theoretical possibility of Appendix J2 requiring up to 70 test cycles, DOE is not aware of any products currently or historically on the market that would require this maximum number of test cycles. In DOE's experience, in practice the number of test cycles is around 6 cycles for clothes washers with very few and basic features; around 15–20 cycles for the most typical configurations on the market; and around 35 cycles for the most feature-rich models that would trigger the greatest number of required test cycles in Appendix J2. Nevertheless, DOE seeks to find opportunities for reducing the test burden associated with its test procedures, while maintaining representative, repeatable, and reproducible test results.

One of the key contributors to the total number of required cycles is the requirement to test three load sizes for each wash/rinse temperature selection required for testing on clothes washers with automatic WFCS (which represent the majority of the market). As described previously, the three load sizes were devised to approximate a normal distribution of consumer load sizes. At the time of the August 1997 Final Rule, clothes washer control panels were not as feature-rich as current models available on the market, and DOE had not contemplated that future clothes washer models could require testing up to 35 cycles.

Given the increasing prevalence of more feature-rich clothes washer models that require a higher number of test cycles under Appendix J2, DOE is proposing to reduce test burden by reducing the number of defined load sizes for the proposed new Appendix J from three to two for clothes washers with automatic WFCS. The following paragraphs discuss how DOE proposes to define the two load sizes for each capacity bin.

The new proposed small and large load sizes would continue to represent the same roughly normal distribution presented in the 1995 P&G data described above. The weighted-average load size using the proposed small and large load sizes would match the weighted-average load size using the current minimum, average, and maximum load sizes. As proposed, the small and large load sizes would have equal load usage factors (''LUFs'') [34] of 0.5. The small and large load sizes would represent approximately the 25th and 75th percentiles of the normal distribution, respectively. Each of these points is discussed in greater detail in the paragraphs that follow.

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Figure III.3 illustrates how the proposed new small and large load sizes would overlay with the P&G load distribution data.

[34] LUFs are weighting factors that represent the percentage of wash cycles that consumers run with a given load size.

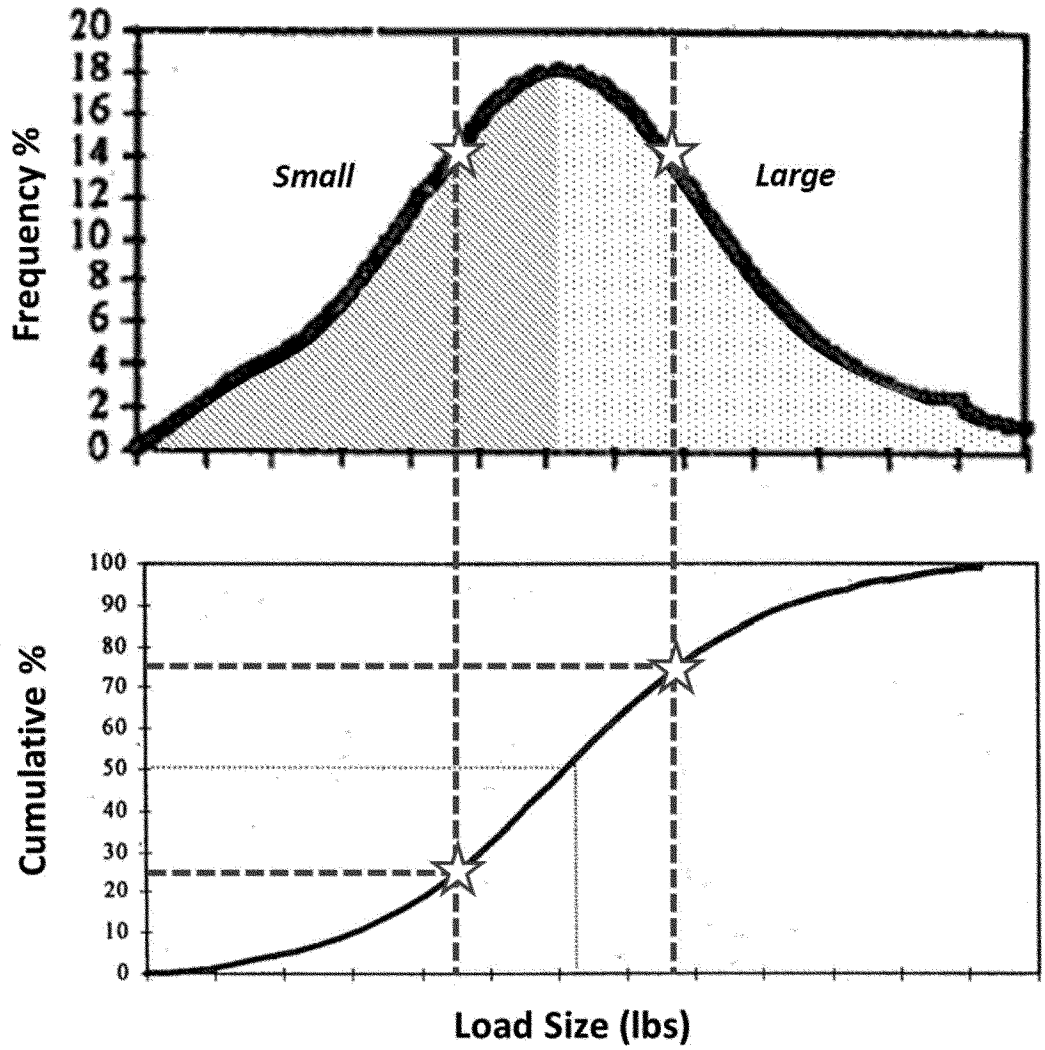

Figure III.3 Illustrative Depiction of the Two Load Sizes Representing the Normal Distribution of Consumer Loads from the 1995 Procter & Gamble Data

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As noted, DOE defined the proposed new load sizes and LUFs such that the weighted-average load size equals the weighted-average load size of the current minimum, average, and maximum load definitions for clothes washers with automatic WFCS, and thus will produce test results with equivalent representativeness. As noted in DOE's responses to comments above, DOE is not aware of any more recent, nationally representative field data indicating that the consumer load size distribution in relation to clothes washer capacity has changed since the introduction of the three load sizes in the August 1997 Final Rule.

Further, defining the small and large loads to represent approximately the 25th and 75th percentiles of the normal distribution balances the need to capture as large of a load size range as possible while remaining representative of the ''peak'' of the load distribution curve, which represents the most frequently used load sizes.

Specifically, DOE is proposing that the small and large load sizes be calculated using Equation III.1 and Equation III.2, respectively.

Small load size [*lb*] = 0.90 × Capacity [ft^3] + 2.34

Equation III.1 Proposed Determination of the Small Test Load Size

Large load size [*lb*] = 3.12 × Capacity [ft^3] + 0.72

Equation III.2 Proposed Determination of the Large Test Load Size

As noted, clothes washers with manual WFCS are tested only with the minimum and maximum load sizes, in contrast to clothes washers with automatic WFCS, which are tested with all three load sizes. Given DOE's proposal to define only two load sizes in the proposed new Appendix J, the same two load sizes could be used for all clothes washers, regardless of whether a clothes washer's WFCS is automatic or manual.

DOE's proposal would reduce test burden under the proposed new Appendix J by requiring only two load sizes to be tested instead of three for clothes washers with automatic WFCS. Specifically, the number of cycles tested would be reduced by 33 percent for clothes washers with automatic WFCS, which represent a large majority of clothes washers on the market.

DOE's proposed water fill selections corresponding to the new small and large load sizes are further discussed in section III.D.2 of this document.

DOE requests comment on its proposal to replace the minimum, maximum, and average load sizes with the small and large load sizes in the proposed new Appendix J. DOE seeks comment on how reducing the number of load sizes tested would impact the

representativeness of test results. DOE also requests data and information to quantify the reduction in test burden that would result from reducing the number of load sizes from three to two for clothes washers with automatic WFCS.

2. Water Fill Setting Selections for the Proposed Load Sizes

Section 3.2.6 of Appendix J2 prescribes the water fill setting selections to use with each load size based on the type of WFCS on the clothes washer. As discussed in section III.D.1.b of this document, DOE is proposing that the proposed new Appendix J test newly-defined small and large load sizes, rather than the minimum, maximum, and average load sizes used in Appendix J2. To test clothes washers using these new small and large load sizes, the appropriate water fill setting selections would also need to be provided in the proposed new Appendix J for each load size for each type of WFCS.

Appendix J2 defines two main types of WFCS: manual WFCS, which ''requires the user to determine or select the water fill level,'' and automatic WFCS, which ''does not allow or require the user to determine or select the water fill level, and includes adaptive WFCS and fixed WFCS.'' Sections 1.22 and 1.5 of Appendix J2, respectively. Section 3.2.6.2 of Appendix J2 further distinguishes between user-adjustable and not-user-adjustable automatic WFCS. Additionally, section 3.2.6.3 of Appendix J2 accommodates clothes washers that have both an automatic WFCS and an alternate manual WFCS. Proposed amendments to the definitions of fixed WFCS and user-adjustable automatic WFCS are further discussed in section III.H.3.a of this document.

Section 3.2.6.1 of the current Appendix J2 specifies that clothes washers with a manual WFCS are set to the maximum water level available for the wash cycle under test for the maximum test load size and the minimum water level available for the wash cycle under test for the minimum test load size.

Section 3.2.6.2.1 of Appendix J2 specifies that clothes washers with non-user-adjustable automatic WFCS are tested using the specified maximum, minimum, and average test load sizes, and that the maximum, minimum, and average water levels are selected by the control system when the respective test loads are used (*i.e.,* no selection of water fill level is required by the user).

Section 3.2.6.2.2 of Appendix J2 specifies that clothes washers with user-adjustable automatic WFCS undergo four tests. The first test is conducted using the maximum test load and with the automatic WFCS set in the setting that will give the most energy intensive result. The second test is conducted with the minimum test load and with the automatic WFCS set in the setting that will give the least energy intensive result. The third test is conducted with the average test load and with the automatic WFCS set in the setting that will give the most energy intensive result for the given test load. The fourth test is conducted with the average test load and with the automatic WFCS set in the setting that will give the least energy intensive result for the given test load. The energy and water consumption for the average test load and water level are calculated as the average of the third and fourth tests.

As discussed in section III.D.1.b of this document, DOE is proposing that the proposed new Appendix J test newly-defined small and large load sizes, rather than the minimum, maximum, and average load sizes used in Appendix J2. To test clothes washers using these new small and large load sizes, the appropriate water fill setting selections would also need to be provided in the proposed new Appendix J for each load size for each type of WFCS.

For manual WFCS clothes washers, DOE first considered maintaining the current water fill level settings as specified in Appendix J2 (*i.e.,* testing the proposed small load with the minimum water level setting available and testing the proposed large load with the maximum water level setting available). However, the proposed small load is larger than the current minimum load, and using the minimum water fill setting for the larger-sized ''small'' load may not be representative of consumer use. In other words, while the minimum water fill level setting may provide an appropriate amount of water for washing the ''minimum'' load size, it may not provide sufficient water for washing the ''small'' load size as proposed. Further, the 1995 P&G data showed that when using a clothes washer with manual WFCS, consumers tend to select more water than is minimally necessary for the size of the load being washed.[35]

Based on these considerations, DOE is instead proposing to specify the use of the second-lowest water fill level setting for the proposed small load size. Although DOE is not aware of any clothes washers with manual WFCS currently on the market with only two water fill level settings available, DOE proposes to accommodate such a design by specifying that if the water fill level selector has two settings available for the wash cycle under test, the minimum water fill level setting would be selected for the small load size, consistent with the current specification in Appendix J2. In all cases, the water fill level selector would be set for the large load size to the maximum water fill level setting available for the wash cycle under test, consistent with the current specification in Appendix J2 for testing the maximum load size.

For clothes washers with non-user-adjustable automatic WFCS, no changes would be required because the water fill levels are determined automatically by the WFCS.

As discussed, section 3.2.6.2.2 of Appendix J2 specifies that clothes washers with user-adjustable automatic WFCS require four test cycles: one test at the most energy-intensive setting[36] using the maximum load size, one test at the least energy-intensive setting using the minimum load size, one test at the least energy-intensive setting using the average load size, and one test at the most energy-intensive setting using the average load size. As described in section III.D.1.b of this document, DOE's proposal would reduce the number of test load sizes from three to two, which would necessitate a change to these instructions for clothes washers with user-adjustable WFCS. To accommodate the proposed ''small'' and ''large'' load sizes in the proposed new Appendix J, DOE is proposing to require testing clothes washers with user-adjustable WFCS using the large test load size at the setting that provides the most energy-intensive result, and the small test load size at the setting that provides the least energy-intensive result. This proposal would capture the same range of water fill performance as the current test procedure (*i.e.,* capturing the range of least-intensive to most-intensive results). Additional tests could be considered, for example: Testing the small test load size at the setting that provides the most energy-intensive result and the large test load size at the setting that provides the least energy-intensive result. However, DOE has tentatively concluded that requiring

[35] See p. 20 of the AHAM document at *www.regulations.gov/document/EERE–2006–TP–0065–0027;* specifically, the conclusions that ''consumers are not good judges of clothes load size'' and ''consumers overuse maximum fill level.''

[36] As described in section III.H.3.b of this document, DOE is proposing to update the phrase ''the setting that will give the most energy-intensive result'' to ''the setting that uses the most water'' (and likewise for the setting that will give the least energy-intensive result) to reflect the original intent of this provision.

these two additional cycles beyond the two proposed cycles would create additional test burden with little, if any, improvement to representativeness compared to the proposal.

In summary, DOE tentatively concludes that the proposed changes to the water fill level settings, in conjunction with the proposed changes to the load sizes and the applicable LUFs, would continue to produce representative test results for each type of WFCS. Collectively, this combination of amendments would continue to approximate the same consumer usage patterns that provide the foundation for the current Appendix J2 test procedure.

DOE recognizes that for some models, these proposed amendments could change the measured efficiency. As noted, DOE is proposing to include the changes to the water fill level specifications only in the proposed new Appendix J, which DOE would use for the evaluation and issuance of updated efficiency standards. Thus, DOE is proposing that use of the proposed new Appendix J, if finalized, would not be required until such time as the energy conservation standards are amended using the measured efficiency as determined under Appendix J.

DOE requests comment on its proposal to change the water fill level selections in the proposed new Appendix J for clothes washers with manual and user-adjustable automatic WFCS to reflect the proposed small and large test load sizes. DOE seeks data and information on how the proposed changes to the water fill level selection for clothes washers with manual and user-adjustable automatic WFCS would impact test procedure representativeness.

3. Determination of Warm Wash Tested Settings

Section 3.5 of Appendix J2 states that if a clothes washer has four or more Warm Wash/Cold Rinse temperature selections, either all discrete selections shall be tested, or the clothes washer shall be tested at the 25-percent, 50-percent, and 75-percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75-percent position, in place of each such unavailable selection, the next warmer temperature selection shall be used. DOE refers to the latter provision as the ''25/50/75 test.'' Section 3.6 of Appendix J2 states that the 25/50/75 test provision also applies to the Warm Wash/Warm Rinse temperature selection.

DOE first established the 25/50/75 test in Appendix J1–1997 to address the test burden for clothes washers that offer a large number of warm wash temperature selections, if the test procedure were to require testing all warm temperature selections. 62 FR 45484, 45497. DOE had originally proposed a similar method [37] in the April 1996 SNOPR for clothes washers having infinite warm wash selections that are nonuniformly distributed. 61 FR 17589, 17599. In the August 1997 Final Rule, DOE considered clothes washers with more than three warm wash temperatures to be clothes washers with infinite warm wash temperature selections, therefore allowing them to also use the 25/50/75 test. 62 FR 45484, 45498. DOE concluded at that time that testing at the various test points of the temperature range, with a requirement to test to the next higher selection if a temperature selection is not available at a specified test point, would provide data representative of the warm wash temperature selection offerings. *Id.*

DOE notes that the 25/50/75 test was adopted before the widespread use of electronic controls, which now allow for the assignment of wash water temperatures that may not reflect the physical spacing between temperature selections on the control panel. For example, with electronic controls, the 25-percent, 50-percent, and 75-percent positions on the dial may not necessarily correspond to 25-percent, 50-percent, and 75-percent temperature differences between the hottest and coldest selections. DOE is aware of clothes washers on the market with four or more warm wash temperature selections, in which the temperature selections located at the 25, 50, and 75-percent positions are low-temperature cycles that have wash temperatures only a few degrees higher than the coldest wash temperature; whereas the temperature selection labeled ''Warm'' is located beyond the 75-percent position on the temperature selection dial and is therefore not included for testing under the 25/50/75 test. 85 FR 31065, 31073.

In the May 2020 RFI, DOE requested feedback on the representativeness of using the 25/50/75 test on clothes washers with electronic controls, particularly for clothes washers in which the 25-percent, 50-percent, and 75-percent positions on the dial do not correspond to 25-percent, 50-percent, and 75-percent temperature increments between the hottest and coldest selections. *Id.* DOE also requested comment on whether there is a less burdensome means for the test procedure to be reasonably designed to measure energy use or efficiency of the clothes washer during a representative average use cycle.

AHAM opposed any changes to the 25/50/75 test for clothes washers with four or more warm/cold temperature selections, stating that changes are not necessary. AHAM asserted that introducing any change could lead to increased test burden with no evident benefit to consumers or energy savings. (AHAM, No. 5 at p. 13)

The CA IOUs supported DOE amending the 25/50/75 test to define positions along the temperature range instead of positions along the temperature selection device. The CA IOUs expressed concern that the current 25/50/75 test significantly underestimates energy usage of clothes washers in situations where positions along the temperature selection device do not match positions along the temperature range. (CA IOUs, No. 8 at p. 16)

The Joint Commenters expressed concern that the 25/50/75 test for clothes washers with four or more Warm Wash/Cold Rinse temperature selections is not representative because, for some clothes washers, the 25-percent, 50-percent, and 75-percent positions on the temperature dial may not accurately represent the 25-percent, 50-percent, and 75-percent temperature differences between the coldest and hottest selections. The Joint Commenters encouraged DOE to amend the 25/50/75 test so that it adequately represents the energy use of all clothes washers' Warm Wash/Cold Rinse temperature selections. (Joint Commenters, No. 10 at p. 3)

NEEA recommended that DOE characterize the Warm Wash/Cold Rinse temperature selections using a single test run on the wash temperature setting labeled ''Warm'' in order to increase representativeness of real-world use. NEEA expressed concern that the current test procedure likely underestimates hot water use and adds unnecessary test burden. (NEEA, No. 12 at pp. 18–20) NEEA added that its recommended change would eliminate up to six test runs from the test procedure (three load sizes at two wash/rinse temperatures). NEEA expects that this benefit would affect a sizeable percentage of the market, given NEEA's estimate that more than 75 percent of clothes washers sold in the Northwest have three or more discrete Warm Wash/Cold Rinse temperature selections. *Id.*

[37] The originally proposed test would have required testing at the 20/40/60/80 percent positions.

DOE is proposing to require testing of both the hottest Warm Wash/Cold Rinse setting and the coldest Warm Wash/Cold Rinse setting for all clothes washers in the proposed new Appendix J instead of the 25/50/75 test. Water consumption, electrical energy consumption, and all other measured values [38] would be averaged between the two tested cycles to represent the Warm Wash/Cold Rinse cycle. DOE is proposing to make the same changes to the Warm Wash/Warm Rinse cycle in the proposed new Appendix J.

DOE's proposal would decrease the test burden under the proposed new Appendix J for clothes washers that offer more than two Warm Wash/Cold Rinse or Warm Wash/Warm Rinse temperature settings, which DOE estimates represent around half of the market, by reducing the number of Warm Wash/Cold Rinse and Warm Wash/Warm Rinse tested cycles from three to two. Because this proposed approach may, however, change the measured energy use of clothes washers that offer more than two Warm Wash/Cold Rinse or Warm Wash/Warm Rinse settings, the proposed edits would not apply to Appendix J2 and therefore would not affect the measured efficiency of existing clothes washers. The ongoing RCW and CCW energy conservation standards rulemakings would consider the impact of any modifications to the measured efficiency using the proposed new Appendix J.

DOE tentatively concludes that the proposed approach in the proposed new Appendix J would maintain representativeness by continuing to capture the complete range of Warm Wash temperatures available for selection (*i.e.,* by relying on an average of the hottest Warm Wash/Cold Rinse setting and the coldest Warm Wash/Cold Rinse setting). For models that are currently tested using the 25/50/75 test and for which certain ''Warm'' settings are located beyond the 75-percent position on the temperature selection dial and therefore not included for testing, DOE's proposal would capture entire range of available Warm Wash temperatures available to the consumer, and therefore would improve representativeness.

DOE acknowledges that NEEA's suggestion to characterize the Warm Wash/Cold Rinse temperature selections using a single test run on the wash temperature setting labeled ''Warm'' would reduce test burden even further by requiring just a single test cycle. However, DOE tentatively concludes that testing a single Warm Wash temperature on a clothes washer that offers multiple Warm Wash selections to the user may not provide as accurate a representation of consumer usage as DOE's proposal, which captures the full range of available Warm Wash temperatures. In addition, DOE is concerned that defining the tested temperature as the setting labeled ''Warm'' would create ambiguity for clothes washers that offer multiple Warm Wash temperatures but for which no setting is expressly labeled ''Warm.'' For example, DOE is aware of clothes washers that use descriptors such as ''Colors,'' ''Brights,'' and ''Whites'' to describe the different wash temperature selections available to the user.

DOE requests comment on the proposal to require in the proposed new Appendix J testing only the hottest and the coldest Warm Wash/Cold Rinse settings. DOE seeks data and information on how this proposed change to the Warm Wash temperature settings required for testing would impact representativeness, testing costs, and manufacturer burden.

As noted, based on its market research, DOE estimates that roughly half of all clothes washer models on the U.S. market offer more than two Warm Wash/Cold Rinse temperature settings. For these units, DOE's proposal to simplify the Warm Wash/Cold Rinse settings required for testing may impact measured efficiency. Therefore, in this NOPR, DOE is proposing to change the Warm Wash tested settings only in the proposed new Appendix J and not in the existing Appendix J2. The ongoing RCW and CCW energy conservation standards rulemakings would consider the impact of these modifications to the Warm Wash/Cold Rinse tested cycles on measured efficiency.

4. Remaining Moisture Content

Section 3.8.4 of Appendix J2 requires that for clothes washers that have multiple spin settings [39] available within the energy test cycle that result in different RMC values, the maximum and minimum extremes of the available spin settings must be tested with the maximum load size on the Cold/Cold temperature selection.[40] The final RMC is the weighted average of the maximum and minimum spin settings, with the maximum spin setting weighted at 75 percent and the minimum spin setting weighted at 25 percent. The RMC measurement is used to calculate the drying energy component of IMEF. On most clothes washers, the drying energy component represents the largest portion of energy captured in the MEF and IMEF metric.

DOE is aware of clothes washers on the market that offer multiple spin settings, but which offer only the maximum spin setting on the Cold/Cold temperature selection. 85 FR 31065, 31073. This results in the lower spin setting not being factored into the RMC calculation, despite being available at other temperature selections in the energy test cycle. As defined in the Temperature Use Factor (''TUF'') [41] Table 4.1.1 in Appendix J2, the Cold/Cold temperature selection represents 37 percent of consumer temperature selections, whereas the other available temperature selections, for which the lower spin settings would be available on such a unit, represent a combined 63 percent of consumer temperature selections. *Id.* DOE has tentatively concluded that the existing RMC measurement procedure may not provide representative test results on certain clothes washer models.

a. Revised Calculation

In the May 2020 RFI, DOE requested comment on testing clothes washers that offer only the maximum spin setting on the Cold/Cold temperature selection but provide lower spin settings on other temperature selections. *Id.* DOE suggested that, RMC could be measured at the default spin setting for each temperature selection and averaged using the TUFs. *Id.*

AHAM stated that it is not necessary to address clothes washers with spin settings that are only available on certain temperature selections because the current method of RMC calculation is representative of an average use cycle. (AHAM, No. 5 at p. 13)

Samsung commented that clothes washers with spin settings that are available only on certain temperature selections make the current test procedure unrepresentative of real world use, since customers can select an

[38] As discussed in sections III.D.4.a and III.D.5 of this document, DOE is proposing to require measurements of RMC and cycle time for each tested cycle.

[39] The term ''spin settings'' refers to spin times or spin speeds. The maximum spin setting results in a lower (better) RMC.

[40] On clothes washers that provide a Warm Rinse option, RMC must be measured on both Cold Rinse and Warm Rinse, with the final RMC calculated as a weighted average using TUFs of 73 percent for Cold Rinse and 27 percent for Warm Rinse. DOE has observed very few clothes washer models on the market that offer Warm Rinse. For simplicity throughout this discussion, DOE references the testing requirements for clothes washers that offer Cold Rinse only.

[41] As described in more detail in section III.G.4 of this document, TUFs are weighting factors that represent the percentage of time that consumers choose a particular wash/rinse temperature selection for the wash cycle.

un-tested, and potentially more energy-intensive mode, in order to access the spin speed they intend to use. Samsung suggested that for such units, DOE consider requiring an additional test at another temperature setting where the spin speed is selectable. (Samsung, No. 6 at pp. 2–3)

NEEA commented that it was not aware of any units with spin speeds that are available only on certain temperature selections, but asserted that Appendix J2's current RMC test does not represent the range of RMCs expected in the field, even when maximum and minimum speeds are tested as specified in Appendix J2. NEEA presented RMC data from its testing of three top-selling clothes washer models, which demonstrated a difference in RMC of 0.3–1.1 percentage points between maximum and minimum speed.[42] (NEEA, No. 12 at p. 5) NEEA described laboratory testing it conducted to isolate and measure variables that affect RMC: testing was performed on 12 top-selling RCW models (including six front-loading and five top-loading), representing over five manufacturers, and spanning the range of efficiencies available on the market; two CCWs were tested as well. (NEEA at No. 12, pp. 2–13) NEEA stated its testing was performed according to the DOE Appendix J2 procedure, except that the RMC was calculated for all test runs performed; an encoder non-invasively measured revolutions per minute during test runs; and some tests were performed at different load sizes or using different cycle selections. Based on its data, NEEA stated that the current Appendix J2 RMC test does not represent the RMC of an average clothes washer cycle. NEEA asserted that the RMC test procedure prescribed in Appendix J2 represents a ''best-case'' scenario for RMC conditions—every other test that NEEA performed at alternate temperatures, load sizes, and cycle types increased the RMC value relative to the Appendix J2-tested value. *Id.* NEEA commented that, according to its testing, the primary difference in RMC for a given clothes washer was due to programmed spin differences such as spin time, and not differences in load size. *Id.* NEEA's stated that its test data show that among all the clothes washers tested, spin time was, on average, 7 minutes longer using the Cold Wash/Cold Rinse temperature selection with the maximum spin selection than when using the Warm Wash/Cold Rinse temperature selection with the default spin selection. These differences resulted in an RMC difference of an average of 10 percentage points. *Id.* NEEA recommended that DOE measure RMC at the default spin setting for each temperature selection and load size, and average those RMC values using TUFs and LUFs. NEEA stated that this approach will reduce test burden by removing the need for a separate test run exclusively for measuring RMC, increase representativeness by capturing RMC for all load sizes and water temperatures, and potentially result in significant energy savings for clothes dryers in the future. *Id.*

The Joint Commenters and CA IOUs supported NEEA's comments and urged DOE to amend the test procedure to measure RMC for all load sizes and temperature selections, and to weight the measurements using LUFs and TUFs because doing so would improve the representativeness of the test procedure. (Joint Commenters, No. 10 at pp. 1–2; CA IOUs, No. 8 at pp. 6–7) The Joint Commenters stated that the current test procedure is likely significantly underestimating drying energy use and is leading to inaccurate efficiency ratings. (Joint Commenters, No. 10 at p. 1)

DOE is proposing an amended method for measuring RMC in the proposed new Appendix J that would require measuring RMC on each of the energy test cycles using the default spin settings, and determining the final RMC by weighting the individual RMC measurements using the same TUFs and LUFs that apply to the water and energy measurements. DOE notes that this proposal is largely consistent with the approach recommended by NEEA and supported by the Joint Commenters and CA IOUs.

DOE tentatively concludes (based on its test observations as described above and the test results presented by NEEA) that the current method of measuring RMC may no longer produce test results that measure energy and water use during a representative average use cycle or period of use, particularly as the prevalence of clothes washers with complex electronic controls continues to increase in the market. On a clothes washer with basic controls (*e.g.,* in which the available spin settings are the same regardless of what wash/rinse temperature is selected), measuring RMC using only the Cold/Cold cycle would be expected to provide RMC results that are equally representative of the other available wash/rinse temperatures, which as noted comprise the majority of consumer cycle selections. However, on a clothes washers in which the selection of wash/rinse temperature affects which spin settings are available to be selected, measuring RMC using only the Cold/Cold cycle may not necessarily provide results that measure energy and water use during a representative average use cycle or period of use (*i.e.,* across the range of wash/rinse temperature options selected by consumers, as represented by the temperature use factors).

The data presented by NEEA illustrates how, on average, the spin portion of the cycle on the setting used to measure RMC (*i.e.,* the maximum spin setting on the Cold Wash/Cold Rinse temperature setting) may not be representative of the spin characteristics and resulting RMC measurement of other temperature selections comprising the energy test cycle. Specifically, the data presented by NEEA suggest that the specific cycle configuration from which RMC is measured is programed with a longer spin time than other temperature settings available to the consumer, resulting in a significantly better RMC measurement than would be experienced by the consumer on the majority of wash cycles performed.

The proposed update to the RMC measurement would provide a more representative measure of RMC than the current test procedures because RMC would be measured on all of the energy test cycles rather than only the Cold Wash/Cold Rinse cycles, which represent only 37 percent of consumer cycles and may not share the same RMC performance as the other 63 percent of consumer cycles.[43]

Regarding Samsung's suggestion to require an additional RMC test at a different temperature setting that would provide the spin speed that is unavailable on the Cold setting, DOE tentatively concludes that its proposed approach would provide a more representative measure of RMC by capturing RMC across all the temperature settings within the energy test cycle.

Because RMC directly affects drying energy, which is a large component in the calculation of IMEF, it is important that the RMC value be representative of all test cycles. DOE's proposal would make the RMC calculation consistent with how hot water energy, electrical energy, and water usage are calculated, *i.e.,* by testing multiple load sizes and temperatures and averaging these values using LUFs and TUFs.

[42] DOE notes that in NEEA's comment, this range was cited as 0.3–0.9, but the data in the table presented by NEEA displayed a range of 0.3–1.1 percentage points between the RMCs at maximum and minimum speed.

[43] 37% is the TUF for the Cold Wash/Cold Rinse temperature selection as specified in Table 4.1.1 of Appendix J2.

DOE tentatively concludes that this proposal would reduce overall test burden. The proposal would require weighing the cloth before and after each test cycle, but would avoid the need to perform extra cycles for capturing both the maximum and minimum spin settings available on the clothes washer if such spin settings are not activated by default as part of the energy test cycle. In DOE's experience, a majority of clothes washers offer multiple spin settings, thus requiring between one and eight RMC cycles, depending on the specific options available on the clothes washer. Appendix J2 currently requires measuring the test load weight before each cycle in order to verify that the load is bone-dry.[44] To DOE's knowledge, many laboratories already measure and record the test load weight after each test cycle as a means for identifying potential cycle anomalies or to provide additional data that can be used to verify quality control retrospectively. In cases where a laboratory currently does not measure the weight after completion of the cycle, DOE's proposal would incur a *de minimis* amount of additional time to weigh the load after the cycle, which can be performed using the same scale used to weigh the load at the beginning of the cycle. For these reasons DOE does not expect the additional collection of data to result in additional test burden.

This proposal would likely impact the measured RMC value and thus would impact a clothes washer's IMEF value. Therefore, in this NOPR, DOE is proposing the revised RMC procedure only in the proposed new Appendix J and not in existing Appendix J2. The ongoing RCW and CCW energy conservation standards rulemakings would consider the impact of any modifications to the RMC calculation on measured efficiency.

DOE requests comment on its proposal to revise the RMC procedure so that RMC would be measured at the default spin setting for each temperature selection and load size, and the individual RMC values would be averaged using TUFs and LUFs to calculate the final RMC. DOE seeks data and information regarding how this change to the RMC calculation would impact testing costs and manufacturer test burden.

DOE further requests comment on whether DOE should implement any changes to the RMC calculation in Appendix J2 to address clothes washers with spin settings that are available only on certain temperature selections.

[44] See section III.D.4.b of this document for the definition of the term ''bone-dry.''

b. Definition of Bone-Dry

In section 1.6 of Appendix J2, the term ''bone-dry'' is defined as a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10-minute periods until the final weight change of the load is 1 percent or less. The bone-dry definition was first established in the September 1977 Final Rule. 42 FR 49801, 49807–49808. In the March 2012 Final Rule, DOE added a specification to section 2.6 of Appendix J2 requiring that the dryer used for drying the cloth to bone-dry must heat the test cloth (and stuffer cloths) above 210 °F (99 °C). 77 FR 13888, 13924.

In response to the May 2020 RFI, NEEA recommended that DOE update its procedure for achieving bone-dry test cloth to harmonize with Annex G of IEC Standard 60456, ''Clothes washing machines for household use—Methods for measuring the performance'' Edition 5.0 (''IEC 60456''). (NEEA, No. 12 at p. 26) In particular, NEEA recommended that DOE consider the tumble dryer specifications in Section G.2 of IEC 60456, the dryer inlet temperature measurement method, and the requirement that the weight of the bone-dry load change be no more than 1 percent or 0.044 lb (whichever is smaller) between 10-minute drying periods (Section G.3 of IEC 60456). *Id.*

DOE is not aware of any problems with the current bone-dry definition that would justify changing the bone-dry definition as NEEA has suggested. DOE has tentatively concluded that specifying a weight change of no more than 1 percent or 0.044 lb (whichever is smaller) would increase the test burden because for a majority of tested loads, the 0.044 lb requirement would apply, which would be more stringent than the existing 1 percent requirement. DOE has not identified, and commenters have not suggested, any problems with the current approach. In the absence of data indicating any problems with the current procedure, DOE is not proposing any changes to the bone-dry definition or associated dryer temperature measurement method in this NOPR.

DOE requests comment on its tentative conclusion not to propose changes to the bone-dry definition and associated dryer temperature measurement method.

c. Starting Moisture Content

Section 2.9.1 of Appendix J2 requires the test load for energy and water consumption measurements to be bone-dry prior to the first cycle of the test, and allows the test load to be dried to a maximum of 104 percent of the bone-dry weight for subsequent testing. This allowance effectively allows for an increase to the starting moisture content of the load from 1 percent moisture (as implied in the definition of ''bone-dry'' in section 1 of Appendix J2) to 4 percent moisture, which creates two concerns.

First, for the largest clothes washers on the market, which use the largest test load sizes, a 4 percent tolerance can represent up to 1 lb of additional water weight in a starting test load. DOE is concerned that the range of starting water weights that this provision allows could reduce the repeatability and reproducibility of test results, particularly for larger clothes washers.

Second, as described in section III.D.4.a of this document, DOE is proposing to require the measurement of RMC for all tested cycles in the proposed new Appendix J. The RMC of each tested cycle would be calculated based on the bone-dry weight at the start of the cycle. Allowing the bone-dry weight to vary within a range of 1 percent to 4 percent moisture at the beginning of each tested cycle would introduce variability into the RMC calculation.

Therefore, to improve repeatability and reproducibility of test results, DOE is proposing in new Appendix J to remove the provision that allows for a starting test load weight of 104 percent of the bone-dry weight, and instead require that each test cycle use a bone-dry test load. DOE is not proposing to make any changes to section 2.9.1 of Appendix J2, recognizing that such a change could impact measured energy efficiency.

In DOE's experience, most test laboratories use the bone-dry weight as the starting weight of each test load rather than a starting weight up to 104 percent of bone-dry, as allowed by section 2.9.1 of Appendix J2. If a test laboratory does make use of this provision in section 2.9.1 of Appendix J2, the requirement to use the bone-dry weight would add no more than 10 minutes of drying time per cycle to ensure that the test load has reached the bone-dry requirement. In DOE's experience, most test laboratories dry the load from the previous test cycle while the next cycle is being tested on the clothes washer, such that a minor increase in drying time would not affect the overall time required to conduct the test procedure.

DOE requests comment on its proposal to require that each test cycle use a bone-dry test load in the proposed new Appendix J. DOE requests comment on whether test laboratories

start test cycles with the test load at bone-dry or at up to 104 percent of the bone-dry weight. DOE further requests feedback on its assessment that this change would not affect test burden.

5. Cycle Time Measurement

The current test procedure does not specify a measurement for average cycle time. In this NOPR, DOE is proposing to base the allocation of annual combined low-power mode hours on the measured average cycle time rather than a fixed value of 8,465 hours, for the proposed new Appendix J (see section III.G.3 of this document). DOE is therefore proposing to require the measurement of average cycle time for the proposed new Appendix J. Calculating the annual standby mode and off mode hours using the measured average cycle time would provide a more representative basis for determining the energy consumption in the combined low-power modes for the specific clothes washer under test.

DOE is proposing to define the overall average cycle time of a clothes washer model as the weighted average of the individual cycle times for each wash cycle configuration conducted as part of the test procedure, using the TUFs and LUFs for the weighting. Using the weighted-average approach would align the average cycle time calculation with the calculations for determining weighted-average energy and water use. These proposed changes would apply only to the proposed new Appendix J.

DOE does not expect the measurement of cycle time to increase test burden. To DOE's knowledge, test laboratories are either already measuring cycle time for all tested cycles or using data acquisition systems to record electronic logs of each cycle, from which determining the cycle time would require minimal additional work.

DOE requests comment on its proposal to add cycle time measurements and to calculate average cycle time using the weighted-average method in the proposed new Appendix J. DOE also requests comment on its assertion that adding cycle time measurements and a calculation of a weighted-average cycle time would not increase testing costs or overall test burden.

6. Capacity Measurement

Section 3.1 of Appendix J2 provides the procedure for measuring the clothes container capacity, which represents the maximum usable volume for washing clothes. The clothes container capacity is measured by filling the clothes container with water and using the weight of the water to determine the volume of the clothes container. For front-loading clothes washers, this procedure requires positioning the clothes washer on its back surface such that the door opening of the clothes container faces upwards and is leveled horizontally.

a. Computer-Aided Design

DOE is aware that for some front-loading clothes washers, positioning the clothes washer on its back surface may be impractical or unsafe, particularly for very large or heavy clothes washers or those with internal components that could be damaged by the procedures specified in section 3.1 of Appendix J2. 85 FR 31065, 31072. On other clothes washers, filling the clothes container volume as described could be difficult or impractical, particularly for clothes washers with concave or otherwise complex door geometries. *Id.*

Recognizing these challenges, in the May 2020 RFI, DOE considered whether to allow manufacturers to determine the clothes container capacity by performing a calculation of the volume based upon computer-aided design (''CAD'') models of the basic model in lieu of physical measurements of a production unit of the basic model. 85 FR 31065, 31072. DOE allows a CAD-based approach for consumer refrigerators, refrigerator-freezers, and freezers, as specified at 10 CFR 429.72(c).[45] In the May 2020 RFI, DOE requested comments on whether to allow CAD-based determination of clothes container capacity for clothes washers in lieu of physical measurements of a production unit of the basic model. *Id.* DOE also requested comments on the impacts on manufacturer burden associated with any such change to the capacity measurement procedure. *Id.*

AHAM stated that the current volume measurement procedure works well as written, and AHAM does not believe it is necessary to allow for CAD-based determination of volume, stating that it would add unnecessary complexity to the test procedure. (AHAM, No. 5 at p. 10)

UL commented that while manufacturers could easily use CAD models of their clothes washer containers in order to measure capacity, third-party laboratories would still need to use the water-filling method. UL suggested that in order to eliminate the necessity of the water-filling method, manufacturers could submit CAD drawings to DOE as part of the certification process. (UL, No. 9 at p. 3)

NEEA commented that DOE should not allow manufacturers to declare capacities that cannot be verified by a third party (such as manufacturer-reported CAD-based determinations). (NEEA, No. 12 at pp. 26–27)

No information is available at this time to determine how a capacity rating based on a CAD model would compare to the measured capacity using the procedure defined in Appendix J2. DOE is not proposing to allow CAD-based capacity measurement at this time.

b. Alternative Measurements

In test procedures established in certain other jurisdictions (*e.g.,* Europe, the United Arab Emirates, Australia, and New Zealand), clothes washer capacity is represented in terms of the weight of clothing (*e.g.,* kilograms or pounds) that may be washed, rather than the physical volume of the clothes container. Furthermore, some of these test procedures allow for the clothes washer capacity to be declared by the manufacturer, representing the maximum weight of clothing that the clothes washer is designed to successfully clean. 85 FR 31065, 31072.

Some of the alternate representations of clothes washer capacity that DOE could consider include:

- A weight-based capacity, such as pounds of clothing, which could be derived from the measured volume of the clothes container in a similar manner to the way that the maximum test load is currently specified in Table 5.1 of Appendix J2 based on the measured clothes container volume.
- A clothes container capacity that is declared by the manufacturer using an industry-standard methodology. For example, IEC 60456 provides two optional methodologies for determining clothes container capacity, using either table tennis balls or water.[46]

In the May 2020 RFI, DOE requested comment on whether to consider any changes to the representation of clothes washer capacity, including, but not limited to, a weight-based capacity or manufacturer-declared capacity based on industry-standard methodology. 85 FR 31065, 31072. Specifically, DOE

[45] Under this approach, any value of total refrigerated volume of a basic model reported to DOE in a certification of compliance in accordance with § 429.14(b)(2) must be calculated using the CAD-derived volume(s) and the applicable provisions in the test procedures in 10 CFR part 430 for measuring volume, and must be within 2 percent, or 0.5 ft^3 (0.2 ft^3 for compact products), whichever is greater, of the volume of a production unit of the basic model measured in accordance with the applicable test procedure in 10 CFR part 430. (*See* 10 CFR 429.72(c).)

[46] For the table tennis ball approach, the clothes container is filled with specified table tennis balls, and an empirically determined equation is provided to convert the number of balls into a capacity value. The water approach is similar to the approach provided in section 3.1 of Appendix J2.

requested comment on whether the two methodologies provided in IEC 60456 provide capacity measurements that result in a test method that measures the energy use of the clothes washer during a representative average use cycle or period of use. *Id.*

AHAM supported the continued use of the current DOE clothes washer volume measurement, stating that it is accurate, repeatable, and reproducible. AHAM opposed any changes of the representation of clothes washer volume to a weight-based measurement or other manufacturer-declared capacity because, to AHAM's knowledge, there is not a repeatable, reproducible way to do so. (AHAM, No. 5 at pp. 10–12) AHAM described work it has performed over the past decade to develop a test procedure to evaluate capacity in terms of the weight of clothes that can be effectively washed and rinsed, similar to various international approaches. *Id.* As part of its investigation, AHAM tested cleaning, rinsing, and gentleness on nine randomly selected units to develop a baseline performance. AHAM stated that the results of this testing showed that the variation of the performance scores was too high to yield repeatable or reproducible results. *Id.* AHAM stated that any DOE effort to formulate a similar procedure would likely meet similar challenges. *Id.*

Electrolux supported AHAM's position that alternative capacity measurement methods should not be considered. Electrolux stated that the water volume-based method in use today is easy for third-party laboratories to use, and provides the best and most accurate data for the DOE test method. Electrolux stated that the water method is neither too restrictive nor too burdensome. (Electrolux, No. 11 at p. 1)

NEEA commented that DOE should maintain a single method of measurement of volumetric capacity, as it does currently in Appendix J2. (NEEA, No. 12 at pp. 26–27) NEEA stated that DOE should not allow multiple methods of capacity measurement under the test method, stating that this can lead to inconsistency and inequitable application of the test procedure that includes a maximum load size based on basket capacity. *Id.* NEEA also commented that DOE should not allow manufacturer declarations of capacity that cannot be verified by a third party (such as manufacturer reported CAD-based determinations). *Id.* NEEA cited the potentially high burden that would be associated with including washing performance testing that would be required for a manufacturer-reported weight capacity. *Id.*

DOE appreciates details and insights from stakeholders and industry regarding efforts to investigate this issue. DOE is not proposing to specify any alternatives to the current capacity measurement procedure at this time.

c. Modifications to the Existing Capacity Method

Section 3.1 of Appendix J2 provides the methodology for determining clothes container capacity. In the March 2012 Final Rule, DOE revised the clothes container capacity measurement to better reflect the actual usable capacity compared to the previous measurement procedures. 77 FR 13887, 13917. In the August 2015 Final Rule, DOE further added to the capacity measurement procedure a revised description of the maximum fill volume for front-loading clothes washers, as well as illustrations of the boundaries defining the uppermost edge of the clothes container for top-loading vertical-axis clothes washers and the maximum fill volume for horizontal-axis clothes washers. 80 FR 46729, 46733.

For top-loading vertical-axis clothes washers, DOE defined the uppermost edge of the clothes container as the uppermost edge of the rotating portion of the wash basket. 77 FR 13887, 13917–13918. DOE also concluded that the uppermost edge is the highest horizontal plane that a dry clothes load could occupy in a top-loading vertical-axis clothes washer that would allow clothing to interact with the water and detergent properly. *Id.*

Samsung recommended that DOE reconsider the capacity measurement guideline for top-loading clothes washers. Samsung stated that volume should be measured up to the manufacturer-recommended fill line, instead of measuring up to the top of the rotating portion of the clothes container. Samsung added that the discrepancy between measured volume and manufacturer-recommended fill line may overstate the energy and water efficiency in the test method compared to real-world use. (Samsung, No. 6 at p. 2)

DOE discussed its justification for the current fill level definition for top-loading clothes washers as part of the March 2012 Final Rule. 77 FR 13888, 13917–13920. The fill level recommended by Samsung corresponds to ''Fill Level 1'' as described in the March 2012 Final Rule, while the current definition as the uppermost edge of the rotating portion of the wash basket corresponds to ''Fill Level 2'' as described in the March 2012 Final Rule. As DOE explained in the March 2012 Final Rule, by respecting manufacturer recommendations, Fill Level 1 would best ensure wash performance is maintained, and thus is the most consumer-relevant fill level. However, should clothing occupy the space between Fill Level 1 and Fill Level 2 during a wash cycle, the clothing could be cleaned sufficiently because water can still be contained within that volume. Clothing above Fill Level 2, however, is not likely to be cleaned sufficiently because it would be outside the wash basket during the wash cycle and risks being damaged if it becomes entangled on stationary fixtures such as the tub cover or other mechanical components of the clothes washer during the wash cycle. *Id.* For these reasons, DOE adopted Fill Level 2 for determining the capacity of top-loading clothes washers.

DOE is not aware of any changes to product designs since the March 2012 Final Rule that would cause DOE to reevaluate its conclusions about the most appropriate capacity fill level. In DOE's experience since the March 2012 Final Rule, the existing capacity fill definition is implemented consistently by test laboratories and results in repeatable and reproducible measurements of capacity. DOE is therefore not proposing any changes to the existing capacity measurement method.

DOE requests comment on its tentative determination to maintain the current capacity measurement method.

7. Anomalous Cycles

Section 3.2.9 of Appendix J2 specifies discarding the data from a wash cycle that ''provides a visual or audio indicator to alert the user that an out-of-balance condition has been detected, or that terminates prematurely if an out-of-balance condition is detected, and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test.'' In the May 2020 RFI, DOE sought input on whether the test procedure should, in addition to out-of-balance conditions, also require discarding data for wash cycles in which any other anomalous behavior may be observed. 85 FR 31065, 31070. DOE also requested information on whether the test procedure should explicitly require that any wash cycle for which data was discarded due to anomalous behavior must also be repeated to obtain data without the anomalous behavior to be included in the energy test cycle. *Id.*

NEEA requested more specific guidance on when test cycle data should be considered anomalous to ensure test

procedure consistency, specifically whether a ''visual or audio'' indicator includes tub cabinet hits, a paused spin cycle, anomalous revolutions per minute (''rpm''), an ''unbalanced'' indication on the control panel, or any other type of signal. NEEA stated that inconsistencies among test laboratory interpretations of this provision could lead to repeatability and reproducibility issues. (NEEA, No. 12 at p. 17)

UL commented that DOE should consider amending section 3.2.9 of Appendix J2 to specify whether the term ''audio indicator'' includes only electronic tones from the clothes washer (*e.g.,* beeps), or if it also includes mechanical noises from the machinery itself (*e.g.,* the cabinet hitting due to an unbalanced load). UL added that unbalanced visual indicators (such as a machine control panel displaying ''ul'' for unbalanced load) may last for only a few seconds and could be easily missed. (UL, No. 9 at p. 2) UL also suggested that wash water use data be discarded if consumption and/or cycle time differ vastly from other cycles run on the machine, since cycle time may be altered if a clothes washer adds an extra rinse to redistribute an unbalanced load. *Id.*

AHAM commented that sometimes a cycle may not terminate due to an out-of-balance or other anomalous behavior, and that some models do not provide audio or visual indicators to notify the consumer that an anomalous condition was detected and fixed by the machine. (AHAM, No. 5 at pp. 7–8) According to AHAM, these actions benefit the consumer—instead of requiring consumer interaction during the cycle, the clothes washer addresses the anomalous behavior and finishes the cycle. AHAM added that this also often saves energy and water by finishing the cycle with some incrementally increased water or energy usage instead of requiring a cycle to be canceled and completely re-run. *Id.* AHAM stated that it is unlikely that these anomalous conditions happen frequently when consumers use the clothes washer and that test runs exhibiting these conditions should be considered invalid. *Id.* In response to DOE's question about how anomalous behavior can be detected without an indicator and during the test of only one unit, AHAM commented that a spot check verification test would be the only means for doing so. AHAM added that should anomalous behavior occur during a single test, more units will almost always be tested as part of DOE's enforcement procedures or ENERGY STAR verification procedures, and that at that time, anomalous behavior would become evident and would be a signal to the laboratory that the outlier test run should be discarded. *Id.* According to AHAM, a trained technician—whether at a manufacturer laboratory or a third-party laboratory—should similarly be able to tell that there was a power interruption at some point in the duration of the cycle due to software detecting an issue, stopping the cycle, and taking action to fix it (*e.g.,* redistributing the load). *Id.*

AHAM recommended that DOE add language to the test procedure specifying that if there is a visual or audio indicator that would alert the user about anomalous behavior, or if there are other indicators that suggest anomalous behavior, the test be stopped and the results discarded. *Id.* According to AHAM, without this change, manufacturers may need to redesign products to terminate at any indication of anomalous behavior rather than automatically resolve the issue for the consumer. AHAM added that the ability of a clothes washer to correct itself without terminating the cycle is an important consumer utility. *Id.* To address possible circumvention concerns (*e.g.,* that a product would be designed to perform this way), AHAM proposed that DOE consider a similar approach to IEC 60456 (Section 8.2.5 and the accompanying note which references Section 9.1), which limits the number of additional test runs and requires reporting the reason for the rejection of a test run. *Id.*

Electrolux supported the suggestion that energy data obtained from a cycle that may be acting erratically or abnormally in any way should be discarded. Electrolux recommended that DOE consider a possible manufacturer-supplied cycle status code that would be available to any test agency following completion of a cycle, which would monitor the cycle for anomalous behavior and provide an error code indicating not to use that cycle data. Electrolux additionally supported AHAM's comments on this issue. (Electrolux, No. 11 at p. 3)

DOE acknowledges that as clothes washer technology has improved, certain clothes washers are designed to self-correct out-of-balance loads or make other adjustments to the operation of the unit to complete the cycle without alerting the consumer or requiring user intervention. DOE also recognizes the benefit of objective and observable criteria to determine when an anomalous cycle has occurred, based on a single test, such that the data from that anomalous cycle should be discarded.

To provide more objective and observable criteria, DOE proposes that data from a wash cycle would be discarded if either: The washing machine signals to the user by means of an audio or visual alert that an off-balance condition has occurred; or the wash cycle terminates prematurely and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test. The proposed reference to an audio or visual alert refers to a warning sound initiated by the clothes washer, or visual cue such as a flashing light or persistent error code, that is provided to the user to actively inform the user that a problem has occurred; as opposed to a more passive indication such as the cabinet hitting the side or a change in the projected cycle duration, which could go unnoticed by the user or which itself may not be an indication of an out-of-balance load that warrants discarding the data for a test cycle. To emphasize this intent, DOE is proposing to change the current phrase ''provides a visual or audio indicator to alert the user'' to ''signals to the user by means of a visual or audio alert'' in both section 3.2.9 of Appendix J2 and section 3.2.6 of the proposed new Appendix J.

DOE is also proposing to change the current phrase ''terminates prematurely if an out-of-balance condition is detected'' to simply ''terminates prematurely,'' in recognition that other factors beyond an out-of-balance condition could also cause a wash cycle to terminate prematurely (*e.g.,* a clogged filter, mechanical malfunction, *etc.*), and that for any such reason, the data from that wash cycle would be discarded.

DOE is further proposing non-substantive wording changes to section 3.2.9 of Appendix J2 and section 3.2.6 of the proposed new Appendix J to make explicit that if data are discarded for the reasons described in these sections, the wash cycle is repeated.

DOE requests comment on the proposed criteria for determining whether test data are to be discarded. Specifically, DOE requests comment on the proposal that test data are discarded if a washing machine either signals to the user by means of a visual or audio alert that an out-of-balance condition has occurred or terminates prematurely. DOE requests comment on whether additional or alternate criteria would provide objective and observable indication during a single test that test data are to be discarded.

8. Semi-Automatic Clothes Washers

Section III.C.2 of this document discussed the installation of semi-automatic clothes washers for testing.

This section discusses the wash/rinse temperature selections and TUFs applicable to semi-automatic clothes washers. As noted, semi-automatic clothes washers are defined at 10 CFR 430.2 as a class of clothes washer that is the same as an automatic clothes washer except that user intervention is required to regulate the water temperature by adjusting the external water faucet valves. DOE's test procedure requirements at 10 CFR 430.23(j)(2)(ii) state that the use of Appendix J2 is required to determine IMEF for both automatic and semi-automatic clothes washers.

Semi-automatic clothes washers inherently do not provide wash/rinse temperature selections on the control panel, as any combination of cold, warm, and hot wash temperatures and rinse temperatures are provided by the user's adjustment of the external water faucet valves. The following discussion provides relevant historical context on this issue.

Section 6.1 of Appendix J–1977 and Appendix J–1997 provided separate TUFs explicitly for semi-automatic clothes washers for the following wash/rinse temperature combinations: Hot/Hot, Hot/Warm, Hot/Cold, Warm/Warm, Warm/Cold, and Cold/Cold. The specification of these TUFs indicated that these six wash/rinse temperature combinations were required for testing. Section 3.2.2.6 of Appendix J–1977 and Appendix J–1997 and section 3.2.3.1.6 of Appendix J1–1997 and Appendix J1–2001 provided a table indicating the following external water faucet valve positions required to achieve each wash and rinse temperature selection:

- Hot: Hot valve completely open, cold valve closed;
- Warm: Hot valve completely open, cold valve completely open; and
- Cold: Hot valve closed, cold valve completely open.

Inherently, testing the Hot/Hot, Warm/Warm, and Cold/Cold temperature combinations require no changes to the water faucet valve positions between the wash and rinse portions of the cycle. However, testing the Hot/Warm, Hot/Cold, and Warm/Cold temperature combinations requires the test administrator to manually regulate the water temperature between the wash and rinse portions of the cycle by adjusting the external water faucet valves. As reflected in DOE's definition of semi-automatic clothes washer, user intervention is required to regulate the water temperature of all semi-automatic clothes washers (*i.e.,* user regulation of water temperature is the distinguishing characteristic of a semi-automatic clothes washer). *See* 10 CFR 430.2.

When it established Appendix J1–1997, DOE combined all of the TUF tables—for both automatic and semi-automatic clothes washers—that were provided in section 5 and section 6 of Appendix J–1997 into a single condensed table in Table 4.1.1 of Appendix J1–1997. 62 FR 45484, 45512. In contrast to Appendix J–1997, which provided separate TUF tables for every possible set of available wash/rinse temperature selections, the simplified table in Appendix J1–1997 was organized into columns based on the number of wash temperature selections available on a clothes washer. Warm rinse was considered separately within each column of the table. *Id.* In the current version of Appendix J2, Table 4.1.1 remains a single simplified table, although in the August 2015 Final Rule, DOE clarified the column headings by listing the wash/rinse temperature selections applicable to each column. 80 FR 46729, 46782.

The simplified Table 4.1.1 in Appendix J2 does not state which column(s) of the table are applicable to semi-automatic clothes washers. In the May 2012 Direct Final Rule, DOE stated that it was not aware of any semi-automatic clothes washers on the market. 77 FR 32307, 32317. However, DOE is currently aware of several semi-automatic clothes washer models available in the U.S. market.

In the May 2020 RFI, DOE requested input on whether to amend the test procedure with regard to the specificity of wash/rinse test combinations for semiautomatic clothes washers in Appendix J2, and whether those updates would provide test results that measure energy efficiency and water use during a representative average use cycle or period of use, and whether they would be unduly burdensome to conduct. 85 FR 31065, 31077.

No comments were received regarding these aspects of the test procedure for semi-automatic clothes washers. The following sections describe DOE's proposals for specifying how to test semi-automatic clothes washers.

a. Temperature Selections and Usage Factors

DOE is proposing to specify how to test semi-automatic clothes washers in the proposed new Appendix J. In this section, DOE describes its proposals to specify which temperatures to test and which TUFs to apply to the measured results.

As described above, Appendix J–1977 required testing six wash/rinse temperature combinations: Hot/Hot, Hot/Warm, Hot/Cold, Warm/Warm, Warm/Cold and Cold/Cold. The TUFs in Table 6.1 of Appendix J–1977 used the same general usage factors for semi-automatic clothes washers as for automatic clothes washers. 42 FR 49802, 49810. For example, the Cold/Cold TUF of 0.15 was the same for both types, and the sum of Hot/Hot, Hot/Warm and Hot/Cold (with a total TUF of 0.30) for semi-automatic clothes washers was the same as the TUF for Hot/Cold on an automatic clothes washer with only three temperature selections.

DOE updated the TUFs in the August 1997 Final Rule, based on P&G data provided by AHAM. 62 FR 45484, 45491. Currently, Table 4.1.1 of Appendix J2 does not include TUFs for all six of the temperatures required for testing in Appendix J–1977.

DOE considered requiring that semi-automatic clothes washers be tested with the same six temperature settings as in Appendix J–1977. Table III.2 lists potential TUF values that could be used if DOE were to require testing all six possible temperature combinations. These values follow the same pattern that was used in Table 6.1 of Appendix J–1977, such that the sum of all temperature selections with a Hot Wash add up to 0.14 and the sum of all temperature selections with a Warm Wash add up to 0.49,[47] consistent with the current TUFs for Hot/Cold and Warm/Cold as defined in Table 4.1.1 of Appendix J2.

TABLE III.2—POTENTIAL TEMPERATURE USAGE FACTORS FOR SEMI-AUTOMATIC CLOTHES WASHERS REFLECTING SIX REQUIRED TEMPERATURE COMBINATIONS

Wash/rinse temperature selection	Potential TUF values
Hot/Hot	0.07
Hot/Warm	0.05
Hot/Cold	0.02
Warm/Warm	0.38
Warm/Cold	0.11
Cold/Cold	0.37

By including all six possible temperature combinations, Table 6.1 of Appendix J–1977 included wash/rinse temperature settings that require the water temperature to be changed between the wash portion and the rinse portion of the cycle (*i.e.,* Hot/Warm, Hot/Cold, and Warm/Cold), and wash/rinse temperature settings that do not require any water temperature change

[47] DOE notes that the apportionment between Warm/Warm and Warm/Cold was different for automatic clothes washers and semi-automatic clothes washers in Appendix J–1977. DOE is proposing a TUF apportionment between Warm/Warm and Warm/Cold that is proportional to the apportionment in Table 6.1 of Appendix J–1977.

(*i.e.,* Hot/Hot, Warm/Warm, and Cold/Cold). In Table 6.1 of Appendix J–1977, temperature settings that do not require a water temperature change had higher usage factors than temperatures settings that do require a water temperature change, reflecting that consumers are more likely to use a single temperature for the entire duration of the cycle than to change the temperature between the wash and rinse portions of the cycle.

In implementing specific provisions for testing semi-automatic clothes washers in the proposed new Appendix J, DOE is proposing to require testing only those temperature settings that do not require a water temperature change (*i.e.,* Hot/Hot, Warm/Warm, and Cold/Cold). As indicated, by the TUFs from Appendix J–1977 and Appendix J–1997, consumers are more likely to use a single temperature for the entire duration of the cycle than to change the temperature between the wash and rinse portions of the cycle. Changing the temperature between the wash and rinse portions of the cycle would require the consumer to monitor the operation of the clothes washer and adjust the temperature at the appropriate time. It is expected that consumers are more likely not to interact with the operation of the clothes washer during operation of the unit, once it has been started. Not requiring testing of temperature combinations that would require the user to change the temperature between wash and rinse would reduce test burden significantly, while producing results that are representative of consumer usage. DOE tentatively concludes that requiring testing all six possible temperature combinations would present undue burden compared to testing only those temperature combinations that do not require a water temperature change.

DOE requests comment on its proposal for testing semi-automatic clothes washers in the proposed new Appendix J that would require testing only the wash/rinse temperature combinations that do not require a wash temperature change between the wash and rinse portions of the cycle (*i.e.,* Hot/Hot, Warm/Warm, and Cold/Cold).

To define the TUFs for these three temperature combinations, DOE proposes to use the TUFs from the existing column of Table 4.1.1 of Appendix J2 specified for testing clothes washers with Hot/Cold, Warm/Cold, and Cold/Cold temperature selections, and presented in Table III.3. To further simplify the test procedure, since DOE is proposing to require testing only those temperature selections that do not require a change in the water temperature, DOE is proposing to label these selections ''Hot,'' ''Warm,'' and ''Cold,'' respectively (as opposed to ''Hot/Hot'', ''Warm/Warm'', and ''Cold/Cold'').

TABLE III.3—POTENTIAL TEMPERATURE USAGE FACTORS FOR SEMI-AUTOMATIC CLOTHES WASHERS REFLECTING THREE REQUIRED TEMPERATURE COMBINATIONS

Temperature selection	Potential TUF values
Hot	0.14
Warm	0.49
Cold	0.37

DOE requests feedback on its proposal to test semi-automatic clothes washers using TUF values of 0.14 for Hot, 0.49 for Warm, and 0.37 for Cold.

DOE further requests comment on whether the temperature selections and TUFs that DOE has proposed for semi-automatic clothes washers would be representative of consumer use; and if not, which temperature selections and TUF values would better reflect consumer use.

DOE recognizes that these proposed specifications for testing semi-automatic clothes washers may differ from how manufacturers are currently testing semi-automatic clothes washers under Appendix J2 (which, as described, does not provide explicit instructions for semi-automatic clothes washers). Therefore, DOE is proposing to include these provisions only in the proposed new Appendix J, which would be used for the evaluation and issuance of updated efficiency standards, and would not be required until the compliance date of any updated standards. However, DOE could consider replicating these changes in Appendix J2 as well, to provide greater clarity on how to test semi-automatic clothes washers using Appendix J2.

DOE requests comment on whether to include explicit instructions for how to test semi-automatic clothes washers in Appendix J2, and if so, whether DOE should implement the same procedures being proposed for the proposed new Appendix J.

DOE requests feedback on how manufacturers of semi-automatic clothes washers are currently testing their products using Appendix J2.

b. Cycles Required for Test

Inherent to semi-automatic clothes washer operation is that the clothes washer provides the same cycle operation for a given load size and cycle setting, regardless of the water temperature that the user provides. As a result, when testing a semi-automatic clothes washer, machine energy consumption, total water consumption, bone-dry weight, cycle-completion weight, and cycle time for a given load size are unaffected by wash/rinse temperature. When testing a given load size, only the relative amount of cold and hot water consumption is based on the water temperature provided by the user. For the Cold cycle as proposed, all of the water used is cold; for the Hot cycle as proposed, all of the water used is hot; and for the Warm cycle as proposed, half of the water used is cold and half is hot.[48] Based on these relationships, for a given load size, once one of the test cycles has been performed and the total water consumption determined, the relative amounts of cold and hot water for the other required cycles can be determined formulaically rather than needing to be determined through testing. Therefore, DOE has tentatively determined that testing all three of the proposed temperature selections would be unnecessary, and that only a single test cycle is required for a given load size. DOE is proposing in the proposed new Appendix J to require testing only the Cold cycle, and to determine the representative values for the Hot and Warm cycles formulaically based on the values measured for the Cold cycle. This approach would reduce the test burden for semi-automatic clothes washers by requiring only two test cycles be conducted (using the small and large test loads with the Cold cycle) as opposed to six cycles (using the small and large test loads with the Cold, Warm, and Hot cycles) and obtaining the other required values through calculation.

DOE requests comment on its proposal to require semi-automatic clothes washers to test only the Cold cycle, and to determine the representative values for the Warm and Hot cycles formulaically, for the proposed new Appendix J.

DOE notes that if it were to require measuring all six temperature options listed in Table III.2 of this document (Hot/Hot, Hot/Warm, Hot/Cold, Warm/Warm, Warm/Cold, and Cold/Cold), the determination of hot and cold water use would be more complicated for temperature selections that require a

[48] These water use determinations are based on the water faucet positions specified in section 3.2.3.2 of Appendix J2, which as described previously, specifies that to obtain a hot inlet water temperature, open the hot water faucet completely and close the cold water faucet; for a warm inlet water temperature, open both hot and cold water faucets completely; and for a cold inlet water temperature, close the hot water faucet and open the cold water faucet completely.

water temperature change. The tester would first need to determine the proportion of wash water to rinse water, in order to be able to apportion the total volume of cold and hot water used between wash and rinse for each of the temperature selections determined formulaically.

DOE requests comment on the test burden associated with determining the apportionment between wash water use and rinse water use on semi-automatic clothes washers.

c. Implementation

To implement the changes described above for semi-automatic clothes washers, DOE is proposing to create a section 3.4 in the proposed new Appendix J (see discussion in section III.H.7 of this document for an explanation of how section 3 of the proposed new Appendix J would be structured) specifying the cycles required for testing semi-automatic clothes washers. Section 3.4.1 would specify the required test measurements for the Cold cycle and would define variables for each measured value. Section 3.4.2 would specify the formulas used to calculate the representative values for the Warm and Hot cycles, based on the measured values from the Cold cycle.

DOE is also proposing to create a section 2.12.2 in the proposed new Appendix J to state that the energy test cycle for semi-automatic clothes washers includes only the Cold Wash/Cold Rinse (''Cold'') test cycle. DOE would also create a section 2.12.1, which would parallel the current section 2.12 in Appendix J2 and would be identified as applying to automatic clothes washers. DOE is further proposing to specify that section 3.2.1 of the proposed new Appendix J (which would mirror section 3.2.4 of Appendix J2) would apply only to automatic clothes washers.

9. Optional Cycle Modifiers

Section 3.2.7 of Appendix J2 states that for clothes washers with electronic control systems, the manufacturer default settings must be used for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine RMC. Specifically, the manufacturer default settings must be used for wash conditions such as agitation/tumble operation, soil level, spin speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water-heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Any optional wash cycle feature or setting (other than wash/rinse temperature, water fill level selection, or spin speed on wash cycles used to determine RMC) that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option, or recommend selecting a different option, for washing normally soiled cotton clothing.

DOE has observed a trend towards increased availability of optional cycle modifiers such as ''deep fill,'' and ''extra rinse,'' among others. 85 FR 31065, 31076. These optional settings may significantly impact the water and/or energy consumption of the clothes washer when activated. *Id.* DOE has observed that the default setting of these optional settings on the Normal cycle is most often in the off position; *i.e.,* the least energy- and water-intensive setting. *Id.* The growing presence of such features may, however, be indicative of an increase in consumer demand and/or usage of these features. *Id.*

In the May 2020 RFI, DOE sought comment on whether testing cycle settings other than the manufacturer default settings would measure the energy efficiency and water use of the clothes washer during a representative average use cycle or period of use. *Id.* DOE also sought comment on whether the non-default selections required by the current DOE test procedure meet this requirement. *Id.* DOE additionally requested information regarding how frequently consumers use ''deep fill,'' ''extra rinse,'' or other cycle modifiers, as well as whether (and if so, by how much) such modifiers may increase the energy or water consumption of a wash cycle compared to the default settings on the Normal cycle. *Id.* DOE requested comment on whether testing these features in the default settings would produce test results that measure energy efficiency and water use of clothes washers during a representative average use cycle or period of use, and the burden of such testing on manufacturers. *Id.*

AHAM opposed testing of cycle settings other than the manufacturer default and recommended that DOE should not test every possible clothes washer cycle or combination of options. AHAM stated that it does not believe optional cycle modifiers are used in most cycles—they exist to provide additional choices to the consumer and increase customer satisfaction. (AHAM, No. 5 at pp. 14–15) AHAM, stated that testing these optional cycle modifiers could increase test burden without a corresponding benefit in improving consumer representativeness, and that DOE should only measure cycles that are representative of an average use cycle or period of use, as required by EPCA. *Id.* AHAM commented that any potential future test procedure change or calculation approach must take into account the frequency with which consumers use optional features and the impact such usage has on energy. (AHAM, No. 5 at p. 4)

Electrolux also opposed additional testing for cycle modifiers. Electrolux commented that cycle modifiers are included on clothes washers for special purposes and are not intended for full-time use. According to Electrolux, these modifiers may be unavailable for specific test cycles and are never a default option due to their specific use. Electrolux stated that adding these to an energy calculation would require extensive survey of their use by consumers. Electrolux further commented that the variety and number of cycle modifiers on machines on the market make it difficult to track and understand usage of the modifiers. (Electrolux, No. 11 at p. 3)

The CA IOUs supported the investigation of the usage frequency of cycle modifiers, stating that the increased presence of such modifiers implies that there is a market desire for such features and that clothes washers are being used with these cycle settings at a non-trivial frequency. (CA IOUs, No. 8 at p. 16)

NEEA commented that, since options such as ''extra water'' and/or ''deep fill'' improve clothes washer performance,[49] it is likely that many consumers use these options even if they are not enabled by default. NEEA stated that these alternative settings should therefore be included in the test procedure. (NEEA, No. 12 at p. 21)

The Joint Commenters encouraged DOE to capture the impact of cycle modifiers such as ''deep fill'' and ''extra rinse'' on energy and water use. The Joint Commenters expressed concern that since the default position for these modifiers is most often ''off,'' the test procedure is effectively assigning a value of zero to the energy and water use of these features, which is likely not representative. According to the Joint Commenters, the test procedure may therefore be significantly underestimating energy and/or water use of clothes washers with these

[49] DOE assumes that by clothes washer performance, NEEA means cleaning and rinsing performance.

optional cycle modifiers. (Joint Commenters, No. 10 at p. 4)

Samsung suggested that DOE amend section 2.8 of Appendix J2 to note that at test load sizes ''Max'' and ''Min'' for manual and automatic water control systems, the corresponding water fill setting should require the use of any user-selectable options to change water level in order to reflect real-world minimum and maximum fill levels. (Samsung, No. 6 at p. 3)

DOE is not aware of any consumer usage data concerning the use of optional cycle modifiers, nor did interested parties provide any such data. Although DOE maintains that the growing presence of such features may be indicative of an increase in consumer usage of these features, DOE lacks consumer usage data that would be required to incorporate the testing of such features in the test procedure. Therefore, DOE is not proposing to change the current requirement to use the manufacturer default settings for optional cycle modifiers.

In response to Samsung's comment, DOE notes that in section 3.2.7 of Appendix J2, wash water fill levels are excluded from the list of cycle options for which the manufacturer default settings must be used. Selecting the most (or least) energy intensive water fill setting as required in section 3.2.6.2.2 for clothes washers with user-adjustable automatic WFCS would therefore require changing an optional cycle modifier from its default position if doing so would provide the most (or least) energy intensive result.

Finally, as discussed in section III.D.4 of this document, DOE is proposing in the proposed new Appendix J to require measuring RMC on each tested cycle using the default spin settings for each cycle. Consistent with this proposal, DOE is proposing to remove ''spin speeds on wash cycles used to determine RMC'' from the list of cycle settings that are excluded from the requirement to use the manufacturer default settings in section 3.2.4 (*Manufacturer default settings*) of the proposed new Appendix J.

DOE requests comment on maintaining the current requirement to use the manufacturer default settings for optional cycle modifiers.

10. Clothes Washers With Connected Functionality

DOE is aware of several ''connected'' RCW models currently on the market, from at least four major manufacturers. 85 FR 31065, 31068. These products offer optional wireless network connectivity to enable features such as remote monitoring and control via smartphone, as well as certain demand response features [50] available through partnerships with a small number of local electric utilities. *Id.* In addition, connected features are available via certain external communication modules for CCWs. *Id.* However, DOE is not aware of any CCW models currently on the market that incorporate connected features directly into the unit. *Id.*

As noted previously, section 3.2.7 of Appendix J2 specifies using the manufacturer default settings for any cycle selections except temperature selection, wash water fill level, or spin speed. Furthermore, section 3.9.1 of Appendix J2 specifies performing the combined low-power mode testing without changing any control panel settings used for the active mode wash cycle. With regard to the measurement of network mode energy use specifically, DOE stated in the March 2012 Final Rule that ''DOE cannot thoroughly evaluate these [IEC Standard 62301 (Second Edition)] network mode provisions, as would be required to justify their incorporation into DOE's test procedures at this time.'' 77 FR 13887, 13899. DOE notes that although an individual appliance may consume a relatively small amount of power in network mode, the potential exists for energy-related benefits that more than offset this additional power consumption if the appliance can be controlled by the ''smart grid'' to consume power during non-peak periods. 85 FR 31065, 31068.

If connected features on a clothes washer affect its inactive mode power consumption in the as-shipped configuration (*e.g.,* by energizing a wireless communication chip on the circuit board by default), such impact would be measured by the current test procedure provisions in section 3.9 of Appendix J2 for measuring combined low-power mode power. Whereas, if the inactive mode power consumption is not affected unless the consumer actively enables the connected functionality on the unit, any incremental inactive mode power consumption resulting from the connected features would not be measured by the current test procedure, because the test procedure does not include instructions for activating any such features before performing the low-power mode measurement. Similarly, any incremental energy consumption in active mode, or any other modes of operation impacted by the product's connected features, would not be measured as part of the current DOE test procedure, because the test cycle requirements in section 3.2.7 of Appendix J2 do not include instructions for activating any such features before performing the active mode test cycles.

In the May 2020 RFI, DOE requested feedback on its characterization of connected RCWs, and any CCWs, currently on the market. *Id.* Specifically, DOE requested input on the types of features or functionality enabled by connected clothes washers that exist on the market or that are under development. *Id.* DOE also sought comment on adding a clarifying provision that would require testing to be conducted with any network functionality turned off, or without measuring or reporting the energy use of the clothes washer in network mode. *Id.* DOE also requested data on the percentage of users purchasing connected RCWs who activate the connected capabilities, and, for those users, the percentage of the time when the connected functionality of the RCW is activated and using additional energy. *Id.*

The CA IOUs recommended that network-capable RCWs be tested with connected functions activated to capture the energy use associated with these functions, especially as connected clothes washers become more prevalent. The CA IOUs commented that while network capabilities may use a small amount of power compared to the active washing cycle, these features often operate year-round and could potentially consume a significant amount of energy annually. (CA IOUs, No. 8 at pp. 12–13) The CA IOUs added that capturing the energy consumption associated with connected features should not hinder their continued development. *Id.*

The Joint Commenters recommended that DOE incorporate a measurement of ''network mode'' power consumption to provide consumers with information about any additional energy consumption associated with connected features. The Joint Commenters stated that, although it asserts that DOE is concerned about impeding innovation, the power consumption associated with ''network mode'' may be accounted for in energy conservation standards so as not to hinder the availability of models with connected features. (Joint Commenters, No. 10 at p. 2)

NEEA recommended that DOE develop a method for measuring standby mode energy use of clothes washers with connected functionality,

[50] ''Demand response features'' refers to product functionality that can be controlled by the ''smart grid'' to improve the overall operation of the electrical grid, for example by reducing energy consumption during peak periods and/or shifting power consumption to off-peak periods.

since connected clothes washers are becoming more prevalent and sales of connected RCWs have been increasing. NEEA also commented that Wi-Fi-enabled appliances tend to experience a wide variation of energy use, depending on the circuit design and silicon used, so it will be important to measure individual clothes washer energy use in this context. (NEEA, No. 12 at pp. 20–21)

AHAM commented that there is not yet adequate consumer use data on connected features to justify amending the test procedure. (AHAM, No. 5 at p. 5) AHAM stated that consumer use and understanding of new technologies continues to evolve and inform manufacturers' designs. According to AHAM, some consumers do not even connect their network-enabled appliances to use the available features. *Id.* AHAM stated that DOE should ensure that the clothes washer test procedure does not prematurely address new designs which may not yet have an average use or be in common use, and that doing so could stifle innovation. *Id.*

DOE recognizes the potential benefits that could be provided by connected capability, such as providing energy saving benefits to consumers, enabling peak load shifting on the electrical grid, and other consumer-related benefits. While a number of connected clothes washers are currently on the market with varying implementations of connected features, DOE is not aware of any data available, nor did interested parties provide any such data, regarding the consumer use of connected features. Therefore, DOE is unable to establish a representative test configuration for assessing the energy consumption of connected functionality for clothes washers.

As noted previously, while DOE's current test procedure does not specifically consider energy use of network features, the test procedure may result in the measurement of the energy use of connected features in inactive mode. Specifically, as discussed, any energy use of connected features would be measured in section 3.9 of Appendix J2 for measuring combined low-power mode power if the connected features are enabled in the ''as-shipped'' configuration. If the consumer is required to actively enable the connected functionality, however, such energy consumption would not be measured. Similarly, any incremental energy consumption in active mode, or any other modes of operation impacted by the product's connected features, would not be measured because the test cycle requirements in section 3.2.7 of Appendix J2 do not include instructions for activating any such features before performing the active mode test cycles.

Given the lack of data to establish a test configuration that would be representative of consumer use of connected features on clothes washers, DOE is proposing to amend section 3.2.7 of Appendix J2 and section 3.2.4 of the proposed new Appendix J to specify that network settings (on clothes washers with network capabilities) must be disabled during testing if such settings can be disabled by the end-user, and the product's user manual provides instructions on how to do so.

If, however, connected functionality cannot be disabled by the end-user or the product's user manual does not provide instruction for disabling connected functionality that is enabled by default, then the unit must be tested with the network capability in the factory default setting as specified in the current test procedure. DOE has preliminarily determined that if connected functionality cannot be disabled, or the product's user manual does not provide instruction for disabling the function, it is more representative to include the energy consumption of the clothes washer in the default condition, including the enabled connected function, than to exclude the energy consumption associated with the connected feature. As such, the energy consumption of a connected function that cannot be disabled would continue to be measured, as in the current test procedure. DOE notes that this approach is consistent with the approach proposed in the test procedure supplemental NOPR for microwave ovens published on August 3, 2021. 86 FR 41759.

DOE requests comment on its proposed amendment to Appendix J2 and the proposed new Appendix J to specify that network settings (on clothes washers with network capabilities) must be disabled during testing if such settings can be disabled by the end-user, and the product's user manual provides instructions on how to do so.

DOE seeks the following information regarding connected clothes washers, which could inform future test procedure considerations:

DOE requests feedback on its characterization of connected clothes washers currently on the market. Specifically, DOE requests input on the types of features or functionality enabled by connected clothes washers that exist on the market or that are under development.

DOE requests data on the percentage of users purchasing connected clothes washers, and, for those users, the percentage of the time when the connected functionality of the clothes washer is used.

DOE requests data on the amount of additional or reduced energy use of connected clothes washers.

DOE requests data on the pattern of additional or reduced energy use of connected clothes washers; for example, whether it is constant, periodic, or triggered by the user.

DOE requests information on any existing testing protocols that account for connected features of clothes washers, as well as any testing protocols that may be under development within the industry.

E. Metrics

1. Replacing Capacity With Weighted-Average Load Size

As discussed, the current energy efficiency standards for RCWs are based on the IMEF metric, measured in ft^3/kWh/cycle, as calculated in section 4.6 of Appendix J2. IMEF is calculated as the capacity of the clothes container (in ft^3) divided by the total clothes washer energy consumption (in kWh) per cycle. The total clothes washer energy consumption per cycle is the sum of: (a) The machine electrical energy consumption; (b) the hot water energy consumption; (c) the energy required for removal of the remaining moisture in the wash load; and (d) the combined low-power mode energy consumption.

The current energy efficiency standards for CCWs are based on the MEF_{J2} metric, measured in ft^3/kWh/cycle, as determined in section 4.5 of Appendix J2. The MEF_{J2} metric differs from the IMEF metric by not including the combined low-power mode energy consumption in the total clothes washer energy consumption per cycle.

The current water efficiency standards for both RCWs and CCWs are based on the IWF metric, measured in gal/cycle/ft^3, as calculated in section 4.2.13 of Appendix J2. IWF is calculated as the total weighted per-cycle water consumption (in gallons) for all wash cycles divided by the capacity of the clothes container (in ft^3).

In the May 2020 RFI, DOE requested feedback on whether to consider changing the energy or water efficiency metrics for RCWs or CCWs to maintain consistency with any changes to the capacity metric or for other reasons. 85 FR 31065, 31080. DOE included several examples such as incorporating the weighted-average weight of test cloth test load, which would result in energy efficiency metric expressed in terms of pounds of clothing per kWh per cycle. *Id.*

AHAM stated that DOE does not need to change the energy efficiency or water efficiency metrics. (AHAM, No. 5 at p. 16)

The CA IOUs recommended changing IWF and IMEF to eliminate their relationship to capacity. The CA IOUs stated that by normalizing with the capacity of a clothes washer, the current metrics create a built-in bias towards larger-capacity machines, as the minimum- and average-sized test loads are not purely scaled with the clothes washer's capacity. The CA IOUS stated that this leads to larger-capacity clothes washers washing a smaller fraction of clothing compared to their capacity. The CA IOUs commented that in order to remove this bias, IMEF and IWF should be normalized with the weighted-average load size of clothing washed (*e.g.,* IMEF would be measured in lb/kWh/cycle instead of ft^3/kWh/cycle). (CA IOUs, No. 8 at p. 5) The CA IOUs stated that this amendment would create a more representative performance metric of an average clothes washer use cycle and would also improve alignment with the clothes dryer performance metric. *Id.*

The Joint Commenters encouraged DOE to consider basing efficiency metrics on pounds of clothes washed instead of capacity of the clothes washer. According to the Joint Commenters, basing efficiency metrics on clothes washer capacity creates a bias towards large-capacity clothes washers, since weighted-average load size is much greater for large-capacity clothes washers than it is for small-capacity clothes washers. The Joint Commenters encouraged DOE to instead consider alternative efficiency metrics based on the LUF-weighted-average load size for a given clothes washer capacity. (Joint Commenters, No. 10 at p. 5)

NEEA commented that the current DOE test procedure allows larger-capacity clothes washers to use more energy and water per pound of textiles washed than smaller-capacity clothes washers with the same IMEF ratings. NEEA has also observed that IMEF generally increases with capacity in the most recent models to come into the market. NEEA stated that due to the increase in average clothes washer capacity from 3.5 ft^3 to 4.4 ft^3, this issue is becoming more prevalent. (NEEA, No. 12 at pp. 13–17) NEEA conducted testing under conditions that it characterized as more realistic than DOE test conditions and summarized the results as demonstrating that on a lb/kWh basis, larger-capacity clothes washers perform less efficiently than smaller-capacity clothes washers.[51] Based on these results, NEEA concluded that large-capacity clothes washers may use more energy than small-capacity clothes washers when operating with typical load sizes and wash temperatures. *Id.* NEEA recommended that, to better address the efficiency of the largest-capacity clothes washers in the market, DOE should consider adopting an alternative energy efficiency metric such as pounds of textile per kWh, which would be based on the LUF-weighted load size, and the LUF-weighted and TUF-weighted energy use per cycle. NEEA also recommended that DOE consider developing an energy conservation standard that is a function of capacity, so that larger-capacity clothes washers would need to meet higher IMEF and lower IWF levels than smaller clothes washers. *Id.* NEEA noted that this would be similar to the way standards for refrigerators, room air conditioners, and water heaters are a function of adjusted volume, cooling capacity, and storage volume, respectively. NEEA calculated that making these changes could result in 1–2 quads of energy savings over a 30-year period associated with increased efficiency of large-capacity clothes washers. *Id.*

As noted throughout the discussion previously, under Appendix J2, energy use (the denominator of the IMEF and MEF equations) scales with weighted-average load size, whereas capacity (the numerator of the IMEF and MEF equations) scales with maximum load size. This provides an inherent numerical advantage to large-capacity clothes washers that is disproportionate to the efficiency advantage that can be achieved through ''economies of scale'' associated with washing larger loads. This advantage means that a larger-capacity clothes washer consumes more energy to wash a pound of clothes than a smaller-capacity clothes washer with the same IMEF rating. This relationship applies similarly to water efficiency through the IWF equation. As noted in the comments summarized previously, this disproportionate benefit increases as average clothes washer capacity increases over time. To avoid providing bias for large-capacity clothes washers, DOE is proposing to change the energy and water efficiency metrics in the proposed new Appendix J by replacing the capacity term with the weighted-average load size, in pounds. Under this proposed change, energy and water use would scale proportionally with weighted-average load size in the IMEF, MEF, and IWF formulas and thus eliminate the efficiency bias currently provided to large-capacity clothes washers.

EPCA defines energy efficiency as ''the ratio of the useful output of services from a consumer product to the energy use of such product.'' (42 U.S.C. 6291(5); 42 U.S.C. 6311(3)) In the current efficiency metrics, clothes washer capacity is used to represent the measure of useful output. DOE has tentatively determined that clothing load size (*i.e.,* the weight of clothes cleaned), expressed as the weighted-average load size, may better represent the ''useful output'' of a clothes washer.

Were DOE to finalize the proposed metric change, changes to the energy conservation standards would be addressed in an energy conservation standards rulemaking.

DOE requests comment on its proposal to replace the capacity term with weighted-average load size in the energy efficiency metrics and the water efficiency metric in the proposed new Appendix J.

In addition, DOE is proposing to rename the efficiency metrics to avoid any confusion between the proposed new metrics and the existing metrics. DOE is proposing to designate energy efficiency ratio (''EER'') as the energy efficiency metric for RCWs (replacing IMEF); active-mode energy efficiency ratio (''AEER'') as the energy efficiency metric for CCWs (replacing MEF_{J2}); and water efficiency ratio (''WER'') as the water efficiency metric for both RCWs and CCWs (replacing IWF). As proposed, EER would be calculated as the quotient of the weighted-average load size (in lb) divided by the total clothes washer energy consumption (in kWh) per cycle; and AEER would be calculated as the quotient of the weighted-average load size (in lb) divided by the total clothes washer energy consumption (in kWh) per cycle not including the combined low-power mode energy consumption. Section III.E.2 of this document describes how WER would be calculated.

DOE is also proposing to establish provisions in 10 CFR 430.23(j) to specify the procedure for determining EER and WER for RCWs, and in 10 CFR 431.154 to specify the procedure for determining AEER and WER for CCWs.

DOE requests comment on its proposed names for the proposed new efficiency metrics: Energy efficiency ratio (EER), active-mode energy efficiency ratio (AEER), and water efficiency ratio (WER).

[51] NEEA stated that that it considers these data to be preliminary and that additional testing would provide more clarity.

2. Inverting the Water Metric

As described previously, IWF is calculated in section 4.2.13 of Appendix J2 as the total weighted per-cycle water consumption (in gallons) for all wash cycles divided by the capacity of the clothes container (in ft^3). Unlike the IMEF metric, in which a higher number indicates more efficient performance, a lower IWF value indicates more efficient performance.

In the May 2020 RFI, DOE requested feedback on whether to consider any changes to the water efficiency metric defined in the test procedure to maintain consistency with any changes to the capacity metric or for any other purpose, including those described for the energy efficiency metric, and whether it would be appropriate to invert the existing calculation such that a higher value of IWF would represent more efficient performance. 85 FR 31065, 31080.

The CA IOUs supported inverting the IWF and WF metrics to better align with the IMEF and MEF metrics. (CA IOUs, No. 8 at p. 6) Additionally, the CA IOUs recommended that DOE should consider changing the name of the updated metrics in order to alert customers and relevant stakeholders of the implications of the change. *Id.*

DOE is proposing to invert the water metric, in conjunction with replacing the capacity term with weighted-average load size, as described in the previous section. By inverting the metric, a higher value would represent more efficient performance, consistent with the energy efficiency metrics. In addition, by inverting the metric, the proposed WER metric would represent the ratio of the useful output of services to the water use of the product, consistent with EPCA's definition of energy efficiency as described.

DOE is proposing to define WER in the proposed new Appendix J as the quotient of the weighted-average load size (in lb) divided by the total weighted per-cycle water consumption for all wash cycles (in gallons).

DOE requests comment on its proposal to invert the water efficiency metric and calculate the newly defined WER metric as the quotient of the weighted-average load size divided by the total weighted per-cycle water consumption for all wash cycles.

3. Annual Energy Use

The annual energy consumption of an RCW tested according to Appendix J2 is calculated as part of the estimated annual operating cost calculations at 10 CFR 430.23(j)(1)(ii)(A) and (B).[52] In each equation, annual energy consumption is calculated by multiplying the per-cycle energy consumption [53] by the representative average RCW use of 295 cycles per year.[54] The annual operating cost is provided to the consumer on the Federal Trade Commission (''FTC'') EnergyGuide label for RCWs.

DOE considered whether to make changes to the method for calculating annual energy use so that the calculation more directly reflects annual energy use during a representative average use cycle. DOE also considered whether changes to the overall calculation methodology would improve the usefulness of the information presented to the consumer on the product label.

According to the current calculation methodology, all clothes washers are assumed to be used for 295 cycles per year, while the per-cycle energy reflects a weighted-average load size based on the clothes washer capacity. Therefore, the annual energy calculation reflects an annual volume of laundered clothing that scales with clothes washer capacity. For example, the current annual energy calculation methodology is based on an annual laundry volume of 2,258 pounds for a 3.0-ft^3 RCW and 4,036 pounds for a 6.0-ft^3 RCW. 85 FR 31065, 31081.

Under the current annual energy calculation methodology, the information presented on the product label would indicate that a larger-capacity RCW would use significantly more annual energy than a smaller-capacity model with the same IMEF rating. This is because the larger-capacity RCW's label would be based on a significantly larger amount of annual laundry than the smaller-capacity model, as illustrated above. Whereas, if compared on the basis of an equivalent volume of laundered clothing, both RCWs could be expected to use the same amount of annual energy since they have the same IMEF efficiency rating. This potential disparity may limit the ability of an individual consumer to use the information presented on the product label to compare the differences in expected energy use among RCW models with the same rated energy efficiency but different capacities.

When DOE originally developed the annual energy calculation methodology at 10 CFR 430.23(j)(1)(i), the test procedure accommodated clothes washers with capacities up to 3.8 ft^3.[55] An increasingly wide range of RCW capacities are available on the market, ranging from less than 1.0 ft^3 to greater than 6.0 ft^3. As the range of capacities increases, the effect of capacity on the represented annual energy cost becomes more pronounced.

Given the increasingly wide range of RCW capacities available on the market, and the significant changes over time in estimated annual RCW cycles, DOE considered whether any changes are warranted for the annual energy and annual water calculations to ensure that the results continue to reflect representative average use for all clothes washer sizes, to harmonize with any changes to other metrics within the DOE test procedures, and to continue to provide useful comparative information to consumers. 85 FR 31065, 31081. DOE described two examples in the May 2020 RFI:

- Revising the annual energy and annual water calculation methodology from being based on a fixed number of annual cycles to a fixed number of annual pounds of clothing.
- Varying the annual number of wash cycles based on clothes washer capacity, rather than a fixed number of annual cycles for all clothes washers. *Id.*

In the May 2020 RFI, DOE requested data and information regarding whether and how the annual number of wash cycles varies as a function of clothes washer capacity. *Id.* DOE also requested feedback on whether DOE should consider any changes to the annual energy or annual water calculation methodology and the burden associated with these potential changes. *Id.*

NEEA recommended that DOE change the annual energy metric to use an average number of pounds of textiles washed annually instead of using an average number of cycles per year. NEEA stated that its research found that neither number of cycles nor load size scales with capacity, suggesting that this change would provide a more effective comparison of clothes washers with different capacities. (NEEA, No. 12 at p. 25)

The CA IOUs supported DOE's current method of basing annual energy calculations on a fixed number of wash cycles per year, rather than using a fixed amount of clothing washed per year.

[52] Part (A) provides the calculation when electrically heated water is used. Part (B) provides the calculation when gas-heated or oil-heated water is used.

[53] These equations include the machine electrical energy consumption, hot water energy consumption, and combined low-power mode energy consumption; they exclude the energy consumption for removal of moisture from the test load (*i.e.,* the ''drying energy'').

[54] See section III.G.1 of this document for DOE's proposal to modify the representative average clothes washer use per year.

[55] The maximum capacity in the original load size table in Appendix J1–1997 was 3.8 ft^3.

The CA IOUs commented that annual energy calculations based on a fixed amount of clothing washed would contradict the test procedure that acknowledges that clothes washers of different sizes wash different amounts of clothing, as identified in LUFs and test load sizes. (CA IOUs, No. 8 at pp. 11–12) The CA IOUs further recommended that DOE investigate whether the fixed number of cycles per year should be changed to be more representative of average use in larger households, since larger households tend to have larger-capacity clothes washers, and larger-capacity clothes washers run more cycles per year, as detailed in Table HC3.4 and Figure 3.9 of the 2015 Residential Energy Consumption Survey (''RECS'') data. *Id.*

The CA IOUs also recommended that if DOE changes the annual energy calculation from a fixed number of annual wash cycles to a fixed amount of clothing washed, this change should also be reflected in the rest of the test procedure to capture any operational difference by capacity. (CA IOUs, No. 8 at p. 12)

Notwithstanding the potential limitations of DOE's current approach of calculating annual energy consumption, as described previously, in the absence of any new nationally representative data showing either a constant annual weight of washed laundry, or a correlation between clothes washer capacity and annual weight of washed laundry, DOE is not proposing to change the methodology for calculating annual energy use. DOE could, however, consider such a change should additional data or information become available, as previously described.

DOE requests data on the annual amount of laundry washed by consumers, and whether the annual amount of laundry washed by consumers is correlated with clothes washer capacity.

4. Representation Requirements

Representation requirements for RCWs and CCWs are codified at 10 CFR 429.20(a) and 10 CFR 429.46(a), respectively.

DOE is proposing to specify that the sampling requirements for RCWs specified at 10 CFR 429.20(a)(2)(ii) would also apply to the new proposed EER and WER metrics. DOE is proposing to clarify that the capacity specified in 10 CFR 429.20(a)(3) is the *clothes container* capacity (emphasis added).

DOE is proposing to specify that the sampling requirements specified for CCWs at 10 CFR 429.46(a)(2)(ii) would also apply to the new proposed AEER and WER metrics.

DOE requests comment on its proposed updated representation and sampling requirements for RCWs and CCWs.

F. Cleaning Performance

EPCA requires DOE to consider any lessening of the utility or the performance of the covered products (and certain commercial equipment, including CCWs) likely to result from the imposition of potential new or amended standards. (42 U.S.C. 6295(o)(2)(B)(i)(IV); 42 U.S.C. 6316(a)) EPCA prohibits DOE from prescribing an amended or new standard if the Secretary finds that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4)) [56]

EPCA authorizes DOE to design test procedures that measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) DOE regulates only the energy and water efficiency of clothes washers. Manufacturers may design their products to prioritize any of the other consumer-relevant performance characteristics, including cleaning performance. As such, DOE's clothes washer test procedures do not prescribe a method for testing clothes washer cleaning performance.

Samsung commented that a product should perform at least its basic cleaning function during the energy test cycle so that consumers can purchase products that perform their basic function effectively, while saving energy and water. (Samsung, No. 6 at p. 2) Samsung added that unless clothes washers perform at a minimum level of acceptable functionality on the Normal cycle, consumers may use other energy- or water-intensive modes and unknowingly sacrifice energy efficiency. *Id.* To ensure products perform their basic functionality, Samsung recommended that DOE incorporate by reference the ENERGY STAR ''Test Method for Determining Residential Clothes Washer Cleaning Performance'' [57] as a new appendix to the test procedure. *Id.*

Electrolux encouraged DOE to introduce an independent cleaning and rinsing performance test into the energy test procedure, because Electrolux is concerned that as more cycles become available to consumers, they are less likely to select the more efficient energy test cycle due to performance concerns. (Electrolux, No. 11 at p. 2) Electrolux added that tying performance testing to the energy test cycle could give consumers visibility into the tradeoff between efficiency and cleaning/rinsing performance, and place the energy test cycle as a more prominent cycle that is efficient and has high cleaning performance. *Id.* Electrolux stated that if DOE were to add a new cleaning and rinsing test, it should be developed based on proven industry standards in use, such as IEC 60456, AHAM HLW–1–2013, ''Performance Evaluation Procedures for Household Clothes Washers'' (''AHAM HLW–1–2013''), or AS/NZS 2040.1:2005, ''Performance of household electrical appliances—Clothes washing machines Methods for measuring performance, energy and water consumption'' (''AS/NZS 2040.1:2005''). *Id.* Electrolux stated that these industry cleaning standards do not have the repeatability and reproducibility required for establishing limits or boundaries, but Electrolux supported their use for reporting and comparison purposes. *Id.* According to Electrolux, adding new cleaning and rinsing metrics would not significantly increase testing burden because manufacturers already extensively perform cleaning and rinsing testing on the energy test cycle. *Id.* Electrolux suggested the following specific testing criteria: (1) Incorporate by reference cleaning and rinsing performance test procedures; (2) test the same machines used for energy testing; (3) test the energy test cycle and settings used for the energy testing; (4) test with a load size based on DOE average capacity and using load types defined in the cleaning standard; (5) limit load sizes to one or two; (6) limit wash and rinse temperature combinations to those that differentiate performance the most, such as one cold, one hot, and one warmest warm; (7) weight multiple tests using TUFs from Appendix J2; and (8) average

[56] The unavailability provision is applicable to CCWs under 42 U.S.C. 6316(a).

[57] The ENERGY STAR ''Test Method for Determining Residential Clothes Washer Cleaning Performance'' is available at *www.energystar.gov/sites/default/files/asset/document/Test%20Method%20for%20Determining%20Residential%20Clothes%20Washer%20Cleaning%20Performance%20-%20July%202018_0.pdf.*

machine cleaning and rinsing performance scores. *Id.*

As noted, EPCA authorizes DOE to design test procedures that measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) Also as noted, in determining whether a new or amended energy conservation standard is economically justified, EPCA requires DOE to consider any lessening of the utility or the performance likely to result from the imposition of a new standard. 42 U.S.C. 6295(o)(2)(B)(i)(IV); 42 U.S.C. 6295(o)(4); 42 U.S.C. 6316(a)). As indicated by comments summarized above, multiple test procedures from industry and international organizations are available for measuring clothes washer cleaning performance (among other attributes). DOE may conduct research and testing that uses these or other established test methods as part of an energy conservation standards rulemaking to evaluate any lessening of the utility or the performance of the covered products likely to result from the imposition of potential new or amended standards, as required by EPCA. For example, in the most recent energy conservation standards final rule for CCWs, published on December 15, 2014 (''December 2014 Final Rule''), DOE conducted performance testing using AHAM's HLW–1–2010 test procedure to quantitatively evaluate potential impacts on cleaning performance, rinsing performance, and solid particle removal as a result of higher standard levels. 79 FR 74492, 74506.

DOE is not, however, proposing to add a cleaning performance test procedure to the proposed new Appendix J or to Appendix J2 in this NOPR.

G. Consumer Usage Assumptions

In the May 2020 RFI, DOE requested information on whether, in accordance with 42 U.S.C. 6293(b)(3), the consumer usage factors incorporated into the test procedure produce test results that measure energy efficiency and water use of clothes washers during a representative average use cycle or period of use. 85 FR 31065, 31077. DOE also sought comment on whether testing cycle configurations with usage factors below a certain percentage would be unduly burdensome to conduct and would not be considered to be reasonably designed to measure energy and water use during a representative average use cycle or period of use because they are rarely used by consumers. *Id.*

AHAM commented generally that it supports updating the test procedure to reflect average use cycles, but commented that any updates must reflect changes observed in national, statistically significant field use studies and must not impact repeatability or reproducibility, or be unduly burdensome to conduct. (AHAM, No. 5 at p. 12) AHAM stated that should it find data that would assist DOE in its rulemaking, it will provide it as soon as possible. (AHAM, No. 5 at p. 15)

Discussion and consideration of consumer usage assumptions are provided in the following paragraphs.

1. Annual Number of Wash Cycles

Section 4.4 of Appendix J2 provides the representative average number of annual clothes washer cycles to translate the annualized inactive and off mode energy consumption measurements into a per-cycle value applied to each active mode wash cycle. Separately, the number of annual wash cycles is also referenced in DOE's test procedure provisions at 10 CFR 430.23(j)(1)(i)(A) and (B), (j)(1)(ii)(A) and (B), and (j)(3)(i) and (ii) to calculate annual operating cost and annual water consumption of a clothes washer.

In the August 1997 Final Rule, DOE estimated the representative number of annual wash cycles per RCW to be 392, which represented the average number of cycles per year from 1986 through 1994, based on P&G survey data provided to DOE as described in a NOPR published on March 23, 1995. 60 FR 15330, 1533; 62 FR 45484, 45501.

In the March 2012 Final Rule, DOE updated the representative number of wash cycles per year to 295 based on an analysis of the 2005 RECS data. 77 FR 13887, 13909. More recently, in the May 2020 RFI, DOE presented an analysis of the 2009 RECS data, which suggests 284 cycles per year, and of the 2015 RECS data (the most recent available) which suggests 234 cycles per year. 85 FR 31065, 31079.

In the May 2020 RFI, DOE requested data and information on whether any further adjustments to the number of annual wash cycles are warranted to reflect current RCW consumer usage patterns, as suggested by RECS data. *Id.*

AHAM supported using 2015 RECS data as a basis for determining annual use cycles. (AHAM, No. 5 at p. 15) AHAM stated that its survey of members found that the average number of annual cycles is 233, which supports DOE's analysis of the 2015 RECS data indicating 234 cycles per year. *Id.*

NEEA supported keeping the current number of wash cycles per year or increasing it slightly. (NEEA, No. 12 at p. 24) NEEA stated that findings from its 2014 laundry study indicate 313 annual use cycles for RCWs. *Id.* NEEA stated that its study was developed to represent the distribution of average household size, which NEEA claims principally determines the number of annual laundry cycles. *Id.* NEEA recommended that DOE not use the RECS methodology, which NEEA stated relies on consumer recollection of typical number of clothes washer loads, and which NEEA asserts is likely to be less accurate. *Id.*

DOE appreciates the submission of data by NEEA but notes that the survey results represent regional usage (the Pacific Northwest) during a 4 to 6-week period in 2012, as described in the referenced report. As such, these findings do not provide a basis for estimated national average usage. In lieu of such data, DOE finds that the 2015 RECS survey is the most reliable source available for nationally representative annual usage data.

Based on the data from the 2015 RECS survey, DOE is proposing to update the number of annual wash cycles to 234 in the proposed new Appendix J. This update would impact the per-cycle low-power mode energy consumption value included in the calculation of IMEF and EER. The per-cycle low-power mode energy consumption would be divided by a smaller number (*i.e.,* 234 instead of 295), and would therefore increase by around 25%. See further discussion of the proposed changes to the calculation of low-power mode energy in section III.G.3 of this document.

DOE is not proposing to change the number of annual wash cycles in Appendix J2 because such a change would impact measured energy efficiency. DOE proposes to make such changes only in the proposed new Appendix J, which would be used for the evaluation and issuance of updated efficiency standards, and for determining compliance with those standards.

In addition to other changes discussed in section III.H.6 of this document, DOE is proposing to update 10 CFR 430.23(j)(1)(i) and (j)(3)(i) such that the annual operating cost and annual water consumption calculation would reflect the new proposed number of annual wash cycles when a clothes washer is tested using the proposed new Appendix J, if finalized.

DOE requests comment on its proposal to update the number of annual wash cycles to 234 in the

proposed new Appendix J and 10 CFR 430.23(j)(1)(i) and (j)(3)(i).

2. Drying Energy Assumptions

Section 4.3 of Appendix J2 provides an equation for calculating total per-cycle energy consumption for removal of moisture from the clothes washer test load in a clothes dryer, *i.e.,* the ''drying energy.'' DOE first introduced the drying energy equation in Appendix J1 as part of the August 1997 Final Rule. The drying energy calculation is based on the following three assumed values: (1) A clothes dryer final moisture content of 4 percent; (2) the nominal energy required for a clothes dryer to remove moisture from a pound of clothes (''DEF'') of 0.5 kWh/lb; and (3) a clothes dryer usage factor (''DUF'') of 0.91, representing the percentage of clothes washer loads dried in a clothes dryer.

a. Dryer Final Moisture Content

DOE's test procedure for clothes dryers, codified at 10 CFR part 430, subpart B, appendix D1 (''Appendix D1''), prescribes a final moisture content between 2.5 and 5.0 percent, which is consistent with the 4-percent final moisture content value in the clothes washer test procedure for determining the drying energy. However, DOE's alternate clothes dryer test procedure, codified at 10 CFR part 430, subpart B, appendix D2 (''Appendix D2''), prescribes a final moisture content between 1 and 2.5 percent for timer dryers, which are clothes dryers that can be preset to carry out at least one operation that is terminated by a timer, but may also be manually controlled without including any automatic termination function. For automatic termination control dryers, which can be preset to carry out at least one sequence of operations to be terminated by means of a system assessing, directly or indirectly, the moisture content of the load, the test cycle is deemed invalid if the clothes dryer terminates the cycle at a final moisture content greater than 2 percent. Section 3.3.2 of Appendix D2. In the final rule establishing Appendix D2, DOE determined a clothes dryer final moisture content of 2 percent using the DOE test load to be more representative in that, generally, consumers would find a final moisture content higher than this level unacceptable. 78 FR 49607, 49625 (Aug. 14, 2013). Timer dryers are allowed a range of final moisture contents during the test because DOE concluded that it would be unduly burdensome to require the tester to dry the test load to an exact final moisture content; however, the measured test cycle energy consumption for timer dryers is normalized to calculate the energy consumption required to dry the test load to 2-percent final moisture content. *Id.* Manufacturers may elect to use Appendix D2 to demonstrate compliance with the January 1, 2015, energy conservation standards; however, the procedures in Appendix D2 need not be performed to determine compliance with energy conservation standards for clothes dryers at this time. See introductory paragraph to Appendix D1. Use of Appendix D2 is, however, required for ENERGY STAR certification.[58]

In the May 2020 RFI, DOE requested information to determine whether to revise the clothes dryer final moisture content in the clothes washer test procedure. 85 FR 31065, 31079.

AHAM opposed changing the final moisture content to align with DOE's clothes dryer test procedure in Appendix D2 because the current value of 4 percent is consistent with Appendix D1, which is still the mandatory test procedure and the one most often used. (AHAM, No. 5 at p. 15)

Samsung supported changing the final moisture content value in the drying energy calculation in Appendix J2 from 4 percent to 2 percent to align with the DOE clothes dryer test procedure in Appendix D2, because automatic termination dryers represent a majority of the clothes dryer market, and Appendix D2 has been recognized by stakeholders as representative of how automatic termination dryers are used by consumers. (Samsung, No. 6 at p. 4) Samsung added that the Appendix D1 test procedure was intended as a stopgap measure to test ''sensor dryers'' using ''non-sensing'' settings, and that the Appendix D1 procedure does not represent how the ''sensor dry'' products are used by consumers as accurately as the Appendix D2 test procedure. *Id.*

The Joint Commenters and CA IOUs supported changing the final moisture content value in the drying energy calculation from 4 percent to 2 percent in order to align with the clothes dryer test procedure in Appendix D2. (Joint Commenters, No. 10 at p. 4; CA IOUs, No. 8 at p. 9)

Although clothes dryer manufacturers may optionally use Appendix D2 to demonstrate compliance with the current energy conservation standards, Appendix D1 provides the basis for the current clothes dryer energy conservation standard levels and, as noted by AHAM, is the test procedure used as the basis for certification for the majority of models on the market. In this NOPR, DOE is not proposing to change the assumed final moisture content of 4 percent in the drying energy calculation, which aligns with Appendix D1. However, DOE could reevaluate updating the assumed final moisture content in the clothes washer test procedure based on future updates to clothes dryer test procedures or standards, among other factors.

DOE requests comment on maintaining the assumed final moisture content of 4 percent in the drying energy equation, or whether it should update the assumed final moisture content to 2 percent to align with DOE's Appendix D2 clothes dryer test procedure.

b. Nominal Dryer Energy

The DEF represents the nominal energy required for a clothes dryer to remove moisture from clothes. The value of 0.5 kWh/lb was first proposed in the March 23, 1995 NOPR. 60 FR 15330, 15336. DOE received no comments on this proposal and introduced this DEF value into Appendix J1 in the August 1997 Final Rule. 62 FR 45484, 45489.

In the May 2020 RFI, DOE requested information to determine whether to revise the DEF value as a result of the 2015 updates to the DOE clothes dryer test procedure and any market changes due to the most recent energy conservation standards for clothes dryers. 85 FR 31065, 31079.

AHAM proposed that DOE should lower DEF because of the existence of more efficient clothes dryers. (AHAM, No. 5 at pp. 15–16). AHAM did not propose an amended DEF value but commented that one would need to be determined based on the efficiency of products in the market. *Id.*

The CA IOUs commented that the current DEF represents a reasonable and conservative estimate for residential clothes dryers based on their analysis of current consumer clothes dryer standards and market share data from the most recent energy conservation standards rulemaking for clothes dryers. (CA IOUs, No. 8 at pp. 9–11)

NEEA recommended that DOE retain the current DEF, or increase it slightly to what NEEA stated would be a more representative value, such as 0.66 kWh/lb, as used by the Northwest Regional Technical Forum. (NEEA, No. 12 at pp. 25–26) NEEA stated that its research showed that residential clothes dryers use more energy in the field than what is predicted by the dryer test procedure.

[58] The ENERGY STAR Specification of Clothes Dryer Requirements Version 1.1 requires the use of Appendix D2 for clothes dryers to obtain ENERGY STAR certification.

Id. NEEA recommended that if DOE retains the current DEF, DOE should revisit this issue once the clothes dryer test procedure has been adjusted to better reflect real-world energy use. *Id.*

As noted by the CA IOUs, the current estimate of 0.5 kWh/lb is consistent with the estimates that DOE developed to reflect the current installed base of clothes dryers as part of the most recent energy conservation standards final rule for clothes dryers.[59] In lieu of any additional data representing national average clothes dryer usage, DOE has tentatively concluded that a DEF of 0.5 kWh/lb remains representative of the nominal energy required for a clothes dryer to remove moisture from clothes.

DOE is, therefore, not proposing to change the value of DEF at this time.

DOE requests comment on maintaining the current DEF value of 0.5 kWh/lb.

c. Dryer Usage Factor

The DUF represents the percentage of clothes washer loads dried in a clothes dryer and is used in section 4.3 of Appendix J2 in the equation for calculating the per-cycle drying energy. In the August 1997 Final Rule, DOE originally established a DUF value of 0.84, which was based in part on data provided by P&G, as described in the April 1996 SNOPR. 61 FR 17589, 17592; 62 FR 45484, 45489. In the March 2012 Final Rule, DOE revised the DUF in Appendix J2 to 0.91 based on updated consumer usage data from 2005 RECS. 77 FR 13887, 13913–13914.

In the May 2020 RFI, DOE requested information to determine whether to revise the DUF value. 85 FR 31065, 31078.

NEEA supported keeping the DUF at 0.91 or raising it to a slightly higher value. (NEEA, No. 12 at p. 25) NEEA calculated a DUF of 0.935, using data from its own study. *Id.*

DOE appreciates the submission of data by NEEA but notes that its survey results represent regional usage (the Pacific Northwest) during a 4 to 6-week period in 2012, as described in its report. As such, NEEA's suggested DUF value of 0.935 does not represent national average usage. DOE is not aware of data or information that would indicate that a value other than 0.91 should be considered and so is not proposing to change the DUF in this NOPR.

DOE requests comment on maintaining the current DUF value of 0.91.

3. Low-Power Mode Assumptions

Section 4.4 of Appendix J2 allocates 8,465 combined annual hours for inactive and off modes. If a clothes washer offers a switch, dial, or button that can be optionally selected by the user to achieve a lower-power inactive/off mode than the default inactive/off mode, section 4.4 of Appendix J2 assigns half of those hours (*i.e.,* 4,232.5 hours) to the default inactive/off mode and the other half to the optional lowest-power inactive/off mode. This allocation is based on an assumption that if a clothes washer offers such a feature, consumers will select the optional lower-power mode half of the time. 77 FR 13887, 13904. The allocation of 8,465 hours to combined inactive and off modes is based on assumptions of 1 hour per cycle and 295 cycles per year, resulting in 295 active mode hours (for a total of 8,760 hours per year for all operating modes). As described in the September 2010 NOPR and confirmed in the March 2012 Final Rule, the estimate of 1 hour per cycle was based on a 2005 report from the U.S. Environmental Protection Agency (''EPA'')[60] that summarized test data from three issues of the *Consumer Reports* magazine, which showed top-loading clothes washers with ''normal'' cycle times of 37–55 minutes and front-loading clothes washers with ''normal'' cycle times of 51–105 minutes.[61]

In the May 2020 RFI, DOE requested input on whether the annual hours allocated to combined inactive and off modes, as well as the assumed 50-percent split between default inactive/off mode and any optional lower-power inactive/off mode, result in a test method that measures the energy efficiency of the clothes washer during a representative average use cycle or period of use and would not be unduly burdensome to conduct. 85 FR 31065, 31079.

No comments were received regarding the assumed 50-percent split between default inactive/off mode and any optional lower-power inactive/off mode. Other issues regarding low-power mode, specifically regarding CCWs, are further discussed in section III.G.7 of this document.

For the proposed new Appendix J, DOE is proposing to update the number of hours spent in low-power mode from a fixed 8,465 total hours to a formula based on the clothes washer's measured cycle time, as discussed in section III.D.5 of this document, and the updated number of annual cycles, as discussed in section III.G.1 of this document. This proposal would allow for a more representative allocation of hours between active mode and low-power mode. DOE is not proposing to make these changes to Appendix J2 because doing so would likely change the measured efficiency, and DOE proposes to make such changes only in the proposed new Appendix J, which would be used for the evaluation and issuance of updated efficiency standards, and for determining compliance with those standards.

DOE requests comment on its proposal to update the number of hours spent in low-power mode from a fixed 8,465 total hours to a formula based on measured cycle time and an assumed number of annual cycles.

4. Temperature Usage Factors

TUFs are weighting factors that represent the percentage of wash cycles for which consumers choose a particular wash/rinse temperature selection. The TUFs in Table 4.1.1 of Appendix J2 are based on the TUFs established in Appendix J1–1997. As described in the April 1996 SNOPR, DOE established the TUFs in Appendix J1–1997 based on an analysis of consumer usage data provided by P&G, AHAM, General Electric Company, and Whirlpool, as well as linear regression analyses performed by P&G and the National Institute of Standards and Technology (''NIST''). 61 FR 17589, 17593.

In the May 2020 RFI, DOE requested comment on current consumer usage frequency of the wash/rinse temperature selections required for testing in Appendix J2. 85 FR 31065, 31077. DOE also requested input on whether requiring the testing of temperature selections with low TUFs (for example, the current Table 4.1.1 lists TUFs including 5, 9, and 14 percent) is consistent with the EPCA requirement that the test procedure be reasonably designed to measure the energy use or efficiency of the clothes washer during a representative average use cycle or period of use, and not be unduly burdensome to conduct. *Id.*

NEEA and the CA IOUs commented that they support the existing TUF values. (NEEA, No. 12 at p. 22; CA IOUs, No. 8 at p. 7) The CA IOUs provided temperature selection data from the 2016 PG&E survey, which found that wash temperature and rinse temperature usage data aligned

[59] April 2011 Clothes Dryers Energy Conservation Standards Final Rule Technical Support Document, Chapter 9. Available at *www.regulations.gov/document/EERE-2007-BT-STD-0010-0053.*

[60] C. Wilkes *et al.* 2005. ''Quantification of Exposure-Related Water Uses for Various U.S. Subpopulations.'' U.S. Environmental Protection Agency, Office of Research and Development. Report No. EPA/600/R–06/003. Washington, DC. December 2005. Available at *www.wilkestech.com/205edrb06_Final_Water_Use_Report.pdf.*

[61] These studies appeared in the July 1998, July 1999, and August 2000 issues of Consumer Reports, as cited by EPA.

reasonably well with TUFs from Table 4.1.1 of Appendix J2. (CA IOUs, No. 8 at p. 7–8) As summarized by CA IOUs, the 2016 PG&E survey indicated the following selection frequencies of each wash temperature setting: Cold (45 percent), Warm (46 percent), Hot (7 percent), and Sanitize (1 percent). *Id.* For the rinse temperature setting, 21 percent of cycles used warm rinse, 51 percent used cold rinse, and 28 percent reported no separate rinse temperature. *Id.*

The CA IOUs supported measuring energy and water use of all relevant cycle selections in Table 4.1.1 of Appendix J2, including those with lower TUFs, in order to fully capture energy use in a representative average use cycle or period of use, as required by EPCA. (CA IOUs, No. 8 at p. 7)

As previously mentioned in section III.A of this document, AHAM commented that, in the worst-case scenario of a product with every feature (one that includes manual and user-adjustable automatic WFCS, a heater, four warm wash temperatures, warm rinse, and selectable spin speeds), over half of the test cycles have 1 percent or less overall contribution to the total energy efficiency. (AHAM, No. 5 at p. 4) AHAM emphasized that temperature use factors play a role in the overall burden of the test procedure. *Id.*

DOE appreciates the CA IOUs' data regarding consumer usage of different wash temperatures. As noted previously, the results from the 2016 PG&E survey are instructive as a point of comparison, but limited in geographic and seasonal representation, and represent only a small number of wash cycles per participating household. DOE is not aware of any nationally representative consumer usage data that demonstrate a change in temperature setting usage; therefore, DOE is not proposing any changes to the TUF values at this time.

In response to AHAM's comment regarding the test burden caused by TUFs that represent a relatively smaller percentage of consumer usage, DOE is proposing to implement several other changes to the proposed new Appendix J that would reduce test burden while maintaining representativeness. In particular, DOE is proposing to reduce the number of Warm Wash tested settings, as discussed in section III.D.3 of this document; to reduce the number of tested load sizes, as further discussed in section III.D.1.b of this document; and to measure RMC on the energy test cycle rather than requiring separate additional cycles for measuring RMC, as further discussed in section III.D.4 of this document. Nonetheless, testing the full range of wash temperatures available to consumers on the Normal cycle is necessary to fully capture the energy and water use of a representative use cycle/period of use of a clothes washer.

DOE requests comment on maintaining the current TUF values.

5. Load Usage Factors

As described previously, LUFs are weighting factors that represent the percentage of wash cycles that consumers run with a given load size. Table 4.1.3 of Appendix J2 provides two sets of LUFs based on whether the clothes washer has a manual WFCS or automatic WFCS.

For a clothes washer with a manual WFCS, the two LUFs represent the percentage of wash cycles for which consumers choose the maximum water fill level and minimum water fill level in conjunction with the maximum and minimum load sizes, respectively. For a clothes washer with an automatic WFCS, the three LUFs represent the percentage of cycles for which the consumer washes a minimum-size, average-size, and maximum-size load (for which the clothes washer determines the water fill level). As discussed in section III.D.1.b of this document, the values of these LUFs are intended to approximate a normal distribution that is slightly skewed towards the minimum load size.

In the May 2020 RFI, DOE requested data on current consumer usage as related to the LUFs and whether any updates to the LUFs in Table 4.1.3 of Appendix J2 are warranted to reflect current consumer usage patterns. 85 FR 31065, 31077. DOE specifically requested comment on whether the use of certain LUFs in the test procedure is consistent with the EPCA requirement that the test procedure be reasonably designed to measure energy and water use during a representative average use cycle or period of use without being unduly burdensome to conduct, because certain load sizes may be rarely used by consumers. *Id.*

The CA IOUs provided load size data from the 2016 PG&E survey that showed the following load size usage: Very small (3 percent), small (11 percent), medium (28 percent), large (45 percent), and very large (14 percent).[62] (CA IOUs, No. 8 at pp. 8–9) The CA IOUs stated that international research supports the conclusion that large loads represent a more significant portion of consumer operation than currently represented by Table 4.1.3 of Appendix J2. *Id.* The CA IOUs recommended that DOE consider the results from the 2016 PG&E survey in updating the LUFs. *Id.*

NEEA presented its test data showing that 36 percent of consumer loads are small (less than 6 lb), 52 percent are medium (6 lb to 12 lb), and 11 percent are large (12 lb or more). (NEEA, No. 12 at p. 22) NEEA recommended, based on its testing data, that DOE update the LUFs to place higher weightings on small- and average-sized loads, and less weighting on maximum-sized loads. *Id.*

DOE notes that, as discussed previously in this document, the data presented from both NEEA and the CA IOUs are regional in scope and do not necessarily represent national U.S.-average usage. In addition, DOE notes that the two data sets offer opposing conclusions with regard to load size usage factors.

As previously discussed in section III.D.1.b of this document, DOE is proposing to replace the minimum, maximum, and average load sizes with the small and large load sizes in the proposed new Appendix J. DOE has defined the small and large load sizes such that the small and large load sizes each have an equal (50–50) weighting. As such, DOE is proposing to update the LUFs in the proposed new Appendix J to 0.5 for both the small and the large load size. Because this proposal simplifies the LUF definitions by using the same LUFs regardless of clothes washer WFCS, a separate LUF table is no longer needed. DOE is therefore proposing to remove the LUF Table 4.1.3 and define the LUFs as 0.5 in the equations where the LUFs are first used in section 4.1.3 of the proposed new Appendix J.

DOE requests comment on its proposal to update the LUFs for the small and large load sizes to be equal to 0.5, consistent with the proposed load size definitions in the proposed new Appendix J.

6. Water Heater Assumptions

Section 4.1.2 of Appendix J2 provides equations for calculating total per-cycle hot water energy consumption for all water fill levels tested. The hot water energy consumption is calculated by multiplying the measured volume of hot water by a constant fixed temperature rise of 75 °F and by the specific heat of water, defined as 0.00240 kilowatt-hours per gallon per degree Fahrenheit (''kWh/gal-°F''). No efficiency or loss factor is included in this calculation, which implies an electric water heater efficiency of 100 percent. Similarly, section 4.1.4 of Appendix J2 provides an equation for calculating total per-cycle

[62] The CA IOUs did not define the terms ''very small,'' ''small,'' ''medium,'' ''large,'' or ''very large.''

hot water energy consumption using gas-heated or oil-heated water, for product labeling requirements.[63] This equation includes a multiplication factor ''e,'' representing the nominal gas or oil water heater efficiency, defined as 0.75. These water-heating energy equations estimate the energy required by the household water heater to heat the hot water used by the clothes washer. Per-cycle hot water energy consumption is one of the four energy components in the IMEF metric.

In the May 2020 RFI, DOE requested input on whether any updates were warranted to the water heater efficiency values implied in section 4.1.2 and provided in section 4.1.4 of Appendix J2. 85 FR 31065, 31079.

The CA IOUs recommended that DOE update the gas and oil efficiency factor in section 4.1.4 of Appendix J2, and include a new efficiency factor for electric water heaters in the rest of section 4.1 of Appendix J2, to account for heat losses in the hot water distribution system. (CA IOUs, No. 8 at p. 15)

The CA IOUs did not provide specific recommendations or data that could be used to justify updating the gas and oil efficiency factor, or for a new efficiency factor to account for any heat losses in the hot water distribution system. DOE is unaware of any nationally representative data regarding heat losses in residential water distribution systems.

In the absence of such data, DOE is not proposing any changes to the assumed water heater efficiency factors in the clothes washer test procedure.

DOE requests comment on maintaining the current water heater efficiency assumptions.

7. Commercial Clothes Washer Usage

As mentioned in section I of this document, CCWs are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(H)) EPCA requires the test procedures for CCWs to be the same as those established for RCWs. (42 U.S.C. 6314(a)(8))

The CA IOUs recommended that DOE include CCW use patterns when determining the number of average use cycles, annual loads of laundry, and LUF values. (CA IOUs, No. 8 at pp. 8–9, 12–14) The CA IOUs stated that according to Table HC3.4 of the 2015 RECS data, 17.6 percent of respondents rely on CCWs to wash their clothing. The CA IOUs commented that, due to the exclusion of CCW usage data, DOE's analysis undercounts the average annual use cycles. *Id.* The CA IOUs cited an ENERGY STAR case study at an apartment building in Maryland that reported 1,138 cycles per CCW per year, with each CCW servicing more than 19 apartments.[64] According to the CA IOUs, this implies that the RECS annual cycle use analysis provided by DOE in the September 2010 NOPR represents an undercounting of the average annual use cycles due to a lack of representation of CCWs. *Id.*

The CA IOUs also suggested that DOE develop a DEF for CCWs that is different than the DEF for RCWs. (CA IOUs, No. 8 at p. 11) The CA IOUs recommended that DOE calculate this DEF by investigating any changes to market share distribution of consumer clothes dryers since the 2011 clothes dryer standards rulemaking, and by incorporating energy use and market share implications for CCWs. *Id.*

NEEA, the CA IOUs, and the Joint Commenters recommended that DOE require standby/low power mode testing for CCWs, and that low-power mode energy consumption should be incorporated into the energy efficiency metric for CCWs. (NEEA, No. 12 at p. 18; Joint Commenters, No. 10 at p. 2; CA IOUs, No. 8 at p. 13) NEEA reported data from its test program that showed CCWs have an average standby power of 6.4 watts compared to 0.5 watts for RCWs. NEEA stated that although CCWs have more active wash cycles than RCWs, CCWs still spend a significant amount of time in low power mode. According to NEEA, low-power mode energy use in CCWs can be reduced cost-effectively in a variety of ways. (NEEA, No. 12 at p. 18) The CA IOUs further commented that transitioning CCWs' efficiency metric to IMEF could align with the California Energy Commission's Low Power Modes Roadmap.[65] (CA IOUs, No. 8 at p. 13)

NEEA's standby power data for CCWs falls within with the range of test results described by DOE in the December 2014 Final Rule. As part of its market assessment and engineering analysis for the December 2014 Final Rule, DOE performed an in-depth evaluation of the standby and off mode power characteristics of a representative sample of CCWs spanning a wide range of display types, payment systems, and communication features. 79 FR 74492, 74501. DOE observed that manufacturers offer a variety of display and payment functionalities that can be selected independently from the basic model. The standby power associated with these different display and payment functionalities varies from 0.88 to 11.77 watts. *Id.* The lowest standby power levels are associated with models having no vend price display and no coin or card payment options (often referred to as ''push-to-start'' models). These models are typically used in small multi-family housing facilities offering free laundry, or in other commercial applications not requiring fare payment. Such models are not suitable for coin-operated laundry or most other multi-family housing facilities. *Id.* The highest standby power levels are associated with models having a digital vend price display, coin or debit card payment system, and advanced features such as dynamic or cycle-based pricing controls, built-in logging capabilities, and remote auditing features. These models are typically used in coin-operated laundries located in competitive markets. *Id.*

In the December 2014 Final Rule, DOE determined not to include low-power mode energy in the CCW energy efficiency metric. *Id.* DOE determined that promulgating an amended standard that included low-power mode energy could enable backsliding and that the IMEF metric would not provide a useful means for differentiating the active mode characteristics of different CCW models. *Id.* Because of the wide variations in standby power, CCWs with significantly different active mode ratings could have similar IMEF ratings depending on their control panel functionalities, and vice versa. This would diminish the usefulness of the IMEF metric as a means for differentiating the active mode characteristics of different CCW models. *Id.*

Moreover, as noted, EPCA requires the test procedures for CCWs to be the same as those established for RCWs. (42 U.S.C. 6314(a)(8)) Creating load, temperature, or dryer usage factors specific to CCWs within the RCW test procedure would effectively create a separate test procedure for CCWs because the LUF, TUF, DUF, and DEF values are integral to the calculations of per-cycle energy and water use, on which the regulated metrics for RCWs and CCWs are based.

Regarding annual use cycles, DOE notes that in calculating national energy

[63] The Federal Trade Commission's EnergyGuide label for RCWs includes the estimated annual operating cost using natural gas water heating.

[64] The apartment building included 14 clothes washers for 272 apartments. *www.energystar.gov/ia/products/appliances/clotheswash/508_ColesvilleTowers.pdf.*

[65] Additional information can be found at the California Energy Commission's Low-Power Mode docket: *efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=17-AAER-12.*

savings as part of the analysis conducted during CCW energy conservation standards rulemakings, DOE uses CCW-specific usage data for factors such as annual use cycles, the proportion of gas versus electric water heating, and others. This ensures that the analysis of energy savings and national impacts as part of a CCW standards rulemaking accurately reflects CCW usage. Any determination regarding whether to include low-power mode energy use in the energy efficiency metric for CCWs would be made as part of the ongoing energy conservation standards rulemaking for CCWs.

DOE is not proposing any changes to CCW usage factors or to the CCW energy efficiency metric in this NOPR.

H. Clarifications

In this section of the NOPR, DOE is proposing amendments to its test procedures for clothes washers at Appendix J2 that DOE has tentatively determined would not alter the measured efficiency of clothes washers. The proposed amendments either codify guidance on the existing regulations, provide more specificity in the test procedure provisions, provide improved organization of each section, or correct formatting errors in DOE's clothes washer test procedures.

1. Water Inlet Hose Length

DOE has observed an increasing trend of water inlet hoses not being included with the purchase of a new clothes washer. DOE has received questions from test laboratories asking how to install a clothes washer that does not include water inlet hoses among the installation hardware.

Multiple styles of water inlet hoses (different materials, lengths, durability, etc.) are commercially available from appliance and hardware retailers. While most such products intended for consumer use would be appropriate for installing a clothes washer, DOE seeks to provide additional direction to avoid the use of a hose designed for niche purposes (*i.e.,* to ensure representativeness) as well as to ensure reproducible results among different laboratories. Specifically, DOE observes a wide range of hose lengths available on the market, and recognizes that using an excessively long hose could result in the water temperature or pressure at the clothes washer inlet deviating significantly from the temperature and pressure at the test fixture. Based on a review of water inlet hoses available at major retailers, the most common lengths for clothes washer hoses range from 3–6 feet (''ft''). DOE is therefore proposing to specify the use of hoses that do not exceed 72 inches in length (6 ft) in section 2.10.1 of the proposed new Appendix J.

DOE requests comment on its proposal to specify the use of hoses not to exceed 72 inches in length in the proposed new Appendix J. DOE also requests comment on the length of inlet hose typically used for testing.

DOE could also consider this change for Appendix J2, but is not proposing it in this NOPR because of the potential for this change to impact measured energy efficiency. DOE proposes to make such changes only in the proposed new Appendix J, which would be used for the evaluation and issuance of updated efficiency standards, and for determining compliance with those standards.

2. Water Fill Selection Availability

Table 2.8 within section 2.8 of Appendix J2 requires that, for clothes washers with manual WFCS, each temperature selection that is part of the energy test cycle be tested using both the minimum and maximum water fill levels, using the minimum and maximum load sizes, respectively. Section 3.2.6 of Appendix J2 describes these water fill levels as the minimum and maximum water levels available for the wash cycle under test. DOE has observed one RCW model with electronic controls in which the maximum water fill level on the unit cannot be selected with all of the temperature selections required for testing; *i.e.,* on at least one temperature setting, the maximum water fill that can be selected is one of the intermediate fill levels on the unit. In such cases generally, the ''reduced maximum'' water fill level for a particular temperature setting may not be appropriate for use with the maximum load size required for that particular cycle under test. Using a maximum load size with a reduced maximum water fill level may not provide results that measure energy efficiency and water use during a representative average use cycle or period of use, since the unavailability of the ''full maximum'' water fill level for that particular cycle under test would suggest that the particular temperature selection is not intended to be used with a maximum load size.

The RCW model with this characteristic is no longer available on the market, and DOE is not aware of any other clothes washer models currently on the market with this characteristic. As described further in this discussion, DOE is not proposing any amendments in this NOPR to address the potential for the maximum load size required by the test procedure to conflict with the maximum load size intended or able to be washed on such a cycle. Nevertheless, DOE considered comments received from interested parties on this issue and seeks additional comment on several approaches that DOE has considered that could address this issue in the test procedure.

In the May 2020 RFI, DOE requested comment from interested parties on how the test procedure should accommodate clothes washers in which the maximum available water fill level may differ depending on the temperature selection. 85 FR 31065, 31073.

Samsung stated that it believes that because some clothes washers do not offer all water level selections for all temperature options, the current test procedure is unrepresentative of real-world use. According to Samsung, if the energy test cycle cannot be run at all temperature and water fill options, consumers may switch to a non-tested, and potentially more energy-intensive, mode in order to access the water level and temperature they intend to use. Samsung suggested that DOE consider amending the test procedure to require testing of other cycles, in addition to the Normal cycle, for which all water level selections are available. (Samsung, No. 6 at pp. 2–3)

AHAM commented that it is not necessary to amend the test procedure to include directions for testing clothes washers with water fill levels that are only available at certain temperature settings. (AHAM, No. 5 at p. 12) AHAM commented that while consumers have options available for other needs, the Normal cycle remains the most representative of customer use, and there have not been any data to prove otherwise. AHAM emphasized that the purpose of testing is to test the most used, or ''representative,'' cycle and that the Normal cycle has been and remains that cycle. *Id.* Furthermore, AHAM commented that DOE has achieved its objectives by limiting water and energy use and restrictions on options in the most commonly used cycle while also allowing for consumer choice. AHAM stated that it may have more data on this issue at a future time. *Id.*

The suggestion by Samsung to require testing of other cycles for which all water level selections are available would mirror the approached used in the flowcharts in section 2.12 of Appendix J2 for determining the wash/rinse temperatures that comprise energy test cycle. For each wash/rinse temperature selection other than Cold/Cold, the flowcharts require deviating

from the Normal cycle (as that term is defined in section 1.25 of Appendix J2) if the particular wash/rinse temperature combination is not offered on the Normal cycle but is offered on one of the other cycle selections on the clothes washer. DOE could consider amending the flowcharts to incorporate the availability of load sizes in conjunction with the availability of wash/rinse temperature selections, for example.

DOE could also consider other approaches that would maintain the use of the Normal cycle in such cases; for example, specifying the use of a modified load size if the maximum load size defined by the test procedure conflicts with the maximum load size intended or able to be washed on such a cycle.

DOE notes an important distinction between the requirements of EPCA and AHAM's comment regarding the purpose of the test procedure. As discussed, EPCA requires that test procedures produce test results that measure energy efficiency or energy use during a representative average use cycle or period of use (among other considerations). (42 U.S.C. 6293(b)(3); 42 U.S.C. 6314(a)(2)) AHAM's comment suggests that testing other cycles for models with certain characteristics is not necessary because, according to AHAM, the Normal cycle remains the most representative of customer use. However, EPCA does not require that the results of the test procedure be representative of the average use of consumers across all models of clothes washers; rather, EPCA requires that the results of the test procedure be representative of the energy (and water) use of the particular model being tested. Although the Normal cycle may be the most commonly used cycle across all clothes washers on the market, the ''representative average use cycle or period of use'' might differ for a model in which the maximum water fill level on the unit cannot be selected with all of the temperature selections required for testing.

As stated, DOE is not proposing any changes at this time to address the potential for the maximum load size required by the test procedure to conflict with the maximum load size intended or able to be washed using the cycle required for testing. To the extent that models with this characteristic were to be reintroduced the market, more research would be needed to address any potential concerns regarding representative use.

Finally, DOE notes that the amended load sizes proposed for new Appendix J (in which the ''large'' load size is smaller than the ''maximum'' load size currently defined by Appendix J2) would obviate the need for any changes to the test procedure for the one RCW model of concern.

DOE requests comment on whether it should amend the test procedure to accommodate potential future clothes washer models for which the maximum load size required by the test procedure conflicts with the maximum load size intended or able to be washed with the cycle required for testing. If so, DOE seeks additional comment on the approaches it has considered, or on any other approaches that could be considered, that would address this issue in the test procedure.

3. Water Fill Control Systems

a. Definitions

Section 1.5 of Appendix J2 defines ''automatic water fill control system'' as a clothes washer WFCS that does not allow or require the user to determine or select the water fill level, and includes adaptive WFCS and fixed WFCS. Section 1.4 of Appendix J2 defines ''adaptive water fill control system'' as a clothes washer automatic WFCS that is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container. Section 1.14 of Appendix J2 defines ''fixed water fill control system'' as a clothes washer automatic WFCS that automatically terminates the fill when the water reaches an appropriate level in the clothes container. Section 3.2.6.2.2 of Appendix J2 provides testing instructions for a ''user-adjustable'' automatic WFCS, which is described in that section as an automatic water fill control that affects the relative wash water levels.

In response to the May 2020 RFI, NEEA and the Joint Commenters recommended that DOE develop new definitions for WFCS to address the current variety and sophistication of clothes washer fill options and the range of possible consumer use. NEEA stated that the market has shifted away from the two main types of WFCS currently defined in Appendix J2, and that NEEA has encountered many types of combined WFCS. (NEEA, No. 12 at p. 21; Joint Commenters, No. 10 at pp. 3–4)

To provide additional specificity to both Appendix J2 and the proposed new Appendix J, DOE is proposing revisions to some of the WFCS definitions, as follows.

DOE proposes to amend the definition of ''fixed water fill control system'' to mean ''a clothes washer automatic water fill control system that automatically terminates the fill when the water reaches a pre-defined level that is not based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring the user to determine or select the water fill level.'' This proposed amendment to the definition would specify that the water fill level for this type of WFCS is pre-defined (*i.e.,* fixed) and does not vary based on the size or weight of the load. The proposal would incorporate the same terminology used in the other WFCS definitions so as to more clearly articulate how a fixed WFCS relates to the other defined WFCS. This amended definition would be included in the proposed new Appendix J as well.

To provide greater specificity regarding user-adjustable automatic WFCS, DOE is proposing to add a definition of a ''user-adjustable automatic water fill control system'' to section 1 of both Appendix J2 and the proposed new Appendix J. DOE is proposing to define a user-adjustable automatic WFCS as ''an automatic clothes washer fill control system that allows the user to adjust the amount of water that the machine provides, which is based on the size or weight of the clothes load placed in the clothes container.'' Given DOE's proposal to create a definition of user-adjustable automatic WFCS, DOE proposes to simplify the wording of section 3.2.6.2.2 of Appendix J2 from ''[c]onduct four tests on clothes washers with user adjustable automatic water fill controls that affect the relative wash water levels'' to ''[c]onduct four tests on clothes washers with user-adjustable automatic water fill controls.'' For the proposed new Appendix J, section 3.2.3.2.2 would state ''For the large test load size, set the water fill selector to the setting that uses the most water. For the small test load size, set the water fill selector to the setting that uses the least water.''

DOE requests comment on its proposed changes to the definition of ''fixed water fill control system'' and on its proposal to add a definition for ''user-adjustable automatic water fill control system.''

b. ''Most Energy Intensive'' Wording for User-Adjustable Automatic Water Fill Control Systems

As discussed, section 3.2.6.2.2 of Appendix J2 specifies how to test clothes washers with user-adjustable automatic WFCS. Four tests are required:

☐ A test using the maximum test load size and with the WFCS set in the setting that will give the most energy intensive result;

☐ a test using the minimum test load size and with the WFCS set in the setting that will give the least energy intensive result;

☐ a test using the average test load size and with the WFCS set in the setting that will give the most energy intensive result; and

☐ a test using the average test load size and with the WFCS set in the setting that will give the least energy intensive result.

DOE has received questions from a test laboratory regarding how to determine which setting is the most ''energy intensive'' for the purposes of this provision. Depending on the quantity and temperature of water under consideration—as well as whether the term ''energy intensive'' is intended to include machine electrical energy, hot water heating energy, and/or drying energy—the setting that uses the most (or least) amount of water may not correspond to the most (or least) amount of energy. While the amount of water used in a wash cycle can be readily determined, measuring and calculating the amount of energy consumption requires more time and effort, particularly if energy consumption includes a combination of machine electrical energy, hot water heating energy, and/or drying energy.

The provisions requiring testing the most and least energy intensive settings were initially proposed in response to an interim waiver granted to GEA for a clothes washer with user-adjustable adaptive WFCS. 61 FR 57794, 57795 (Nov. 8, 1996; ''November 1996 NOPR''), referencing interim waiver case no. CW–004, 61 FR 18125 (Apr. 24, 1996; ''April 1996 Interim Waiver''). These testing provisions were adopted in the August 1997 Final Rule 62 FR 45484, 45487.

At the time of the November 1996 NOPR, the applicable energy efficiency metric (*i.e.,* energy factor) did not include the drying energy component, and the energy conservation standards at the time did not regulate the water efficiency of clothes washers. As evident throughout the discussions in the April 1996 Interim Waiver, November 1996 NOPR, and August 1997 Final Rule, absent the consideration of drying energy and water efficiency, DOE used the terms ''most energy intensive'' and ''least energy intensive'' synonymously with discussing the water fill amounts.[66] The terms ''most energy intensive'' and ''least energy intensive'' were originally employed to provide direction of the water fill amounts required for testing of the adaptive WFCS. In no part of any of these three documents did DOE discuss the possibility that the highest (or lowest) water fill amount would not also correspond to the most (or least) energy intensive setting. In the context of the user-adjustable automatic WFCS provisions, the test conditions are to provide instruction as to the required water fill level, and not require a determination of energy intensity.

As the test procedures and energy conservation standards have been amended, the measured energy use accounts for more than just that which correlates to the water fill level. However, use of the energy intensity terminology remained in the user-adjustable automatic WFCS provisions.

Given the evolution of clothes washer control systems and operation since the August 1997 Final Rule, more precise language is needed to avoid an unnecessary determination of whether the highest (or lowest) water fill amount on a user-adjustable automatic WFCS corresponds to the most (or least) energy intensive setting. Therefore, DOE is proposing to change the wording of both section 3.2.6.2.2 of Appendix J2 and section 3.2.3.2.2 of the proposed new Appendix J, to update the phrase ''the setting that will give the most energy intensive result'' to ''the setting that uses the most water'' to reflect the original intent of this provision. Similarly, DOE is proposing to update the phrase ''the setting that will give the least energy intensive result'' to ''the setting that uses the least water.''

DOE requests comment on its proposal to update the wording of section 3.2.6.2.2 of Appendix J2 and section 3.2.3.2.2 of the proposed new Appendix J from ''the setting that will give the most energy intensive result'' to ''the setting that uses the most water;'' and from ''the setting that will give the least energy intensive result'' to ''the setting that uses the least water.''

4. Energy Test Cycle Flowcharts

In the August 2015 Final Rule, DOE implemented a series of flowcharts to determine the wash/rinse temperature selections required for testing in section 2.12 of Appendix J2. 80 FR 46730, 46744.

a. Clarification of Load Size To Be Used for Temperature Comparisons

Figure 2.12.5 of Appendix J2, which is the flow chart used for the determination of the Extra-Hot Wash/Cold Rinse temperature selection, asks if the wash/rinse temperature selection has a wash temperature greater than 135 °F. DOE is aware that for some clothes washer on the market, the answer to that question could differ depending on what load size is used, *i.e.,* the wash temperature may exceed 135 °F only on certain load sizes, meaning that the determination of whether the temperature selection is classified as Hot Wash/Cold Rinse or Extra-Hot Wash/Cold Rinse would depend on the load size used for making the determination. More generally, all of the flowcharts in section 2.12 require comparing wash and rinse water temperatures across different temperature selections, without specifying a load size to be used for making these comparisons.

DOE is proposing to specify using the maximum load size to evaluate the flow chart for clothes washers tested to Appendix J2, and the large load size for the proposed new Appendix J.[67] The maximum/large load size is the load size expected to use the most water (compared to the other load sizes) under each appendix, and in DOE's experience, larger quantities of water (particularly hot water) provide a more reliable determination of the relative differences in water temperature among the various temperature settings. Therefore, the maximum/large load size is likely to provide the most repeatable and reproducible end result for each flowchart.

DOE notes that Figure 2.12.1 of Appendix J2, which is the flow chart used for the determination of the Cold Wash/Cold Rinse temperature selection, provides direction for cases where multiple wash temperature selections in the Normal cycle do not use any hot water for any of the water fill levels or test load sizes required for testing. For Appendix J2, DOE is proposing that the new clarifying language would not apply to the Cold Wash/Cold Rinse temperature settings in order to avoid the potential need for retesting under Appendix J2 if a clothes washer was tested in a manner inconsistent with this proposed change. For the proposed new Appendix J, DOE is proposing to delete from the Cold Wash/Cold Rinse flowchart (Figure 2.12.1) the clause applying it to all tested load sizes, and

[66] For example, in the April 1996 Interim Waiver, DOE stated the following: However, the ''sensitivity'' or relative fill amounts of the automatic water fill mode can be reprogrammed in the secondary programming mode, thus resulting in an increase in energy consumption above the manual mode result. 61 FR 18125, 18127.

[67] See section III.D.1.b of this document for a discussion of the definition of the new ''large'' test load size.

to instead require the use of the large size, consistent with all the other wash/rinse temperature selection flowcharts.

DOE requests comment on its proposal to require that the energy test cycle flow charts be evaluated using the large load size for all wash/rinse temperature settings in the proposed new Appendix J. DOE also requests comment on its proposal to require that the energy test cycle flow charts be evaluated using the maximum load size, except for the Cold/Cold flow chart, in Appendix J2.

b. Clothes Washers That Generate All Hot Water Internally

As described in section III.C.2 of this document, DOE is aware of single-inlet clothes washers on the market that intake only cold water and internally generate all hot water required for a cycle by means of an internal heating element. As observed on the market, these clothes washers offer Cold, Warm, Hot, and/or Extra Hot temperature selections. As part of determining the Cold Wash/Cold Rinse temperature selection, the instruction box in the flowchart in Figure 2.12.1 of Appendix J2 refers to ''. . . multiple wash temperature selections in the Normal cycle [that] do not use any hot water for any of the water fill levels or test load sizes required for testing . . .'' In the May 2020 RFI, DOE considered rephrasing the text in Figure 2.12.1 of Appendix J2 to say ''. . . use *or internally generate* any heated water . . .'' (emphasis added) so that the wording of the Cold Wash/Cold Rinse flowchart in Figure 2.12.1 of Appendix J2 explicitly addresses clothes washers that internally generate hot water. 85 FR 31065, 31074. This change would be consistent with DOE's interpretation of the current Cold Wash/Cold Rinse flowchart and subsequent flowcharts for the Warm Wash and Hot Wash temperature selections for this type of clothes washer. *Id.* DOE requested input on this rephrasing. *Id.*

UL supported changing the wording of Figure 2.12.1 of Appendix J2 to specifically address clothes washers that internally generate heated water. (UL, No. 9 at p. 3)

AHAM stated that it does not oppose rephrasing Figure 2.12.1 of Appendix J2 to specifically address clothes washers that internally generate all hot water used for a cycle by means of internal heating elements, and believes it would be a useful clarification. (AHAM, No. 5 at p. 13)

As suggested in the May 2020 RFI, DOE proposes rephrasing the text in Figure 2.12.1 of both Appendix J2 and the proposed new Appendix J to say ''. . . use *or internally generate* any heated water . . .'' (emphasis added) so that the wording of the Cold Wash/Cold Rinse flowchart in both appendices explicitly addresses clothes washers that internally generate hot water. 85 FR 31065, 31074. In this NOPR, DOE is further proposing to rephrase the description of Warm Wash/Warm Rinse in Figure 2.12.4 of both Appendix J2 and the proposed new Appendix J to state ''. . . rinse temperature selections that add *or internally generate* hot water . . .'' (emphasis added), for the same reasons.

DOE requests comments on its proposal to update the flowcharts for Cold Wash/Cold Rinse and Warm Wash/Warm Rinse in both Appendix J2 and the proposed new Appendix J to explicitly address clothes washers that internally generate hot water.

5. Wash Time Setting

Section 3.2.5 of Appendix J2 defines how to select the wash time setting on a clothes washer. If no one wash time is prescribed for the wash cycle under test, the wash time setting is the higher of either the minimum or 70 percent of the maximum wash time available, regardless of the labeling of suggested dial locations. Hereafter in this document, DOE refers to this provision as the ''70-percent test.''

In the March 2012 Final Rule, DOE added instructions to the wash time section of Appendix J1 and Appendix J2 that specified the direction of rotation of electromechanical dials, and that the 70-percent test applies regardless of the labeling of suggested dial locations. 77 FR 13887, 13927. In the August 2015 Final Rule, DOE specified that, if 70-percent of the maximum wash time is not available on a dial with a discrete number of wash time settings, the next-highest setting greater than 70-percent must be chosen. 80 FR 46729, 46745.

a. Electronic vs. Electromechanical Dials

DOE has observed on the market clothes washers that have an electronic cycle selection dial designed to visually simulate a conventional electromechanical dial.[68] 85 FR 31065, 31075. In particular, DOE has observed clothes washers with an electronic dial that offers multiple Normal cycle selections; for example, ''Normal-Light,'' ''Normal-Medium,'' and ''Normal-Heavy,'' with the descriptor referring to the soil level of the clothing. On such clothes washers, the only difference between the three Normal cycles apparent to consumers when performing each cycle may be the wash time, although other less observable parameters may also differ. Although the electronic dial simulates the visual appearance of an electromechanical dial, the electronic dial is programmed with a preestablished set of wash cycle parameters, including wash time, for each of the discrete cycle selections presented on the machine. *Id.* For this type of cycle selection dial, each of the discrete cycle selection options represents a selectable ''wash cycle'' as referred to in section 3.2.5 of Appendix J2, and a wash time is prescribed for each available wash cycle. Therefore, for clothes washers with this type of electronic dial, the wash cycle selected for testing must correspond to the wash cycle that meets the definition of Normal cycle in section 1.25 of Appendix J2. The wash time setting thus would be the prescribed wash time for the selected wash cycle; *i.e.,* the 70-percent test would not apply to this type of dial. *Id.* In the May 2020 RFI, DOE requested feedback on whether to further clarify section 3.2.5 of Appendix J2 regarding electronic cycle selection dials that visually simulate conventional electromechanical dials. *Id.*

AHAM suggested that section 3.2.5 of Appendix J2 could be clarified by specifying that the instructions pertaining to electromechanical dials (regarding resetting the dial and turning it to reach the appropriate setting) also pertain to timers that control wash time. (AHAM, No. 5 at p. 14)

DOE agrees with AHAM's suggestion and is proposing to amend section 3.2.5.3 of both Appendix J2 and the proposed new Appendix J by adding the words ''or timer'' after the words ''electromechanical dial'' in order to clarify the application of the instructions to electronic cycle selection dials.

DOE is further proposing to revise the wording of section 3.2.5 of Appendix J2 and section 3.2.2 of the proposed new Appendix J[69] by changing the first sentence of the section to read, ''*If the cycle under test offers a range of wash time settings,* the wash time setting shall be the higher of either the minimum 70 percent of the maximum wash time available for the wash cycle under test,

[68] On most electromechanical dials, the rotational position of the dial corresponds to the desired wash time. The user rotates the dial from the initial ''off'' position to the desired wash time position, and after starting the wash cycle, the dial rotates throughout the progression of the wash cycle until it reaches the ''off'' position at the end of the cycle. In contrast, an electronic dial contains a fixed number of selectable positions, and the dial remains in the selected position for the duration of the wash cycle.

[69] See section III.H.7 of this document for a discussion of the structure of section 3 of the proposed new Appendix J.

regardless of the labeling of suggested dial locations'' (emphasis added). DOE is also proposing to separate section 3.2.5 of Appendix J2 and section 3.2.2 of the proposed new Appendix J into two subsections: Section 3.2.5.1 (in Appendix J2) and section 3.2.2.1 (in the proposed new Appendix J), which specifies the wash time setting for a clothes washer cycle with a range of wash time settings; and section 3.2.5.2 (in Appendix J2) and 3.2.2.2 (in the proposed new Appendix J), which specifies the dial rotation procedure for a clothes washer equipped with an electromechanical dial or timer that rotates in both directions.

DOE requests comment on its proposal to clarify the wording of the wash time setting specifications in section 3.2.5 of Appendix J2 and section 3.2.2 of the proposed new Appendix J.

b. Direction of Dial Rotation

Section 3.2.5 of Appendix J2 states that, for clothes washers with electromechanical dials controlling wash time, the dial must be turned in the direction of increasing wash time to reach the appropriate wash time setting. DOE is aware that not all electromechanical dials currently on the market can be turned in the direction of increasing wash time. 85 FR 31065, 31075. On such models, the dial can only be turned in the direction of decreasing wash time. DOE believes that the direction of rotation need only be prescribed on a clothes washer with an electromechanical dial that can rotate in both directions. *Id.* In the May 2020 RFI, DOE requested comment on its understanding of the functioning of dials currently on the market, specifically with regard to the direction(s) of rotation and whether the wording of section 3.2.5 of Appendix J2 warrants revision to specify that the requirement to rotate the dial in the direction of increasing wash time applies only to dials that can rotate in both directions. *Id.*

UL commented that it supports specifying that the requirement to rotate the dial in the direction of increasing wash time applies only to dials that can rotate in both directions, because some dials only rotate in one direction. (UL, No. 9 at p. 3)

AHAM supported amending section 3.2.5 of Appendix J2 to specify that the requirement to rotate the dial in the direction of increasing wash time applies only to dials that can rotate in both directions. (AHAM, No. 5 at p. 14)

DOE notes general support for its suggestion to specify that the requirement to rotate the dial in the direction of increasing wash time applies only to dials that can rotate in both directions. In this NOPR, DOE is proposing to add a clause in section 3.2.5.2 of Appendix J2 and section 3.2.2.2 of the proposed new Appendix J that would specify that the requirement to rotate the dial in the direction of increasing wash time would only apply to dials that can rotate in both directions.

DOE requests comment on its proposal to add a clause in section 3.2.5.2 of Appendix J2 and section 3.2.2.2 of the proposed new Appendix J stating that the requirement to rotate the dial in the direction of increasing wash time would only apply to dials that can rotate in both directions.

c. ''Wash Time'' Definition

The 70-percent test described above does not explicitly define how to calculate ''wash time.'' In the May 2020 RFI, DOE was considering whether to state that the phrase ''wash time'' in section 3.2.5 of Appendix J2 refers to the period of agitation or tumble. 85 FR 31065, 31975. This clarification would be consistent with the historical context of this section of the test procedure. In Appendix J–1997, section 2.10 *Clothes washer setting* refers to ''actual wash time'' as the ''period of agitation.'' In Appendix J–2001, DOE renamed section 2.10 *Wash time (period of agitation or tumble) setting.*[70] 66 FR 3313, 3330. When establishing Appendix J1 in the August 1997 Final Rule, DOE did not include reference to ''period of agitation or tumble'' in section 2.10 of Appendix J1. 62 FR 45484, 45510. DOE did not address this difference from Appendix J–1977 in the preamble of the August 1997 Final Rule or the NOPRs that preceded that final rule, but given the continued reference to ''wash time'' in Appendix J1, did not intend to change the general understanding that wash time refers to the wash portion of the cycle, which includes agitation or tumble time. DOE has since further amended section 2.10 of both Appendix J1 and Appendix J2 as part of the March 2012 Final Rule and August 2015 Final Rule (in which section 2.10 was renumbered as section 3.2.5), with no discussion in these final rules of the statement that remained in Appendix J–2001, where wash time was referred to in the title of section 2.10 as the period of agitation or tumble time. DOE further notes that in current RCW models on the market, agitation or tumble may be periodic or continuous during the wash portion of the cycle.

In the May 2020 RFI, DOE requested feedback on whether DOE should consider reincorporating language into section 3.2.5 of Appendix J2 to state that the term ''wash time'' refers to the wash portion of the cycle, including agitation or tumble time. 85 FR 31065, 31076.

UL suggested that the phrase ''wash time'' include agitation or tumble time, which can be periodic throughout the wash cycle. (UL, No. 9 at p. 3) UL specified in particular that wash time could be defined as starting when the clothes washer starts filling with water, agitating or tumbling, or a combination of both; and as ending when the clothes washer drains the water from the wash portion of the cycle. *Id.*

AHAM agreed with DOE's proposal to state that ''wash time'' refers to the period of agitation or tumble. (AHAM, No. 5 at p. 14)

In order to provide further clarity in evaluating the wash time setting requirements of section 3.2.5 of Appendix J2 and section 3.2.2 of the proposed new Appendix J, DOE is proposing to define the term ''wash time'' in section 1 of both Appendix J2 and the proposed new Appendix J as ''the wash portion of the cycle, which begins when the cycle is initiated and includes the agitation or tumble time, which may be periodic or continuous during the wash portion of the cycle.''

DOE requests comment on its proposal to add a definition of ''wash time'' to section 1 of both Appendix J2 and the proposed new Appendix J.

6. Annual Operating Cost Calculation

DOE provides in 10 CFR 430.23(j)(1)(ii) the method for calculating the estimated annual operating cost for automatic and semi-automatic clothes washers, when using Appendix J2. In the March 2012 Final Rule, DOE assigned the symbol ''E_{TLP}'' to represent combined low-power mode energy consumption. However, in that rule, DOE used a different symbol (''E_{TSO}'') in updating section 10 CFR 430.23(j)(1)(ii) to represent the same value. 77 FR 12888, 13937–13948. DOE is proposing to update the symbol nomenclature in 10 CFR 430.23(j)(1)(ii) to match the symbol nomenclature in Appendix J2.

In addition, to differentiate between values determined using Appendix J2 from values determined using the proposed new Appendix J throughout 10 CFR 430.23(j), DOE is proposing to add a number ''2'' to each of the symbols representing values derived from Appendix J2 (*e.g.,* E_{TLP2}) that are not already designated accordingly.

[70] In this context, ''agitation'' refers to the wash action of a top-loading clothes washer, whereas ''tumble'' refers to the wash action of a front-loading clothes washer.

DOE further notes that the formula for calculating the estimated annual operating cost for automatic and semi-automatic clothes washers when gas-heated or oil-heated water is used, provided in 10 CFR 430.23(j)(1)(ii)(B), is missing a pair of parentheses. The ''N_2'' multiplier is intended to apply to all of the other factors in the equation, but the lack of parentheses around the ''ME_{T2}'' through ''C_{BTU}'' terms erroneously applies it to only the first term of the sum. DOE is proposing to correct this error.

Since DOE is proposing to remove Appendix J1, DOE is also proposing to update 10 CFR 430.23(j)(1)(i), which currently specifies the formulas for calculating the estimated annual operating cost for automatic and semi-automatic clothes washers when using Appendix J1, with the formulas for calculating the estimated annual operating cost for automatic and semi-automatic clothes washers when using the proposed new Appendix J. These proposed formulas are analogous to the formulas in 10 CFR 430.23(j)(1)(ii). As discussed further in section III.H.7 of this document, the proposed new Appendix J does not include a separate calculation for ''E_{TE}'' (the sum of machine electrical energy (''ME_T'') and hot water heating energy (''HE_T''), as currently defined in section 4.1.7 of Appendix J2). Therefore, DOE's proposed revisions to 10 CFR 430.23(j)(1)(i) replace E_{TE} with the individual components $ME_T + HE_T$.

DOE requests comment on its proposed updates to the annual operating cost calculations in 10 CFR 430.23(j)(1).

7. Structure of the Proposed New Appendix J

As part of the creation of the proposed new Appendix J, DOE is proposing several changes to the structure of the test procedure as compared to the current Appendix J2 to improve readability, as follows.

DOE is proposing to better organize section 2.8 of the proposed new Appendix J, as compared to the parallel section in Appendix J2. Currently, section 2.8 of Appendix J2 cross-references the load size table to determine the three load sizes, specifies the allowable composition of energy test cloths and energy stuffer cloths in each load,[71] and provides a table showing required test load sizes and water fill settings for each type of WFCS. In the proposed new Appendix J, section 2.8.1 would contain the specifications for determining the load sizes; section 2.8.2 would contain the specifications describing the allowable composition of energy test cloths and energy stuffer cloths in each load; and the table specifying the required test load sizes and water fill settings for each type of WFCS would not be included. This table would be no longer needed in the proposed new Appendix J because the same two load sizes (small and large) would be used for all WFCS types.

Section 2.9 of Appendix J2 is named ''Use of test loads'' and provides specifications for drying each load to bone-dry prior to use and instructions for loading the test cloth into the clothes washer. DOE is proposing to title section 2.9 of the proposed new Appendix J ''Preparation and loading of test loads'' and to include a statement that the procedures described in section 2.9 to prepare and load each test load are applicable when performing the testing procedures in section 3 of the appendix.

Section 3.2 of Appendix J2 is titled ''Procedure for measuring water and energy consumption values on all automatic and semi-automatic washers'' and specifies conducting testing under the energy test cycle (3.2.1); provides a table that cross-references to each relevant test section in section 3 of the appendix (3.2.2); and provides specifications for: Configuring the hot and cold water faucets (3.2.3); selecting the wash/rinse temperature selection (3.2.4); selecting the wash time setting (3.2.5); selecting water fill levels for each type of WFCS (3.2.6); using manufacturer default settings (3.2.7); testing active washing mode only (3.2.8); and discarding anomalous data (3.2.9). DOE is proposing to title section 3.2 of the proposed new Appendix J as simply ''Cycle settings'' and to organize the section as follows: The contents in section 3.2.1 of Appendix J2 would be instead included within the instructions of a new section 3.3 (as described below); the contents of section 3.2 of Appendix J2, including the table, would not be included as the contents would be redundant with the proposed sections 3.3 and 3.4; the contents of section 3.2.3 of Appendix J2 would not be included, as the hot and cold water faucet instructions would no longer be necessary given the proposed changes described in section III.C.2 of this document regarding the installation of single-inlet clothes washers; and sections 3.2.4 through 3.2.9 of Appendix J2 would be included as sections 3.2.1 through 3.2.6, respectively, and include any relevant edits as discussed throughout this document.

Currently, sections 3.3 through 3.7 of Appendix J2 contain detailed instructions for testing each wash/rinse temperature available in the energy test cycle: Extra Hot/Cold (3.3); Hot/Cold (3.4); Warm/Cold (3.5); Warm/Warm (3.6); and Cold/Cold (3.7). The content and structure of each of these sections is nearly identical, except for two caveats: (1) Describing the use of temperature indicator labels in section 3.3 to verify the presence of an Extra Hot wash; and (2) describing the 25/50/75 test, described in section III.D.3 of this document, for clothes washers that offer four or more Warm/Cold or Warm/Warm selections. To significantly simplify this part of test procedure, and because the use of temperature indicator labels would be moved to section 2.5.4 of the proposed new Appendix J and the 25/50/75 test would no longer be applicable under the proposals outlined in section III.D.3 of this document, DOE is proposing to combine the common language from sections 3.3 through 3.7 in Appendix J2 into a single section 3.3 in the proposed new Appendix J for automatic clothes washers and an analogous section 3.4 for semi-automatic clothes washers. Section 3.3 of the proposed new Appendix J would also provide a table designating the symbol definitions of each required measured value for each wash/rinse temperature selection and load size. As discussed in section III.D.8.c of this document, section 3.4 of the proposed new Appendix J would provide the same information for semi-automatic clothes washes.

Section 3.8 of Appendix J2 specifies the procedure for measuring and calculating RMC. As described in section III.D.4 of this document, DOE is proposing in the proposed new Appendix J to require measuring the RMC of each tested cycle within the energy test cycle, and to calculate final RMC using TUFs and LUFs, consistent with how hot water energy, electrical energy, and water usage are calculated. Under this proposed change, the RMC values would be calculated in section 4 (''Calculation of Derived Results From Test Measurements'') of the proposed new Appendix J. Given these proposed changes, the current specifications in section 3.8 of Appendix J2 would not apply to the proposed new Appendix J. DOE is therefore proposing not to include the RMC provisions from section 3 in Appendix J2 in the proposed new Appendix J.

DOE is proposing to include sections 3.9 and 3.10 of Appendix J2 in the proposed new Appendix J as sections 3.5 and 3.6, respectively, and to provide the appropriate cross-references.

[71] Test loads must consist of energy test cloths and no more than five energy stuffer clothes per load to achieve the proper weight.

Section 3.10 of Appendix J2 (section 3.6 in the proposed new Appendix J) is titled ''Energy consumption for the purpose of determining the cycle selection(s) to be included in the energy test cycle'' and specifies the following: Establishing the test conditions and setting the cycle selections (3.10.1); using the maximum test load size (3.10.2); using the maximum water fill level available (3.10.3); including only the active washing mode (3.10.4); and calculating ''total energy consumption'' using a defined equation (3.10.5). DOE is proposing to simplify section 3.6 in the proposed new Appendix J by condensing the specifications of sections 3.10.1 through 3.10.4 in Appendix J2 into a single statement in section 3.6.1 of the proposed new Appendix J to use the cycle settings as described in section 3.2 of the proposed new Appendix J. Current section 3.10.5 of Appendix J2 would be included in the proposed new Appendix J as section 3.6.2.

Sections 3 and 4 of Appendix J2 assign various different subscripts to each symbol definition to denote load size and wash/rinse temperature selection, among other attributes. Currently, Appendix J2 uses the subscript ''x'' to denote the maximum load size and the subscript ''m'' to denote the Extra Hot/Cold temperature selection. In the proposed new Appendix J, DOE proposes to use new subscripts to represent the large load size (''L'') and the small load size (''S''). Because the maximum load size would no longer apply in the proposed new Appendix J, DOE is proposing to update the subscript for Extra-Hot/Cold temperature selection from ''m'' to ''x'' (since ''x'' is more intuitive in representing ''Extra''). These changes would apply to sections 3.3, 3.4, 3.6 and 4 in the proposed new Appendix J. Additionally, throughout section 4 of Appendix J2, the symbol ''F'' is used to refer to load usage factors. For greater clarity in the proposed new Appendix J, DOE is proposing to use the symbol ''LUF'' throughout section 4 to represent the load usage factors, rather than the symbol ''F.''

Section 4.1.7 of Appendix J2 specifies calculating ''Total per-cycle energy consumption when electrically heated water is used,'' assigned as symbol ''E_{TE},'' as the sum of machine electrical energy and hot water heating energy. E_{TE} was originally defined in section 4.6 of Appendix J–1977 and at the time represented the total measured energy consumption, since the drying energy (''D_E'') and E_{TLP} were not yet included as part of the clothes washer test procedure. Currently, however, the total measured energy consumption would be more accurately represented by the sum of H_{ET}, M_{ET}, D_E, and E_{TLP}. Because the calculation of E_{TE} as an intermediate step is now obsolete, DOE is proposing to not include the definition of E_{TE} from section 4.1.7 of the proposed new Appendix J, as well as all edit cross-references to E_{TE} (within sections 4.5 and 4.6 of the proposed new Appendix J and 10 CFR 430.23(j)(1)(i)(A) as proposed). In these instances, DOE is proposing to replace E_{TE} with its component parts: HE_T and ME_T.

Section 4.2 of Appendix J2 provides the calculation of water consumption and is structured with multiple subsections. Sections 4.2.1 through 4.2.5 of Appendix J2 provide for the calculation of total water consumption for each load size within each wash/rinse temperature selection by summing the measured values of hot water and cold water: Extra Hot/Cold (4.2.1); Hot/Cold (4.2.2); Warm/Cold (4.2.3); Warm/Warm (4.2.4); and Cold/Cold (4.2.5). In sections 4.2.6 through 4.2.10 of Appendix J2, the total weighted water consumption for each wash/rinse temperature selection is calculated by combining the water consumption values for each load size as calculated in 4.2.1 through 4.2.5 using the LUFs. In section 4.2.11 of Appendix J2, the total weighted water consumption for all wash cycles is calculated by combining the values calculated in sections 4.2.6 through 4.2.10 (representing each wash/rinse temperature) using the TUFs. DOE notes that this order of calculations (which combines the measured values from the individual cycles first using LUFs, then combines the resulting values using TUFs) is the reverse order used for the machine electrical and hot water heating energy calculations in section 4.1 of Appendix J2 (which combines the measured values from the individual cycles first using TUFs, then combines the resulting values using LUFs). In the proposed new Appendix J, DOE is proposing to organize section 4.2 to simplify the calculations and to provide consistency between the water consumption calculations and the energy calculations (*i.e.,* to combine the measured values from the individual cycles first using TUFs, then combine the resulting values using LUFs). Accordingly, section 4.2.1 of the proposed new Appendix J would define the per-cycle total water consumption for each large load size tested (summing the hot and cold water consumption for each load size and temperature setting), and 4.2.2 would similarly define the per-cycle total water consumption for each large small size tested. Section 4.2.3 of the proposed new Appendix J would provide for the calculation of the per-cycle total water consumption for all load sizes, using the TUFs to calculate the weighted average of all temperature settings for each load size. Finally, section 4.2.4 of the proposed new Appendix J would calculate the total weighted per-cycle water consumption, using the LUFs to calculate the weighted average over the two load sizes.

DOE requests comment on its proposed structure of the proposed new Appendix J to simplify and improve readability as compared to Appendix J2.

8. Proposed Deletions and Simplifications

DOE proposes to remove Appendix J1 to subpart B of 10 CFR part 430 along with all references to Appendix J1 in 10 CFR parts 429, 430, and 431. Appendix J1 applied only to RCWs manufactured before March 7, 2015 and CCWs manufactured before January 1, 2018 and is therefore not applicable to models manufactured on or after those dates. Use of Appendix J2 to subpart B of 10 CFR part 430 is currently required for any representations of energy or water consumption of both RCWs and CCWs, including demonstrating compliance with the currently applicable energy conservation standards. As discussed, DOE proposes to maintain the current naming of Appendix J2, and to establish a new test procedure at Appendix J, which would be used for the evaluation and issuance of updated efficiency standards, and for determining compliance with those standards.

DOE requests comment on its proposal to remove Appendix J1 to subpart B of 10 CFR part 430 along with all references to Appendix J1 in 10 CFR parts 429, 430, and 431.

Given DOE's proposal to update the energy and water metrics in the proposed new Appendix J, as described in section III.E of this document, DOE proposes to include references to the proposed new metrics EER, AEER, and WER in place of references to the WF, IWF, MEF, and IMEF metrics, as appropriate, in the proposed new Appendix J. Given that the WF metric is no longer the basis for energy conservation standards for either RCWs or CCWs, DOE proposes to remove the calculation of WF in section 4.2.12 of Appendix J2, as well as any references to WF in 10 CFR parts 429, 430, and 431. Similarly, given that MEF is no longer the basis for energy conservation standards for RCWs, DOE proposes to remove references to MEF from 10 CFR 429.20 and 10 CFR 430.23.

DOE requests comment on its proposal to remove obsolete metric definitions.

DOE proposes to delete the following definitions from section 1 of Appendix J2 because they are either no longer used within the appendix currently, or would no longer be used given DOE's proposed amendments in this NOPR: ''adaptive control system,'' ''compact,'' ''manual control system,'' ''standard,'' and ''thermostatically controlled water valves.''

Section 1.13 of Appendix J2 defines the energy test cycle as follows: Energy test cycle means the complete set of wash/rinse temperature selections required for testing, as determined according to section 2.12 [of Appendix J2]. Within the energy test cycle, the following definitions apply:

(a) Cold Wash/Cold Rinse is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.1 of this appendix.

(b) Hot Wash/Cold Rinse is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.2 of this appendix.

(c) Warm Wash/Cold Rinse is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.3 of this appendix.

(d) Warm Wash/Warm Rinse is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.4 of this appendix.

(e) Extra-Hot Wash/Cold Rinse is the wash/rinse temperature selection determined by evaluating the flowchart in Figure 2.12.5 of this appendix.

Parts (a) through (e) of this definition are redundant with the flowchart definitions provided in section 2.12 of Appendix J2. Therefore, DOE proposes to simplify the definition of energy test cycle in both Appendix J2 and the proposed new Appendix J by keeping only the first sentence of the current definition: Energy test cycle means the complete set of wash/rinse temperature selections required for testing, as determined according to section 2.12.

DOE also proposes to remove section 1.30 of Appendix J2, ''Symbol usage,'' to rename section 1 of Appendix J2 (currently ''Definitions and Symbols'') ''Definitions,'' and name section 1 of the proposed new Appendix J ''Definitions'' accordingly. Throughout the appendices, each symbol is defined at each usage, making this section unnecessary for executing the test procedure. DOE notes that most other test procedures in subpart B to part 430 do not include a symbol usage section.

DOE also proposes to remove the numbering of all definitions in section 1 of Appendix J2, and in section 2 of Appendix J3, and instead list the definitions in alphabetical order. This would simplify cross-references to defined terms and would allow for easier editing in the future by avoiding the need to renumber all the definitions (and associated cross-references) any time a definition is added or deleted.

The proposed new Appendix J reflects these changes as proposed for Appendix J2.

DOE requests comment on its proposal to delete the following definitions from section 1 of Appendix J2: ''adaptive control system,'' ''compact,'' ''manual control system,'' ''standard,'' and ''thermostatically controlled water valves.'' DOE also requests comment on its proposal to simplify the definition of ''energy test cycle.'' DOE also requests comment on its proposal to remove section 1.30 ''Symbol usage'' from Appendix J2. Lastly, DOE requests comment on its proposal to remove the numbering of all definitions in section 1 of Appendix J2 and section 2 of Appendix J3, and to instead list the definitions in alphabetical order.

DOE further proposes to remove section 6, *Waivers and Field Testing,* from Appendix J2 and not include a parallel section in the proposed new Appendix J. The language of section 6 of Appendix J2 was first introduced as section 7 in Appendix J–1997 and has been maintained through successive amendments of the test procedures. DOE notes, however, that none of the waivers sought by manufacturers to date have made use of these provisions. Instead, the provisions of 10 CFR 430.27 (Petitions for waiver and interim waiver) provide comprehensive instructions regarding DOE's waiver process. DOE tentatively concludes that the information presented in section 6 of Appendix J2 is unnecessary given the regulatory language of 10 CFR 430.27.

DOE requests comment on its proposal to remove section 6, *Waivers and Field Testing,* of Appendix J2 and proposal not to include a parallel section in the proposed new Appendix J.

9. Typographical Errors

In an effort to improve the readability of the text in certain sections of 10 CFR 430.23 and Appendix J2, DOE is proposing to make minor typographical corrections and formatting modifications as follows. These minor proposed modifications are not intended to change the substance of the test methods or descriptions provided in these sections. The language of the proposed new Appendix J reflects these corrections.

The test procedure provisions at 10 CFR 430.23(j)(1)(ii)(B) contain a definition for ''C_{KWH},'' which is duplicative with the same definition provided in 10 CFR 430.23(j)(1)(ii)(A). DOE proposes to remove the duplicate definition of C_{KWH} from 10 CFR 430.23(j)(1)(ii)(B).

DOE is proposing to correct two misspellings in section 2.8 of Appendix J2 referring to energy stuffer cloths (currently ''clothes'') and test load sizes (currently ''siszes''). DOE is also proposing to correct the spelling of ''discrete'' in section 3.2.5 of Appendix J2 (currently ''discreet'') and of ''test cycle'' in section 3.6 of Appendix J2 (currently ''testy''). DOE is also proposing to spell out the word ''percent'' in the paragraph in section 3.2.5 of Appendix J2.

Currently in Appendix J2, the drying energy abbreviation is D_E. This notation is inconsistent with the notation used for machine electrical energy and hot water heating energy (ME_T and HE_T, respectively). DOE is proposing to standardize the notation used for drying energy throughout sections 3 and 4 of the proposed new Appendix J, such that it is listed as DE_T. DOE could consider also making this change in Appendix J2, but understands that changing the symbol definition could require test laboratories to update test templates that use the D_E symbol as currently defined in Appendix J2.

DOE is also proposing to rename section 2 in Appendix J2 from ''Testing Conditions'' to ''Testing Conditions and Instrumentation'' to more fully reflect the contents of this section.

In several instances throughout Appendix J2, the qualifier ''of this appendix'' is missing in section cross-references. DOE is proposing to rectify these omissions. DOE is also proposing to clarify references to Appendix J3 in Appendix J2, and *vice-versa,* by using ''to this subpart.'' Finally, DOE proposes to update all cross-references as needed, following the edits proposed in this NOPR.

DOE requests comment on its proposal to make the minor typographical corrections and formatting modifications described in this section.

I. Test Cloth Provisions

Appendix J2 requires using specialized test cloth as the material comprising each tested load. DOE originally developed the energy test cloth specifications as part of the January 2001 Final Rule, based on the results of a detailed investigation of the cloth material used by industry for

testing.[72] In particular, DOE observed that the material properties of the energy test cloth had a significant effect on the RMC measurement,[73] which as discussed was added to Appendix J1–2001 to measure the effectiveness of the final spin cycle in removing moisture from the wash load. As described in the test cloth report, the final specifications for the energy test cloth were developed to be representative of a consumer load: A 50-percent cotton/50-percent polyester blended material was specified to approximate the typical mix of cotton, cotton/polyester blend, and synthetic articles that are machine-washed by consumers. In developing the test cloth specifications, DOE also considered:

□ Manufacturability: A 50/50 cotton-polyester momie weave was specified because at the time, such cloth was produced in high volume, had been produced to a consistent specification for many years, and was expected to be produced on this basis for the foreseeable future. 66 FR 3314, 3331.

□ Consistency in test cloth production: The cloth material properties were specified in detail, including fiber content, thread count, and fabric weight; as well as requirements to verify that water repellent finishes are not applied to the cloth. *Id.*

□ Consistency of the RMC measurement among different lots: A procedure was developed to generate correction factors for each new ''lot'' (*i.e.,* batch) of test cloth to normalize test results and ensure consistent RMC measurements regardless of which lot is used for testing. *Id.*

1. Test Cloth Specification

In the May 2020 RFI, DOE requested comments on manufacturers' and testing laboratories' experience with the current test cloth specifications and whether DOE should consider any changes to the energy test cloth specifications to reduce burden and improve testing results. 85 FR 31065, 31071.

AHAM commented that it would strongly oppose changing from the uniform test cloth to a more varied load. AHAM stated that the clothes washer test procedure requires the use of a uniform test cloth to produce repeatable and reproducible results. (AHAM, No. 5 at p. 3) According to AHAM, the introduction of a ''real-world'' load that includes items with different weights, sizes, and materials could introduce significant variation in the test procedure. AHAM stated that sufficient data have not been provided that would demonstrate acceptable repeatability and reproducibility using a ''real-world'' test load. *Id.*

GEA recommended that DOE not change the current test cloth specifications, noting that significant work has gone into addressing the myriad complexities with test cloth variation. (GEA, No. 13 at p. 2)

DOE is not proposing any changes to the test cloth specification.

2. Consolidation to Appendix J3

Appendix J3 specifies a qualification procedure that must be conducted on all new lots of energy test cloth prior to the use of such test cloths in any clothes washer test procedure. This qualification procedure provides a set of correction factors that correlate the measured RMC values of the new test cloth lot with a set of standard RMC values established as the historical reference point. These correction factors are applied to the RMC test results in section 3.8.2.6 of Appendix J2 to ensure the repeatability and reproducibility of test results performed using different lots of test cloth. The measured RMC of each clothes washer has a significant impact on the final IMEF value.

DOE is proposing several structural changes to Appendix J3 to consolidate all of the test cloth specifications and procedures (some of which are currently located in Appendix J2) that must be evaluated on each new lot of test cloth. Consolidating into a single test procedure will improve the overall logical flow of both test procedures and clarify that the test cloth procedures need not be conducted for each clothes washer under test. As described further, the proposed changes would remove from Appendix J2 specifications and procedures that are not intended to be completed for every clothes washer test. The proposed edits would also formally codify additional qualification procedures that are currently conducted for every new lot of test cloth.

a. Test Cloth Requirements in Appendix J2

Section 2.7 of Appendix J2 (''Test cloths'') contains specifications and procedures regarding the test cloth. Sections 2.7.1 and 2.7.2 specify the unfinished and finished dimensions, maximum lifetime, and marking requirements for energy test cloth and energy stuffer cloths, respectively. These sections also specify that mixed lots of material must not be used for testing. Section 2.7.3 specifies a procedure for preconditioning new test cloth, which requires performing a series of five wash cycles on all new (unused) test cloths before the cloth can be used for clothes washer tests. Section 2.7.4 provides the material specifications (fabric type, fabric weight, thread count, and fiber content) for the energy test cloths and energy stuffer cloths, as well as three industry test methods that must be performed to confirm the absence of any water-repellent finishes and to measure the cloth shrinkage after preconditioning. Section 2.7.5 references Appendix J3 for performing the standard extractor procedure to measure the moisture absorption and retention characteristic of each new lot of cloth.

Several of these provisions within section 2.7 of Appendix J2 are not intended to be conducted as part of each individual clothes washer test performed under Appendix J2. Based on discussions with the AHAM Test Cloth Task Force, DOE is aware that some of the test cloth provisions in section 2.7 of Appendix J2 are performed by a third-party laboratory on each new lot of test cloth, avoiding the need for manufacturers and test laboratories to perform the same procedures for each individual clothes washer test. 85 FR 31065, 31071.

In the May 2020 RFI, DOE requested comments on whether to consolidate into Appendix J3 provisions from section 2.7 of Appendix J2 that relate only to the testing of the test cloth and are not required to be performed for each individual Appendix J2 clothes washer test. *Id.* DOE also sought comment on whether to remove these provisions entirely. *Id.*

AHAM supported the consolidation of section 2.7 of Appendix J2 provisions into Appendix J3, stating that doing so would mitigate testing burden. (AHAM, No. 5 at p. 9)

NEEA supported reorganization of the test procedure to put all test cloth qualification and lot correction information into the separate Appendix J3 test procedure, as this would add clarity and improve ease of use. (NEEA, No. 12 at p. 25)

In this NOPR, DOE is proposing to move most of the specifications from section 2.7 of Appendix J2 to Appendix J3. Section 2.7 of Appendix J2 would retain the following specifications, which are relevant to the conduct of

[72] ''Development of a Standardized Energy Test Cloth for Measuring Remaining Moisture Content in a Residential Clothes Washer.'' U.S. Department of Energy: Buildings, Research and Standards. May 2000. Available online at *www.regulations.gov/document/EERE-2006-STD-0064-0277.*

[73] The RMC measurement is an important aspect of DOE's clothes washer test procedure because the RMC value determines the drying energy, which is the largest contributor to IMEF. Based on the Technical Support Documents from the March 2012 Final Rule, drying energy represents 65 percent of the total energy for a 2015 baseline-efficiency top-loading standard RCW, and 72 percent for a 2015 baseline-efficiency front-loading standard RCW.

individual clothes washer tests: The maximum lifetime specification, marking requirements, and the requirement that mixed lots of material must not be used for testing. All other specifications from section 2.7 of Appendix J2 would be moved to Appendix J3. DOE would add a general statement in section 2.7 of Appendix J2 that the test cloth material and dimensions must conform to the specifications in Appendix J3. These proposed changes are also reflected in the proposed new Appendix J.

DOE requests comment on its proposal to consolidate into Appendix J3 the test cloth specifications and procedures from section 2.7 of Appendix J2 that are not intended to be conducted as part of each individual clothes washer test performed under Appendix J2.

b. Test Cloth Requirements in Appendix J3

Industry has developed a process in which the qualification procedure described above is performed by a third-party laboratory, and the results are reviewed and approved by the AHAM Test Cloth Task Force, after which the new lot of test cloth is made available for purchase by manufacturers and test laboratories. 85 FR 31065, 31071.

DOE has received a request from members of the AHAM Test Cloth Task Force to add to Appendix J3 additional steps to the qualification procedure that have historically been performed on each new lot of test cloth to ensure uniformity of RMC test results on test cloths from the beginning, middle, and end of each new lot. *Id.* Industry practice is to perform this ''uniformity check'' before conducting the procedure to develop the RMC correction factors currently specified in the DOE test procedure, as described previously. *Id.* Specifically, the uniformity check involves performing an RMC measurement on nine bundles of sample cloth representing the beginning, middle, and end locations of the first, middle, and last rolls of cloth in a new lot. *Id.* The coefficient of variation across the nine RMC values must be less than or equal to 1 percent for the test cloth lot to be considered acceptable for use. *Id.*

In the May 2020 RFI, DOE sought comment on whether it is necessary to specify any qualification procedure that must be conducted on all new lots of energy test cloth prior to use of such test cloths, as opposed to simply providing requirements for the test cloth without specifying in DOE's regulations the procedure for achieving those requirements. *Id.* Industry could then continue with its current prequalification process, making changes as it determined necessary to improve that process, without the need to seek permission from DOE and participate in a rulemaking proceeding to make such improvements. *Id.* DOE also requested comments on whether it is necessary to incorporate the aforementioned test cloth uniformity check into Appendix J3, or whether the current regulations, with the existing requirements for test cloth and qualification procedure, are sufficient to ensure the quality of the test cloth. *Id.* DOE requested comment on any burden that results from the current qualification procedure, or would result from incorporating the discussed uniformity check, particularly for small businesses. *Id.*

AHAM commented that the existing cloth uniformity test is effective and does not need to be changed. (AHAM, No. 5 at p. 9) AHAM added that DOE should consider requiring that each load that is used for testing contains a mix of cloth from the beginning, middle, and end of the lot so that it is representative of the entire lot. AHAM further added that more sampling may be necessary if test cloth lot sizes increase. *Id.*

With regards to DOE's consideration of test burden, AHAM commented that the current process works well, and that it is not necessary to develop a particular qualification procedure. *Id.*

NEEA encouraged DOE to adopt an additional test cloth qualification procedure if one is needed to maintain reproducibility, as it would improve transparency. (NEEA, No. 12 at p. 25)

In this NOPR, DOE is proposing to codify in Appendix J3 the ''uniformity check'' described above and to restructure Appendix J3 to improve the overall logical flow of the procedure.

The sections of Appendix J3 are currently structured as follows: (1) Objective; (2) Definitions; (3) Testing Conditions; (4) Test Loads; (5) Test Measurements; (6) Calculation of RMC Correction Curve; and (7) Application of the RMC Correction Curve.

DOE is proposing to update the objectives included in section 1 to specify that Appendix J3 now includes: (1) Specifications for the energy test cloth to be used for testing clothes washers; (2) procedures for verifying that new lots of energy test cloth meet the defined material specifications; and (3) procedures for developing the RMC correction coefficients.

In section 2 of Appendix J3, DOE is proposing to add a definition for the term ''roll,'' which refers to a subset of a lot, and to remove the definition of roll from Appendix J2.

DOE is proposing to create a new section 3, ''Energy Test Cloth Specifications,'' that would specify the test cloth material, dimensions, and use requirements as currently specified in section 2.7 of Appendix J2.

DOE is proposing to change the title of current section 3 of Appendix J3, newly renumbered as section 4, from ''Testing Conditions'' to ''Equipment Specifications.'' This section would contain the specifications for the extractor (currently specified in section 3.2) and the bone-dryer (currently specified in section 3.3). DOE proposes to merge the current specification in section 3.1 of Appendix J3 (which specifies the extractor spin conditions to be used) with the proposed edits to newly renumbered section 8 (''RMC Correction Curve Procedure''), as described below.

DOE is proposing to create a new section 5, ''Pre-Conditioning Instructions,'' in Appendix J3 that would specify the instructions for pre-conditioning test cloth, as currently specified in section 4.1 of Appendix J3, with a clarifying wording change. Currently, the second paragraph of section 4.1 in Appendix J3 specifies ''Perform five complete wash-rinse-spin cycles, the first two with current AHAM Standard detergent Formula 3 and the last three without detergent.'' The last sentence of that paragraph specifies: ''Repeat the cycle with detergent and then repeat the cycle three additional times without detergent, bone drying the load between cycles (for a total of five complete wash-rinse-spin cycles).'' DOE is concerned that the wording of the last sentence could be misconstrued as requiring the repeating of the entire sequence of five wash-rinse-spin cycles specified in the first sentence. To avoid this potential misinterpretation, DOE is proposing to replace the last sentence with the following: ''Dry the load to bone-dry between each of the five wash-rinse-spin cycles.''

DOE is proposing to create a new section 6, ''Extractor Run Instructions,'' in Appendix J3 that would specify the instructions for testing test cloth in the extractor at specific spin speed and time conditions, as currently listed in sections 5.1 through 5.10 of Appendix J3, with some minor organizational changes.

DOE is proposing to create a new section 7, ''Test Cloth Material Verification Procedure,'' in Appendix J3 that codifies the ''uniformity check'' procedure described above.

DOE is proposing to add a new section 8, ''RMC Correction Curve Procedure,'' in Appendix J3 which would consolidate the provisions

currently specified in sections 5 and 6 of Appendix J3.

DOE is proposing to renumber section 7 to section 9 in Appendix J3 and to update any applicable cross references.

Finally, given the broader scope of Appendix J3 as proposed by these amendments, DOE is proposing to rename Appendix J3 from ''Uniform Test Method for Measuring the Moisture Absorption and Retention Characteristics of New Energy Test Cloth Lots'' to ''Energy Test Cloth Specifications and Procedures for Determining Correction Coefficients of New Energy Test Cloth Lots.''

DOE requests comment on its proposed edits to Appendix J3 to codify the ''uniformity check'' procedure and to restructure Appendix J3 to improve the overall logical flow of the procedure.

J. Product-Specific RMC Enforcement Provisions

DOE provides product-specific enforcement provisions for all clothes washers at 10 CFR 429.134(c), which specify provisions for determining RMC. 10 CFR 429.134(c)(1)(i) specifies that the measured RMC value of a tested unit will be considered the tested unit's final RMC value if the measured RMC value is within two RMC percentage points of the certified RMC value of the basic model (expressed as a percentage), or is lower than the certified RMC value. 10 CFR 429.134(c)(1)(ii) specifies that if the measured RMC value of a tested unit is more than two RMC percentage points higher than the certified RMC value of the basic model, DOE will perform two additional replications of the RMC measurement procedure, each pursuant to the provisions of section 3.8.5 of Appendix J2, for a total of three independent RMC measurements of the tested unit. The average of the three RMC measurements will be the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit.

As described in sections I.B and III.I of this document, DOE uses the procedures specified in Appendix J3 to evaluate the moisture absorption and retention characteristics of each new lot of test cloth. The results are used to develop a unique correction curve for each new lot of test cloth, which helps ensure that a consistent RMC measurement is obtained for any test cloth lot used during testing. The correction factors developed for each new cloth lot are used to adjust the ''uncorrected'' RMC measurements obtained when performing an Appendix J2 test on an individual clothes washer model.[74] Without the application of correction factors, the uncorrected RMC values for a given spin setting can vary by more than 10 RMC percentage points. The application of correction factors is intended to significantly reduce this lot-to-lot variation in RMC results.

Multiple interested parties have presented confidential data to DOE suggesting that despite the application of correction factors, the ''corrected'' RMC values can vary by up to three RMC percentage points among different test cloth lots. A variation of three RMC percentage points can lead to over a 5-percent variation in IMEF rating.[75] DOE conducted an internal analysis of the confidential data, in which DOE investigated three potential sources of the observed variation in corrected RMC values: (1) Test-to-test variation masking as lot-to-lot variation; (2) spin cycle anomalies masking as lot-to-lot variation; and (3) choice of Lot 3 as the reference lot.[76] Based on DOE's investigations, none of these three hypotheses explained the observed lot-to-lot variation in corrected RMC values in the data presented by the interested parties.

Based on these investigations, DOE preliminarily concludes that although the application of correction factors for each test cloth lot significantly reduces the lot-to-lot variation in RMC (from over 10 percentage points uncorrected), the current methodology may be limited to reducing lot-to-lot variation in corrected RMC to around three RMC percentage points.

Recognizing this potential for lot-to-lot variation of up to three RMC percentage points (corrected), DOE proposes to extend its product-specific enforcement provisions for clothes washers to accommodate up to a 3-percentage point variation in the corrected RMC measurement based on the test cloth lot used for testing. The following paragraphs describe DOE's proposed approach for implementation of these provisions.

DOE proposes to modify the text of 10 CFR 429.134(c)(1) to state that its provisions address anomalous RMC results that are not representative of a basic model's performance, as well as differences in RMC values that may result from DOE using a different test cloth lot than was used by the manufacturer for testing and certifying the basic model.

DOE proposes to specify the enforcement provisions when testing according to the proposed new Appendix J at 10 CFR 429.134(c)(1)(i), and when testing according to Appendix J2 at 10 CFR 429.134(c)(1)(ii).

Under the provisions for Appendix J2, DOE proposes new subsection (ii)(A), which would specify that the procedure for determining RMC will be performed once in its entirety, pursuant to the test requirements of section 3.8 of Appendix J2, for each unit tested (as currently specified at 10 CFR 429.134(c)(1)).

DOE proposes new subsection (ii)(B), which would specify that if the measured RMC value of a tested unit is equal to or lower than the certified RMC value of the basic model (expressed as a percentage), the measured RMC value will be considered the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit (consistent with the current specifications at 10 CFR 429.134(c)(1)(i)).

DOE proposes new subsection 10 CFR 429.134(ii)(C), which would specify that if the difference between the measured RMC value and the certified RMC value of the basic model is less than or equal to two RMC percentage points, the measured RMC value of a tested unit will be considered the tested unit's final RMC value unless DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model; in which case, DOE may[77] apply the proposed new paragraph (c)(1)(ii)(E) of the same section if the difference between the measured and certified RMC values would affect the unit's compliance with the applicable standards.

DOE proposes new subsection 10 CFR 429.134 (ii)(D)—which would address anomalous RMC results that are not representative of a basic model's performance—specifying that if the measured RMC value of a tested unit is more than two RMC percentage points

[74] DOE maintains an historical record of the standard extractor test data and final correction curve coefficients for each approved lot of energy test cloth. These are available through DOE's web page for standards and test procedures for residential clothes washers at *www.energy.gov/eere/buildings/downloads/clothes-washer-test-cloth-correction-factor-information.*

[75] See discussion in the August 2015 Final Rule in which DOE described that limiting RMC variation to 2 RMC percentage points would limit the variation in the overall MEF or IMEF calculation to roughly 5 percent. 80 FR 46730, 46756.

[76] The RMC characteristics of historical Lot 3 represent the ''standard RMC values'' defined in Table 6.1 of Appendix J3.

[77] DOE is proposing to use the phrase ''may apply'', as opposed to ''shall apply'', to allow for appropriate discretion by DOE. If ''shall'' were to be used instead, DOE would be required to seek the test cloth lot information from the manufacturer in every such case, since lot number is not a reported value. Alternatively, DOE could require reporting of the lot number used to certify each basic model.

higher than the certified RMC value of the basic model, DOE will perform two replications of the RMC measurement procedure, each pursuant to the provisions of section 3.8.5 of Appendix J2, for a total of three independent RMC measurements of the tested unit; and that average of the three RMC measurements will be calculated (as currently specified at 10 CFR 429.134(c)(1)(ii)). Within this section, a new subsection 10 CFR 429.134 (ii)(D)(1) would specify that if the average of the three RMC measurements is equal to or lower than the certified RMC value of the basic model, the average RMC value will be considered the tested unit's final RMC value. A new subsection 10 CFR 429.134 (ii)(D)(2) would specify that if the average of the three RMC measurements is higher than the certified RMC value of the basic model, the average RMC value will be considered the tested unit's final RMC value unless DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model; in which case, DOE may apply a new proposed paragraph (c)(1)(ii)(E) of the same section if the difference between the average and certified RMC values would affect the unit's compliance with the applicable standards.

The proposed new subsection (ii)(E)—which would address differences in RMC values that may result from DOE using a different test cloth lot—specifies two potential courses of action if DOE uses a different test cloth lot than was used by the manufacturer for testing and certifying the basic model. New subsection 10 CFR 429.134 (ii)(E)(1) would specify that if the difference between the tested unit's measured RMC value (or average RMC value pursuant to the new proposed paragraph (c)(1)(ii)(D) of the same section) and the certified RMC value of the basic model is less than or equal to three RMC percentage points, then the certified RMC value of the basic model may be considered the tested unit's final RMC value. New subsection 10 CFR 429.134 (ii)(E)(2) would specify that if the tested unit's measured RMC value (or average RMC value pursuant to paragraph (c)(1)(ii)(D) of the same section) is more than three RMC percentage points higher than the certified RMC value of the basic model, then a value three RMC percentage points less than the measured RMC value may be considered the tested unit's final RMC value.

For testing conducted according to the proposed new Appendix J, several modifications would be made to the procedures described for Appendix J2 due to the revised methodology for measuring RMC in the proposed new Appendix J, as described in section III.D.4 of this document (specifically, that in the proposed new Appendix J, RMC would be measured for each individual test cycle as opposed to measured using a separate set of additional test cycles, as is required by Appendix J2). The provisions for the proposed new Appendix J would not include the specifications for 10 CFR 429.134 (ii)(A) or 10 CFR 429.134 (ii)(D) as described previously.

DOE requests comment on its proposal to extend its product-specific enforcement provisions for clothes washers to accommodate up to a 3-percentage point variation in the corrected RMC measurement based on the test cloth lot used for testing. DOE also requests comment on alternate enforcement approaches that could be implemented.

K. Test Procedure Costs, Harmonization, and Other Topics

1. Test Procedure Costs and Impact

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The following sections discuss DOE's evaluation of estimated costs and savings associated with the amendments proposed in this NOPR.

a. Appendix J2 and Appendix J3 Proposed Amendments

In this NOPR, DOE proposes to amend the existing test procedures for clothes washers by:

(1) Further specifying supply water temperature test conditions and water meter resolution requirements;

(2) Adding specifications for measuring wash water temperature using submersible data loggers;

(3) Expanding the load size table to accommodate clothes container capacities up to 8.0 ft^3;

(4) Defining user-adjustable automatic WFCS;

(5) Specifying the applicability of the wash time setting for clothes washers with a range of wash time settings;

(6) Specifying how the energy test cycle flow charts apply to clothes washers that internally generate hot water;

(7) Specifying that the energy test cycle flow charts be evaluated using the Maximum load size;

(8) Specifying that testing is to be conducted with any network settings disabled if instructions are available to the user to disable these functions;

(9) Further specifying the conditions under which data from a test cycle would be discarded;

(10) Adding a product-specific enforcement provision to accommodate the potential for test cloth lot-to-lot variation in RMC;

(11) Deleting obsolete definitions, metrics, and the clothes washer-specific waiver section;

(12) Consolidating all test cloth-related specifications in Appendix J3;

(13) Reorganizing sections of Appendix J3 for improved readability; and

(14) Codifying the test cloth material verification procedure as used by industry.

DOE has tentatively determined that these proposed amendments to Appendix J2 and Appendix J3 would not be unduly burdensome for manufacturers to conduct and would not result in the need for any re-testing.

The proposal to remove the target inlet water temperatures from the specified range of temperatures would allow test laboratories to select the optimal water temperature target for their water supply system within the prescribed range (*e.g.,* choosing the midpoint of the range as the target). This could reduce test burden by reducing the potential for invalid cycles to occur due to a deviation in water temperatures outside the specified range.

The proposal to require more precise hot water meters for clothes washers with hot water usage less than 0.1 gallons in any of the energy test cycles would require additional cost to upgrade existing water meters if a manufacturer or test laboratory expects to test such clothes washers but does not already have a water meter with the proposed more precise resolution. Based on a market survey of water meters, the cost of a water meter that provides the proposed resolution, including associated hardware, is around $600 for each device. DOE recognizes that laboratories may have multiple test stands, and that each test stand would likely be upgraded with the more precise hot water meter (if such an upgrade is required). As an example, for a laboratory with 10 test stands, the material cost associated with installing a more precise hot water meter would total approximately $6,000. However, as discussed, at least one manufacturer already uses water meters with the proposed more precise resolution, and DOE's experience working with third-party laboratories indicates that most, if not all, third-party laboratories already use water meters with this resolution. DOE has not included the potential costs associated with this proposal based on stakeholder comment and DOE's knowledge of third-party laboratory capabilities that suggest that

laboratories that test clothes washers with hot water usage less than 0.1 gallons already use water meters with the proposed more precise resolution.

The proposal to explicitly allow for the use of submersible temperature loggers would specify an additional means for determining wash water temperatures to confirm whether a wash temperature greater than 135 °F (defined as an Extra Hot Wash) has been achieved during the wash cycle. As discussed, other methods for measuring wash water temperatures may provide inconclusive results, thus requiring re-testing of cycles or additional ''exploratory'' testing to accurately determine the wash water temperature. Explicitly providing for the use of submersible temperature loggers may avoid the need for such additional testing. Based on a market survey of submersible data loggers, the cost of a submersible data logger is around $230 for each device. As discussed, laboratories may have multiple test stands, and DOE expects that a laboratory would purchase a separate data logger for each test stand. As an example, for a laboratory with 10 test stands, the material cost associated with purchasing submersible data loggers for each test stand would total around $2,300. DOE expects that the recurring cost savings enabled by the use of submersible temperature loggers (due to reducing the need for re-testing certain cycles or performing additional exploratory testing) would substantially outweigh the one-time purchase cost associated with each device and therefore has not included this cost in its summary of costs associated with this NOPR.

DOE requests comment, specifically from manufacturers and third-party test laboratories, on whether costs would be incurred for each laboratory as a result of the proposals in this NOPR to specify more precise hot water meters and to explicitly allow the use of submersible temperature loggers; and if so, the total incurred cost associated with outfitting each test stand with the specified instrumentation. DOE also requests comment on the potential cost savings to be expected from enabling the use of submersible temperature loggers.

The proposal to extend the load size table would apply only to clothes washers with capacities exceeding 6.0 ft^3. Any such clothes washers currently on the market have already been granted a test procedure waiver from DOE, which specifies the same extended capacity table.

The proposal to more explicitly define user-adjustable automatic WFCS would provide greater specification of DOE's existing definitions and could potentially alleviate test burden resulting from an incorrect application of the existing language. The proposals specifying updated language regarding cycle selection for clothes washers with a range of wash time settings would improve repeatability and reproducibility without imposing any additional test burden. The proposal to specify how the energy test cycle flow charts apply to clothes washers that internally generate hot water reflects DOE's interpretation of the current Cold Wash/Cold Rinse flowchart and subsequent flowcharts for the Warm Rinse temperature selections for this type of clothes washer; in addition, comments from interested parties suggest that this interpretation is generally consistent with that of manufacturers and third-party laboratories. The proposal to specify that the energy test cycle flow charts be evaluated using the Maximum load size would improve repeatability and reproducibility without imposing any additional test burden.

The proposal to specify that network settings must be disabled for testing under Appendix J2 would impact only clothes washers with network settings that are enabled by default. DOE is not aware of any clothes washers currently on the market that meet these characteristics, and as such DOE does not expect this proposal to change how any current models are tested.

The proposal to add product-specific enforcement provisions to accommodate the potential for lot-to-lot variation in RMC would extend current product-specific enforcement provisions for clothes washers to accommodate up to a 3-percentage point variation in the corrected RMC measurement based on the test cloth lot used for testing, and would not impact manufacturers' testing costs.

The proposal to delete obsolete definitions, metrics, and the waiver section would not impact manufacturers' testing costs because these sections of the test procedure are no longer in use.

The proposal to move all test cloth-related sections of the test procedures into Appendix J3 would simplify Appendix J2 without any changes to the test conduct or cost to manufacturers. The proposal to add additional test cloth qualification procedures to Appendix J3 would not affect manufacturer cost because the proposal would codify existing industry-standard practices.

DOE requests comment on its characterization of the expected costs of the proposed amendments to Appendix J2 and Appendix J3 and on DOE's preliminary determination that the proposed amendments would not be unduly burdensome.

b. Appendix J Proposed Test Procedure

In this NOPR, DOE is also proposing a new Appendix J that would include, in addition to the amendments discussed previously for Appendix J2, significant additional changes that would affect the measured efficiency of a clothes washer. Because DOE would use the new Appendix J for the evaluation and issuance of any updated efficiency standards, and for determining compliance with those standards, the use of the proposed new Appendix J would not be required until such a time as compliance with any amended energy conservation standards that are developed with consideration of new Appendix J are required. The ongoing energy conservation standards rulemakings for RCWs and CCWs would consider the impact of such changes to manufacturers. The differences between Appendix J2 (as proposed in this NOPR) and the proposed Appendix J are the following:

(1) Modifying the hot water supply temperature range;

(2) Modifying the clothes washer pre-conditioning requirements;

(3) Modifying the Extra-Hot Wash threshold temperature;

(4) Adding a measurement and calculation of average cycle time;

(5) Requiring the testing of no more than two Warm Wash/Cold Rinse cycles, and no more than two Warm Wash/Warm Rinse cycles;

(6) Measuring RMC on each cycle within the energy test cycle, rather than on cycles specifically dedicated to measuring RMC;

(7) Reducing the number of load sizes from three to two for units with automatic WFCS;

(8) Modifying the load size definitions consistent with two, rather than three, load sizes;

(9) Updating the water fill levels to be used for testing to reflect the modified load size definitions;

(10) Specifying the installation of single-inlet clothes washers, and simplifying the test procedure for semi-automatic clothes washers;

(11) Defining new performance metrics that are functions of the weighted-average load size rather than clothes container capacity;

(12) Updating the number of annual clothes washer cycles from 295 to 234; and

(13) Updating the number of hours assigned to low-power mode to be based on the clothes washer's average

measured cycle time rather than an assumed fixed value.

The proposal to require the measurement of cycle time could result in an increase in test burden if a laboratory is not currently measuring cycle time. However, although cycle time is not currently required to be measured, it is DOE's understanding that test laboratories already measure cycle time or use a data acquisition system to record electronic logs of each test cycle, from which average cycle time can be readily determined such that any increase in test burden would be *de minimis*. Therefore, DOE preliminarily concludes that the proposal to require measurement of cycle time is unlikely to result in an increase in test burden. Furthermore, none of the other proposed changes for Appendix J would result in an increase in test burden. As described in the paragraphs that follow, DOE has tentatively determined that several of the proposed changes would result in a substantial decrease in test burden.

To determine the potential savings to manufacturers, DOE first estimated the number of RCW and CCW models that are currently certified, using data from DOE's publicly available Compliance Certification Database (''CCMS'').[78] DOE identified approximately 25 manufacturers selling an estimated 702 basic models of RCWs and 67 basic models of CCWs.

To enable an estimate of cost savings associated with specific features, as described in the paragraphs that follow, DOE developed representative market samples consisting of 100 basic models of RCWs and 10 basic models of CCWs (representing approximately 15 percent of the total basic models for each) that capture the range of available functionalities and options available to consumers. To develop these market samples, DOE selected a sample of basic models for which detailed product features could be determined from product brochures and other marketing materials, representing all major manufacturers and product designs currently on the market, and spanning all available efficiency levels.

The proposal to reduce the number of load sizes from three to two for units with an automatic WFCS would reduce test burden for all clothes washers with an automatic WFCS. DOE's representative market sample suggests that 11 percent of RCWs have a manual WFCS and therefore would experience no change in test burden as a result of this proposal. Whereas, 89 percent of RCWs on the market would experience a reduction in test burden as follows: 20 percent of RCWs would experience a reduction in test burden of 2 to 4 cycles; 54 percent of RCWs would experience a reduction in test burden of 5 to 8 cycles; and 15 percent of RCWs would experience a reduction in test burden of more than 9 cycles. DOE's representative mark sample suggests that all CCWs have an automatic WFCS and therefore DOE estimates that 70 percent of CCWs would experience a reduction in test burden of 3 or 4 cycles and that 30 percent of CCWs would experience a reduction in test burden of 5 cycles. Based on these estimates, DOE estimates a weighted-average test burden reduction of 5.1 cycles per RCW, and 3.7 cycles per CCW.

The proposal to reduce the number of required test cycles by requiring the use of no more than two Warm Wash/Cold Rinse cycles, and no more than two Warm Wash/Warm Rinse cycles, would reduce the number of tested cycles for any clothes washer offering more than two Warm Wash temperatures. Based on DOE's representative market sample, DOE estimates that 49 percent of RCWs offer two or fewer Warm Wash temperature options and therefore would experience no change; 44 percent of RCWs would experience a reduction in test burden of 2 cycles; and 7 percent of RCWs would experience a reduction in test burden of 4 cycles. DOE estimates that 70 percent of CCWs would experience no change and that 30 percent of CCWs would experience a reduction in test burden of 4 cycles. Based on these estimates, DOE estimates a weighted-average additional test burden reduction of 1.2 cycles per RCW, and 0.6 cycles per CCW.[79]

The proposal to reduce the number of required test cycles by measuring RMC on each tested cycle instead of measuring it on dedicated RMC cycles would remove the need for one or more cycles used for measuring RMC for any clothes washer offering more than one spin speed selectable on the Normal cycle. Based on DOE's representative market sample, DOE estimates that 45 percent of RCWs would experience no change; 27 percent of RCWs would experience a reduction in test burden of 1 cycle; 27 percent of RCWs would experience a reduction in test burden of 2 cycles; and 1 percent of RCWs would experience a reduction in test burden of 4 cycles. DOE estimates that no CCWs would experience a reduction in test burden from this change. Based on these estimates, DOE estimates a weighted-average additional test burden reduction of 0.9 cycles per RCW.[80]

The proposal to simplify the test procedure for semi-automatic clothes washers would reduce test burden for all semi-automatic clothes washers by 10 cycles. DOE has determined that approximately 2 percent of RCW basic models in CCMS are semi-automatic and is not aware of any semi-automatic CCWs. DOE therefore estimates a weighted-average additional test burden reduction of 0.2 cycles per RCW.

To estimate the cost savings associated with the amendments that are expected to reduce the number of cycles required for testing, DOE estimated each RCW cycle to have a duration of 1 hour, and each CCW cycle to have a duration of 45 minutes. Based on data from the Bureau of Labor Statistics' (''BLS's'') Occupational Employment and Wage Statistics, the mean hourly wage for mechanical engineering technologists and technicians is $29.27.[81] Additionally, DOE used data from BLS's Employer Costs for Employee Compensation to estimate the percent that wages comprise the total compensation for an employee. DOE estimates that wages make up 70.3 percent of the total compensation for private industry employees.[82] Therefore, DOE estimated that the total hourly compensation (including all fringe benefits) of a technician performing the testing is $41.64.[83]

Based on a July 2021 price list from the test cloth manufacturer, the cost of the test cloth required for performing testing is $7.47 per cloth.[84] Based on an average RCW capacity of 4.14 ft^3,[85] the load sizes associated with testing an

[78] *www.regulations.doe.gov/certification-data.* Last accessed on June 24, 2021.

[79] These savings assume the savings from reducing the number of load sizes have already been implemented.

[80] These savings assume the savings from reducing the number of load sizes and from reducing the number of Warm Wash temperature selections under test have already been implemented.

[81] DOE used the mean hourly wage of the ''17–3027 Mechanical Engineering Technologists and Technicians'' from the most recent BLS Occupational Employment and Wage Statistics (May 2020) to estimate the hourly wage rate of a technician assumed to perform this testing. See *www.bls.gov/oes/current/oes173027.htm.* Last accessed on May 26, 2021.

[82] DOE used the December 2020 ''Employer Costs for Employee Compensation'' to estimate that for ''Private Industry Workers,'' ''Wages and Salaries'' are 70.3 percent of the total employee compensation. See *www.bls.gov/news.release/archives/ecec_03182021.pdf.* Last accessed on May 26, 2021.

[83] $29.27 ÷ 0.703 = $41.64.

[84] *testgewebe.de/en/products/ballast-loads-base-load-textiles/doe-energy-test-cloth/.* Last accessed and converted to U.S. dollars on July 8, 2021.

[85] AHAM Trends in Energy Efficiency, 2018.

average-capacity RCW,[86] and the maximum allowable usage of 60 test cycles per cloth,[87] DOE estimates a total material cost of $5.35 per wash cycle on average across all RCWs on the market. Using these material costs, labor rates and time estimates, DOE estimates that the reduction in burden of a single test cycle on an RCW would provide $46.99 in costs savings [88] for tests conducted at an in-house test facility. Based on discussions with manufacturers over the course of multiple rulemakings, DOE understands that the majority of manufacturer testing is conducted at in-house test facilities.

Based on an average CCW capacity of 3.17 ft^3,[89] the load sizes associated with testing an average-capacity CCW,[90] and the maximum allowable usage of 60 test cycles per cloth, DOE estimates a total material cost of $4.36 per wash cycle on average across all CCWs on the market. Using these material costs, labor rates and time estimates, DOE estimates that the reduction in burden of a single test cycle on a CCW would provide $35.59 in costs savings [91] for tests conducted at an in-house test facility.

Based on these estimates, DOE has tentatively determined that the use of proposed new Appendix J would result in a total burden reduction of 7.4 cycles per RCW on average, which results in an average saving of $348 per basic model of RCW.[92] For CCWs, use of proposed new Appendix J would result in a total burden reduction of 4.3 cycles per CCW on average, which results in an average saving of $153 per basic model of CCW.[93]

Based on these estimates, DOE has tentatively determined that the proposed new test procedure at Appendix J would not be unduly burdensome for manufacturers to conduct.

DOE requests comment on any aspect of the estimated testing costs and savings associated with DOE's proposed test procedures.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle or period of use. Section 8(c) of Appendix A of 10 CFR part 430 subpart C; 10 CFR 431.4. In cases where the industry standard does not meet EPCA statutory criteria for test procedures, DOE will make modifications through the rulemaking process to these standards as the DOE test procedures.

The test procedures for clothes washers at the proposed new Appendix J and Appendix J2 and Appendix J3 incorporate by reference certain provisions of IEC Standard 62301 that provide test conditions, testing equipment, and methods for measuring standby mode and off mode power consumption. These appendices also reference AATCC test methods for qualifying new batches of test cloth, and AHAM Standard Test Detergent Formula 3 for preconditioning new test cloths. DOE is not aware of any existing industry test procedures for clothes washers that measure energy and water efficiency.

AHAM commented on the May 2020 RFI that it is about to begin development of its own clothes washer energy test procedure based on Appendix J2, which will address many of the issues DOE raised in the May 2020 RFI. (AHAM, No. 5 at p. 5) For example, AHAM stated that it plans to investigate methods of reducing test burden, including through review of relevant customer usage data. (AHAM, No. 5 at p. 4) AHAM suggested that DOE eventually incorporate AHAM's test procedure by reference. (AHAM, No. 5 at p. 5) AHAM invited DOE, as well as other entities that are able to contribute technical resources to the effort, to participate in the task force. *Id.*

The CA IOUs opposed the adoption of industry test procedures without modification without DOE conducting an independent assessment of representativeness in a public rulemaking to allow adequate stakeholder discussion and review. (CA IOUs, No. 8 at p. 16)

DOE is aware of two clothes washer test procedures established by industry: AHAM HLW–1–2013 and IEC 60456. AHAM's existing clothes washer procedure, AHAM HLW–1–2013, does not include a procedure for measuring energy and water. IEC 60456 includes tests for water and energy use, water extraction (*i.e.,* RMC), washing performance, rinsing performance, and wool shrinkage. DOE notes several key differences between IEC 60456 and DOE's test procedure, including:

(1) IEC 60456 uses manufacturer-declared capacity or, in the absence of a declared capacity, specifies two alternative capacity measurement procedures: A table tennis ball method (in which the drum is filled with table tennis balls) and a water fill method, which more closely resembles DOE's capacity measurement method. However, the water fill method for top-loading clothes washers corresponds to ''Fill Level 1,'' as discussed in section III.D.6.c of this document, in contrast to DOE's currently specified ''Fill Level 2.''

(2) IEC 60456 defines two types of load materials that can be used: A 100-percent cotton load, consisting of sheets, pillowcases, and towels; or a synthetics/blends load (65-percent polyester, 35-percent cotton), consistent of men's shirt and pillowcases. IEC 60456 requires a distribution in age (*i.e.,* number of cycles that have been performed) for each different item type comprising the load.

(3) The procedure for determining water and energy consumption (section 8.6 of IEC 60456) specifies that the test load shall be subjected to ''performance'' testing, which requires operating a reference clothes washer in parallel with the unit under test; using a test load that includes stain strips used to evaluate cleaning performance; and using detergent as specified.

(4) IEC 60456 does not define the ''Normal'' cycle or energy test cycle; rather, the procedures in IEC 60456 are generic and can be applied to any wash program or cycle selections defined by the tester.

DOE tentatively concludes that IEC 60456 does not meet EPCA statutory criteria, in that IEC 60456 would be unduly burdensome to conduct and would not produce test results that reflect the energy efficiency, energy use, water use, or estimated operating costs of a clothes washer during a representative average use cycle or period of use for a U.S. consumer.

[86] The load sizes associated with a 4.14 ft^3 clothes washer are 3.0 lb (minimum), 10.0 lb (average), and 17.0 lb (maximum) under Appendix J2; and 6.1 lb (small) and 13.65 lb (large) under proposed Appendix J, resulting in an average load size of 10.0 lb under Appendix J2 or 9.9 lb under Appendix J. For the purpose of the calculations in this analysis, DOE used 10.0 lb to represent the average load size.

[87] Section 2.7.1 of Appendix J2 specifies that each energy test cloth must not be used for more than 60 test runs (after preconditioning).

[88] $1 \times \$41.64 + \$5.35 = \$46.99$.

[89] DOE calculated the average CCW capacity based on the average capacity of the representative sample of CCWs presented in chapter 5 of the technical support document accompanying the December 2014 Final Rule. Available at *www.regulations.gov/document/EERE-2012-BT-STD-0020-0036.*

[90] The load sizes associated with a 3.17 ft^3 clothes washer are 3.0 lb (minimum), 7.95 lb (average), and 12.9 lb (maximum) under Appendix J2; and 5.2 lb (small) and 10.55 lb (large) under proposed Appendix J, resulting in an average load size of 7.95 lb under Appendix J2 or 7.9 lb under Appendix J. For the purpose of the calculations in this analysis, DOE used 7.95 lb to represent the average load size.

[91] $0.75 \times \$41.64 + \$4.36 = \$35.59$.

[92] $7.4 \times \$46.99 = \$348$.

[93] $4.3 \times \$35.59 = \$153$.

3. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the existing test procedures for clothes washers. Note that DOE also issued an RFI to seek more information on whether its test procedures are reasonably designed, as required by EPCA, to produce results that measure the energy use or efficiency of a product during a representative average use cycle or period of use. 84 FR 9721 (Mar. 18, 2019). DOE particularly seeks comment on this issue as it pertains to the test procedures for clothes washers, as well as information that would help DOE create a procedure that is not unduly burdensome to conduct. Comments regarding repeatability and reproducibility are also welcome.

L. Compliance Date and Waivers

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2); 42 U.S.C. 6314(d)(1)) To the extent the new test procedure at Appendix J proposed in this document is required only for the evaluation and issuance of updated efficiency standards, use of new Appendix J, if finalized, would not be required until the compliance date of any updated standards. Section 8(d) of appendix A to 10 CFR part 430 subpart C; 10 CFR 431.4.

If DOE were to publish amended test procedures, EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3); 42 U.S.C. 6314(d)(2)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

Upon the compliance date of test procedure provisions of an amended test procedure, should DOE issue a such an amendment, any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. 10 CFR 430.27(h)(2); 10 CFR 431.401(h)(2). Recipients of any such waivers would be required to test the products subject to the waiver according to the amended test procedures as of the compliance date of the amended test procedures. The amendments proposed in this NOPR pertain to issues addressed by waivers granted to Whirlpool (case no. CW–026) and Samsung (case no. CW–027). 81 FR 26215; 82 FR 17229, respectively.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined that this test procedure rulemaking does not constitute ''significant regulatory actions'' under section 3(f) of Executive Order (''E.O.'') 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (''OIRA'') in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *https://energy.gov/gc/office-general-counsel.* DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. The following sections detail DOE's IRFA for this test procedure rulemaking.

1. Description of Reasons Why Action Is Being Considered

The Energy Policy and Conservation Act, as amended (''EPCA''),[94] requires that, at least once every 7 years, DOE evaluate test procedures for RCWs. (42 U.S.C. 6291–6317) EPCA also requires the test procedures for CCWs to be the same as the test procedures established for RCWs. (42 U.S.C. 6314(a)(8)) As with the test procedures for RCWs, EPCA requires that DOE evaluate, at least once every 7 years, the test procedures for CCWs.

2. Objective of, and Legal Basis for, Rule

EPCA, as amended, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B[95] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include RCWs. (42 U.S.C. 6292(a)(7)) Title III, Part C[96] of EPCA, added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment. This equipment includes CCWs. (42 U.S.C. 6311(1)(H)) Both RCWs and CCWs are the subject of this document.

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including RCWs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

EPCA requires the test procedures for CCWs to be the same as the test procedures established for RCWs. (42 U.S.C. 6314(a)(8)) As with the test procedures for RCWs, EPCA requires that DOE evaluate, at least once every 7 years, the test procedures for CCWs to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

3. Description and Estimate of Small Entities Regulated

DOE uses the Small Business Administration's (''SBA'') small business size standards to determine whether manufacturers qualify as small

[94] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[95] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[96] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

businesses, which are listed by the North American Industry Classification System (''NAICS''). The SBA considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. The NAICS code for clothes washers is 335220, major household appliance manufacturing. The threshold number for NAICS code 335220 is 1,500 employees.[97] This employee threshold includes all employees in a business's parent company and any other subsidiaries. DOE identified 15 original equipment manufacturers (''OEMs'') of covered products and equipment. Of those companies, one is a small business that offers a single model of RCWs.

DOE requests comment on its initial determination that there is one small, domestic OEM of RCWs and no small, domestic OEMs of CCWs.

4. Description and Estimate of Compliance Requirements

In this NOPR, DOE proposes to amend Appendix J2 and Appendix J3 by (1) further specifying supply water temperature test conditions; (2) further specifying water meter resolution requirements; (3) adding specifications for measuring wash water temperature using submersible data loggers; (4) expanding the load size table to accommodate up to 8.0 ft^3 in capacity; (5) defining user-adjustable automatic WFCS; (6) specifying more explicitly the cycle selection for clothes washers with a range of wash time settings; (7) specifying how the energy test cycle flow charts apply to clothes washers that internally generate hot water; (8) specifying that the energy test cycle flow charts be evaluated using the Maximum load size; (9) specifying that testing is to be conducted with any network settings disabled if instructions are available to the user to disable these functions; (10) further specifying the conditions under which data from a test cycle would be discarded; (11) adding a product-specific enforcement provision to accommodate the potential for lot-to-lot variation in RMC; (12) deleting obsolete definitions, metrics, and the clothes washer-specific waiver section; (13) consolidating all test cloth-related specifications in Appendix J3; and (14) codifying the test cloth material verification procedure as used by industry into Appendix J3. DOE has initially determined these proposed amendments to Appendix J2 and Appendix J3 would not result in manufacturers needing to re-rate clothes washers. The amendment (2) above may require more precise hot water meters for clothes washers with hot water usage less than 0.1 gallons in any of the energy test cycles. However, DOE's analysis of the small manufacturer's product offering indicates that the amendment would not apply and no capital expenditures would be necessary for the business.

Next, this NOPR proposes to specify a new Appendix J, to be applicable upon the compliance date of any future amended energy conservation standards for clothes washers. The proposed new Appendix J would include modifications beyond Appendix J2 that: (1) Modify the hot water supply target temperature and clothes washer pre-conditioning requirements; (2) modify the Extra-Hot Wash threshold temperature; (3) add measurement and calculation of average cycle time; (4) reduce the number of required test cycles by requiring the use of no more than two Warm Wash/Cold Rinse cycles, and no more than two Warm Wash/Warm Rinse cycles; (5) reduce the number of required test cycles by removing the need for one or more cycles used for measuring RMC; (6) reduce the number of load sizes from three to two for units with automatic water fill controls; (7) modify the load size definitions consistent with two, rather than three, load sizes; (8) update the water fill levels to be used for testing to reflect the modified load size definitions; (9) specify the installation of single-inlet clothes washers, and simplify the test procedure for semi-automatic clothes washers; (10) define new performance metrics that are functions of the weighted-average load size rather than clothes container capacity: ''energy efficiency ratio,'' ''active-mode energy efficiency ratio,'' and ''water efficiency ratio''; (11) update the number of annual clothes washer cycles from 295 to 234; and (12) update the number of hours assigned to low-power mode to be based on the clothes washer's measured cycle time rather than an assumed fixed value. Due to the reduction in number of loads and number of wash cycles, the proposed new Appendix J would be less burdensome than Appendix J2 for industry. However, the small manufacturer would need to re-rate its one model when any future amended energy conservation standard requires the use of the proposed new Appendix J. The cost of re-rating one model would have a cost of less than $1000. DOE estimates this to be less than 0.1 percent of revenue for the small manufacturer.

DOE requests comment on its initial determination that the proposed amendments would result in small incremental test burdens on the small business manufacturers of RCWs and CCWs in the United States.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

6. Significant Alternatives to the Rule

DOE considered alternative test methods and modifications to the test procedures for RCWs and CCWs, and tentatively determined that there are no better alternatives than the modifications and procedures proposed in this NOPR. DOE expects the proposed amendments to Appendix J2 to result in zero cost to the small manufacturer. DOE expects the new Appendix J would have no impact before an amended energy conservation standard is adopted. After an amended energy conservation standard is adopted, DOE expects the proposed new Appendix J to have *de minimis* cost impact on the small manufacturer.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of RCWs and CCWs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer

[97] Available online at: *www.sba.gov/document/support--table-size-standards.*

products and commercial equipment, including RCWs and CCWs. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for residential and commercial clothes washers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *https://energy.gov/gc/office-general-counsel.*

DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859

(March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQI%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedures for measuring the energy efficiency of RCWs and CCWs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedures for clothes washers would continue to incorporate testing methods contained in certain sections of the following commercial standards: AATCC Test Method 79–2010, AATCC Test Method 118–2007, AATCC Test Method 135–2010, and IEC 62031. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

In this NOPR, DOE proposes to incorporate by reference the test standard published by AATCC, titled ''Absorbency of Textiles,'' AATCC Test Method 79–2010. DOE also proposes to incorporate by reference the test standard published by AATCC, titled ''Oil Repellency: Hydrocarbon Resistance Test,'' AATCC Test Method 118–2007. AATCC 79–2010 and AATCC 118–2007 are industry-accepted test procedure that verify the presence or absence of water repellent finishes on fabric by measuring the water absorbency and oil repellency of the fabric, respectively.

In this NOPR, DOE proposes to incorporate by reference the test standard published by AATCC, titled ''Dimensional Changes of Fabrics after Home Laundering,'' AATCC Test Method 135–2010. AATCC 135–2010 is an industry-accepted test procedure for measuring dimensional changes in fabric (''shrinkage'') due to laundering.

All three of these AATCC test methods are currently incorporated by reference for use in Appendix J2. This NOPR proposes to transfer the references to these test methods to Appendix J3. Copies of AATCC test methods can be obtained from AATC, P.O. Box 12215, Research Triangle Park, NC 27709, (919) 549–3526, or by going to *www.aatcc.org.*

In this NOPR, DOE proposes to incorporate by reference the test standard published by IEC, titled ''Household electrical appliances—Measurement of standby power,'' (Edition 2.0, 2011–01), IEC 62301. IEC 62301 is an industry-accepted test procedure for measuring standby energy consumption. IEC 62301 is currently incorporated by reference for use in Appendix J2, which references specific provisions of the industry standard. See 10 CFR 430.3(o)(6). This NOPR proposes to include the same references in the proposed new Appendix J.

Copies of IEC 62301 available from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or by going to *webstore.ansi.org.*

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=68&action=viewlive.* Participants are responsible for ensuring their systems are compatible with the webinar software.

Additionally, you may request an in-person meeting to be held prior to the close of the request period provided in the **DATES** section of this document. Requests for an in-person meeting may be made by contacting Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov.*

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this proposed rulemaking, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit requests to speak by sending an email to *ResClothesWasher2016TP0011@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document and will be accessible on the DOE website. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on its proposal to require a hot water meter resolution no larger than 0.01 gallons for clothes washers that use less than 0.1 gallons in any of the individual cycles within the energy test cycle. DOE requests comment on the extent to which manufacturers and test laboratories already use water meters with this greater resolution. DOE also requests comment on whether proposing this requirement for Appendix J2 would require manufacturers to retest any basic models that have already been certified under the existing water meter resolution requirements.

(2) DOE requests comment on its proposal to require all single-inlet clothes washers to be installed to the cold water supply only. DOE also requests comment on whether this requirement should be included in only the proposed new Appendix J, or whether, if adopted, it should be included as an amendment to Appendix J2.

(3) DOE requests comment on its proposal to update the hot water supply temperature for the proposed new Appendix J from 130–135 °F to 120–125 °F. DOE seeks more recent data on hot water supply temperatures in consumer clothes washer installations. DOE also requests comment on any potential impact to testing costs that may occur by harmonizing temperatures between the clothes washer and dishwasher test procedures, and the impacts on manufacturer burden associated with any changes to the hot water supply temperature.

(4) DOE requests comment on its proposal to specify in the proposed new Appendix J that the Extra-Hot Wash/Cold Rinse designation would apply to a wash temperature greater than or equal to 140 °F. DOE requests any additional data on the wash temperature of cycles that meet the Appendix J2 definition of Extra-Hot Wash/Cold Rinse. DOE is also interested in data and information on any potential impact to testing costs that may occur by changing the Extra-Hot Wash temperature threshold, and the impacts on manufacturer burden associated with any changes to the Extra-Hot Wash/Cold Rinse definition.

(5) DOE requests comment on its proposal to remove the target temperatures and instead specify water supply temperature ranges as 55 °F to 60 °F for cold water in both Appendix J2 and the proposed new Appendix J, 130 °F to 135 °F for hot water in Appendix J2, and 120 °F to 125 °F for hot water in the proposed new Appendix J.

(6) DOE requests comment on its proposal to allow the use of a submersible temperature logger in Appendix J2 and the proposed new Appendix J as an option to confirm that an Extra-Hot Wash temperature greater than the Extra-Hot Wash threshold has been achieved during the wash cycle. DOE requests data and information confirming (or disputing) DOE's discussion of the benefits and limitations of using a submersible temperature logger, including DOE's determination that a submersible logger's failure to measure a temperature greater than the Extra-Hot Wash threshold does not necessarily indicate that the cycle under test does not meet the definition of an Extra-Hot Wash/Cold Rinse cycle.

(7) DOE requests comment on its proposal to specify the same pre-conditioning requirements for all clothes washers and to remove the ''water-heating clothes washer'' and ''non-water-heating clothes washer'' definitions in the proposed new Appendix J. DOE also requests information regarding whether test laboratories typically pre-condition water-heating and non-water-heating clothes washers using the same procedure.

(8) DOE requests comment on its proposal to expand the load size table in both Appendix J2 and the proposed new Appendix J to accommodate RCWs with capacities up to 8.0 ft3.

(9) DOE requests comment on its proposal to replace the minimum, maximum, and average load sizes with the small and large load sizes in the proposed new Appendix J. DOE seeks comment on how reducing the number of load sizes tested would impact the representativeness of test results. DOE also requests data and information to quantify the reduction in test burden that would result from reducing the number of load sizes from three to two for clothes washers with automatic WFCS.

(10) DOE requests comment on its proposal to change the water fill level selections in the proposed new Appendix J for clothes washers with manual and user-adjustable automatic WFCS to reflect the proposed small and large test load sizes. DOE seeks data and information on how the proposed changes to the water fill level selection for clothes washers with manual and user-adjustable automatic WFCS would impact test procedure representativeness.

(11) DOE requests comment on the proposal to require in the proposed new Appendix J testing only the hottest and the coldest Warm Wash/Cold Rinse settings. DOE seeks data and information on how this proposed change to the Warm Wash temperature settings required for testing would impact representativeness, testing costs, and manufacturer burden.

(12) DOE requests comment on its proposal to revise the RMC procedure so that RMC would be measured at the default spin setting for each temperature selection and load size, and the individual RMC values would be averaged using TUFs and LUFs to calculate the final RMC. DOE seeks data and information regarding how this change to the RMC calculation would impact testing costs and manufacturer test burden.

(13) DOE further requests comment on whether DOE should implement any changes to the RMC calculation in Appendix J2 to address clothes washers with spin settings that are available only on certain temperature selections.

(14) DOE requests comment on its tentative conclusion not to propose changes to the bone-dry definition and associated dryer temperature measurement method.

(15) DOE requests comment on its proposal to require that each test cycle use a bone-dry test load in the proposed new Appendix J. DOE requests comment on whether test laboratories start test cycles with the test load at bone-dry or at up to 104 percent of the bone-dry weight. DOE further requests feedback on its assessment that this change would not affect test burden.

(16) DOE requests comment on its proposal to add cycle time measurements and to calculate average cycle time using the weighted-average method in the proposed new Appendix J. DOE also requests comment on its assertion that adding cycle time measurements and a calculation of a weighted-average cycle time would not increase testing costs or overall test burden.

(17) DOE requests comment on its tentative determination to maintain the current capacity measurement method.

(18) DOE requests comment on the proposed criteria for determining whether test data are to be discarded. Specifically, DOE requests comment on the proposal that test data are discarded if a washing machine either signals to the user by means of a visual or audio alert that an out-of-balance condition has occurred or terminates prematurely. DOE requests comment on whether additional or alternate criteria would provide objective and observable indication during a single test that test data are to be discarded.

(19) DOE requests comment on its proposal for testing semi-automatic clothes washers in the proposed new Appendix J that would require testing only the wash/rinse temperature combinations that do not require a wash temperature change between the wash and rinse portions of the cycle (*i.e.,* Hot/Hot, Warm/Warm, and Cold/Cold).

(20) DOE requests feedback on its proposal to test semi-automatic clothes washers using TUF values of 0.14 for Hot, 0.49 for Warm, and 0.37 for Cold.

(21) DOE further requests comment on whether the temperature selections and TUFs that DOE has proposed for semi-automatic clothes washers would be representative of consumer use; and if not, which temperature selections and TUF values would better reflect consumer use.

(22) DOE requests comment on whether to include explicit instructions for how to test semi-automatic clothes washers in Appendix J2, and if so, whether DOE should implement the same procedures being proposed for the proposed new Appendix J.

(23) DOE requests feedback on how manufacturers of semi-automatic clothes washers are currently testing their products using Appendix J2.

(24) DOE requests comment on its proposal to require semi-automatic clothes washers to test only the Cold cycle, and to determine the representative values for the Warm and Hot cycles formulaically, for the proposed new Appendix J.

(25) DOE requests comment on the test burden associated with determining the apportionment between wash water use and rinse water use on semi-automatic clothes washers.

(26) DOE requests comment on maintaining the current requirement to use the manufacturer default settings for optional cycle modifiers.

(27) DOE requests comment on its proposed amendment to Appendix J2 and the proposed new Appendix J to specify that network settings (on clothes washers with network capabilities) must be disabled during testing if such settings can be disabled by the end-user, and the product's user manual provides instructions on how to do so.

(28) DOE requests feedback on its characterization of connected clothes washers currently on the market. Specifically, DOE requests input on the types of features or functionality enabled by connected clothes washers that exist on the market or that are under development.

(29) DOE requests data on the percentage of users purchasing connected clothes washers, and, for those users, the percentage of the time when the connected functionality of the clothes washer is used.

(30) DOE requests data on the amount of additional or reduced energy use of connected clothes washers.

(31) DOE requests data on the pattern of additional or reduced energy use of connected clothes washers; for example, whether it is constant, periodic, or triggered by the user.

(32) DOE requests information on any existing testing protocols that account for connected features of clothes washers, as well as any testing protocols that may be under development within the industry.

(33) DOE requests comment on its proposal to replace the capacity term with weighted-average load size in the energy efficiency metrics and the water efficiency metric in the proposed new Appendix J.

(34) DOE requests comment on its proposed names for the proposed new efficiency metrics: energy efficiency ratio (EER), active-mode energy efficiency ratio (AEER), and water efficiency ratio (WER).

(35) DOE requests comment on its proposal to invert the water efficiency metric and calculate the newly defined WER metric as the quotient of the weighted-average load size divided by the total weighted per-cycle water consumption for all wash cycles.

(36) DOE requests data on the annual amount of laundry washed by consumers, and whether the annual amount of laundry washed by consumers is correlated with clothes washer capacity.

(37) DOE requests comment on its proposed updated representation and sampling requirements for RCWs and CCWs.

(38) DOE requests comment on its proposal to update the number of annual wash cycles to 234 in the proposed new Appendix J and 10 CFR 430.23(j)(1)(i) and (j)(3)(i).

(39) DOE requests comment on maintaining the assumed final moisture content of 4 percent in the drying energy equation, or whether it should update the assumed final moisture content to 2 percent to align with DOE's Appendix D2 clothes dryer test procedure.

(40) DOE requests comment on maintaining the current DEF value of 0.5 kWh/lb.

(41) DOE requests comment on maintaining the current DUF value of 0.91.

(42) DOE requests comment on its proposal to update the number of hours spent in low-power mode from a fixed 8,465 total hours to a formula based on measured cycle time and an assumed number of annual cycles.

(43) DOE requests comment on maintaining the current TUF values.

(44) DOE requests comment on its proposal to update the LUFs for the small and large load sizes to be equal to 0.5, consistent with the proposed load size definitions in the proposed new Appendix J.

(45) DOE requests comment on maintaining the current water heater efficiency assumptions.

(46) DOE requests comment on its proposal to specify the use of hoses not to exceed 72 inches in length in the proposed new Appendix J. DOE also requests comment on the length of inlet hose typically used for testing.

(47) DOE requests comment on whether it should amend the test procedure to accommodate potential future clothes washer models for which the maximum load size required by the test procedure conflicts with the maximum load size intended or able to be washed with the cycle required for testing. If so, DOE seeks additional comment on the approaches it has considered, or on any other approaches

that could be considered, that would address this issue in the test procedure.

(48) DOE requests comment on its proposed changes to the definition of ''fixed water fill control system'' and on its proposal to add a definition for ''user-adjustable automatic water fill control system.''

(49) DOE requests comment on its proposal to update the wording of section 3.2.6.2.2 of Appendix J2 and section 3.2.3.2.2 of the proposed new Appendix J from ''the setting that will give the most energy intensive result'' to ''the setting that uses the most water;'' and from ''the setting that will give the least energy intensive result'' to ''the setting that uses the least water.''

(50) DOE requests comment on its proposal to require that the energy test cycle flow charts be evaluated using the large load size for all wash/rinse temperature settings in the proposed new Appendix J. DOE also requests comment on its proposal to require that the energy test cycle flow charts be evaluated using the maximum load size, except for the Cold/Cold flow chart, in Appendix J2.

(51) DOE requests comments on its proposal to update the flowcharts for Cold Wash/Cold Rinse and Warm Wash/Warm Rinse in both Appendix J2 and the proposed new Appendix J to explicitly address clothes washers that internally generate hot water.

(52) DOE requests comment on its proposal to clarify the wording of the wash time setting specifications in section 3.2.5 of Appendix J2 and section 3.2.2 of the proposed new Appendix J.

(53) DOE requests comment on its proposal to add a clause in section 3.2.5.2 of Appendix J2 and section 3.2.2.2 of the proposed new Appendix J stating that the requirement to rotate the dial in the direction of increasing wash time would only apply to dials that can rotate in both directions.

(54) DOE requests comment on its proposal to add a definition of ''wash time'' to section 1 of both Appendix J2 and the proposed new Appendix J.

(55) DOE requests comment on its proposed updates to the annual operating cost calculations in 10 CFR 430.23(j)(1).

(56) DOE requests comment on its proposed structure of the proposed new Appendix J to simplify and improve readability as compared to Appendix J2.

(57) DOE requests comment on its proposal to delete Appendix J1 to subpart B of 10 CFR part 430 along with all references to Appendix J1 in 10 CFR parts 429, 430, and 431.

(58) DOE requests comment on its proposal to remove obsolete metric definitions.

(59) DOE requests comment on its proposal to delete the following definitions from section 1 of Appendix J2: ''adaptive control system,'' ''compact,'' ''manual control system,'' ''standard,'' and ''thermostatically controlled water valves.'' DOE also requests comment on its proposal to simplify the definition of ''energy test cycle.'' DOE also requests comment on its proposal to remove section 1.30 ''Symbol usage'' from Appendix J2. Lastly, DOE requests comment on its proposal to remove the numbering of all definitions in section 1 of Appendix J2 and section 2 of Appendix J3, and to instead list the definitions in alphabetical order.

(60) DOE requests comment on its proposal to remove section 6, Waivers and Field Testing, of Appendix J2 and proposal not to include a parallel section in the proposed new Appendix J.

(61) DOE requests comment on its proposal to make the minor typographical corrections and formatting modifications described in this section.

(62) DOE requests comment on its proposal to consolidate into Appendix J3 the test cloth specifications and procedures from section 2.7 of Appendix J2 that are not intended to be conducted as part of each individual clothes washer test performed under Appendix J2.

(63) DOE requests comment on its proposed edits to Appendix J3 to codify the ''uniformity check'' procedure and to restructure Appendix J3 to improve the overall logical flow of the procedure.

(64) DOE requests comment on its proposal to extend its product-specific enforcement provisions for clothes washers to accommodate up to a 3-percentage point variation in the corrected RMC measurement based on the test cloth lot used for testing. DOE also requests comment on alternate enforcement approaches that could be implemented.

(65) DOE requests comment, specifically from manufacturers and third-party test laboratories, on whether costs would be incurred for each laboratory as a result of the proposals in this NOPR to specify more precise hot water meters and to explicitly allow the use of submersible temperature loggers; and if so, the total incurred cost associated with outfitting each test stand with the specified instrumentation. DOE also requests comment on the potential cost savings to be expected from enabling the use of submersible temperature loggers.

(66) DOE requests comment on its characterization of the expected costs of the proposed amendments to Appendix J2 and Appendix J3 and on DOE's preliminary determination that the proposed amendments would not be unduly burdensome.

(67) DOE requests comment on any aspect of the estimated testing costs and savings associated with DOE's proposed test procedures.

(68) DOE requests comment on its initial determination that there is one small, domestic OEM of RCWs and no small, domestic OEMs of CCWs.

(69) DOE requests comment on its initial determination that the proposed amendments would result in small incremental test burdens on the small business manufacturers of RCWs and CCWs in the United States.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on August 5, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This

administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 5, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429, 430, and 431 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.20 is amended by revising introductory paragraphs (a)(2)(i) and (ii), and (a)(3) to read as follows:

§ 429.20 Residential clothes washers.

* * * * *

(a) * * *

(2) * * *

(i) Any represented value of the integrated water factor, the estimated annual operating cost, the energy or water consumption, or other measure of energy or water consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

* * * * *

(ii) Any represented value of the integrated modified energy factor, energy efficiency ratio, water efficiency ratio, or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

(3) The clothes container capacity of a basic model reported in accordance with paragraph (b)(2) of this section shall be the mean of the measured clothes container capacity, C, of all tested units of the basic model.

* * * * *

■ 3. Section 429.46 is amended by revising introductory paragraph (a)(2)(ii) to read as follows:

§ 429.46 Commercial clothes washers.

* * * * *

(a) * * *

(2) * * *

(ii) Any represented value of the modified energy factor, active-mode energy efficiency ratio, water efficiency ratio, or other measure of energy or water consumption of a basic model for which consumers would favor higher values shall be greater than or equal to the higher of:

* * * * *

■ 4. Section 429.134 is amended by revising paragraph (c)(1) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(c) *Clothes washers*—(1) *Determination of Remaining Moisture Content.* These provisions address anomalous remaining moisture content (RMC) results that are not representative of a basic model's performance, as well as differences in RMC values that may result from DOE using a different test cloth lot than was used by the manufacturer for testing and certifying the basic model.

(i) When testing according to appendix J to subpart B of part 430:

(A) If the measured RMC value of a tested unit is equal to or lower than the certified RMC value of the basic model (expressed as a percentage), the measured RMC value will be considered the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit.

(B) If the measured RMC value is higher than the certified RMC value of the basic model, the measured RMC value of a tested unit will be considered the tested unit's final RMC value unless DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model; in which case, DOE may apply paragraph (c)(1)(i)(C) of this section if the difference between the measured and certified RMC values would affect the unit's compliance with the applicable standards.

(C) If DOE uses a different test cloth lot than was used by the manufacturer for testing and certifying the basic model:

(*1*) If the difference between the tested unit's measured RMC value and the certified RMC value of the basic model is less than or equal to three RMC percentage points, then the certified RMC value of the basic model may be considered the tested unit's final RMC value.

(*2*) If the tested unit's measured RMC value is more than three RMC percentage points higher than the certified RMC value of the basic model, then a value three RMC percentage points less than the measured RMC value may be considered the tested unit's final RMC value.

(ii) When testing according to appendix J2 to subpart B of part 430:

(A) The procedure for determining remaining moisture content (RMC) will be performed once in its entirety, pursuant to the test requirements of section 3.8 of appendix J2 to subpart B of part 430, for each unit tested.

(B) If the measured RMC value of a tested unit is equal to or lower than the certified RMC value of the basic model (expressed as a percentage), the measured RMC value will be considered the tested unit's final RMC value and will be used as the basis for the calculation of per-cycle energy consumption for removal of moisture from the test load for that unit.

(C) If the difference between the measured RMC value and the certified RMC value of the basic model is less than or equal to two RMC percentage points, the measured RMC value of a tested unit will be considered the tested unit's final RMC value unless DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model; in which case, DOE may apply paragraph (c)(1)(ii)(E) of this section if the difference between the measured and certified RMC values would affect the unit's compliance with the applicable standards.

(D) If the measured RMC value of a tested unit is more than two RMC percentage points higher than the certified RMC value of the basic model, DOE will perform two replications of the RMC measurement procedure, each pursuant to the provisions of section 3.8.5 of appendix J2 to subpart B of part 430, for a total of three independent RMC measurements of the tested unit. The average of the three RMC measurements will be calculated.

(*1*) If the average of the three RMC measurements is equal to or lower than the certified RMC value of the basic model, the average RMC value will be considered the tested unit's final RMC value.

(*2*) If the average of the three RMC measurements is higher than the certified RMC value of the basic model, the average RMC value will be considered the tested unit's final RMC value unless DOE used a different test cloth lot than was used by the manufacturer for testing and certifying the basic model; in which case, DOE may apply paragraph (c)(1)(ii)(E) of this section if the difference between the average and certified RMC values would affect the unit's compliance with the applicable standards.

(E) If DOE uses a different test cloth lot than was used by the manufacturer for testing and certifying the basic model:

(*1*) If the difference between the tested unit's measured RMC value (or average RMC value pursuant to paragraph (c)(1)(ii)(D) of this section) and the certified RMC value of the basic model is less than or equal to three RMC percentage points, then the certified RMC value of the basic model may be considered the tested unit's final RMC value.

(*2*) If the tested unit's measured RMC value (or average RMC value pursuant to paragraph (c)(1)(ii)(D) of this section) is more than three RMC percentage points higher than the certified RMC value of the basic model, then a value three RMC percentage points less than the measured RMC value may be considered the tested unit's final RMC value.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 5. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 6. Section 430.3 is amended by revising paragraphs (d) and (o)(6) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(d) *AATCC.* American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, NC 27709, (919) 549–3526, or go to *www.aatcc.org.*

(1) AATCC Test Method 79–2010, Absorbency of Textiles, Revised 2010, IBR approved for appendix J3 to subpart B.

(2) *AATCC* Test Method 118–2007, Oil Repellency: Hydrocarbon Resistance Test, Revised 2007, IBR approved for appendix J3 to subpart B.

(3) *AATCC* Test Method 135–2010, Dimensional Changes of Fabrics after Home Laundering, Revised 2010, IBR approved for appendix J3 to subpart B.

* * * * *

(o) * * *

(6) IEC 62301 (''IEC 62301''), *Household electrical appliances—Measurement of standby power,* (Edition 2.0, 2011–01), IBR approved for appendices C1, D1, D2, F, G, H, I, J, J2, N, O, P, Q, X, X1, Y, Z, BB, and CC to subpart B.

* * * * *

■ 7. Section 430.23 is amended by:

■ a. Revising paragraphs (j)(1)(i) and (ii);
■ b. Removing paragraph (j)(2)(i);
■ c. Redesignating paragraph (j)(2)(ii) as (j)(2)(i);
■ d. Adding paragraph (j)(2)(ii);
■ e. Revising paragraph (j)(3)(i);
■ f. Removing paragraph (j)(4)(i);
■ g. Redesignating paragraph (j)(4)(ii) as (j)(4)(i);
■ h. Revising newly redesignated paragraph (j)(4)(i);
■ i. Adding paragraph (j)(4)(ii); and
■ j. Revising paragraph (j)(5).

The additions and revisions read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(j) * * *

(1) * * *

(i) When using appendix J (see the note at the beginning of appendix J),

(A) When electrically heated water is used,

$$(N \times (ME_T + HE_T + E_{TLP}) \times C_{KWH})$$

Where:

N = the representative average residential clothes washer use of 234 cycles per year according to appendix J,

ME_T = the total weighted per-cycle machine electrical energy consumption, in kilowatt-hours per cycle, determined according to section 4.1.6 of appendix J,

HE_T = the total weighted per-cycle hot water energy consumption using an electrical water heater, in kilowatt-hours per cycle, determined according to section 4.1.3 of appendix J,

E_{TLP} = the per-cycle combined low-power mode energy consumption, in kilowatt-hours per cycle, determined according to section 4.6.2 of appendix J, and

C_{KWH} = the representative average unit cost, in dollars per kilowatt-hour, as provided by the Secretary.

(B) When gas-heated or oil-heated water is used,

$$(N \times (((ME_T + E_{TLP}) \times C_{KWH}) + (HE_{TG} \times C_{BTU})))$$

Where:

N, ME_T, E_{TLP}, and C_{KWH} are defined in paragraph (j)(1)(i)(A) of this section,

HE_{TG} = the total per-cycle hot water energy consumption using gas-heated or oil-heated water, in Btu per cycle, determined according to section 4.1.4 of appendix J, and

C_{BTU} = the representative average unit cost, in dollars per Btu for oil or gas, as appropriate, as provided by the Secretary.

(ii) When using appendix J2 (see the note at the beginning of appendix J2),

(A) When electrically heated water is used

$$(N_2 \times (E_{TE2} + E_{TLP2}) \times C_{KWH})$$

Where:

N_2 = the representative average residential clothes washer use of 295 cycles per year according to appendix J2,

E_{TE2} = the total per-cycle energy consumption when electrically heated water is used, in kilowatt-hours per cycle, determined according to section 4.1.7 of appendix J2,

E_{TLP2} = the per-cycle combined low-power mode energy consumption, in kilowatt-hours per cycle, determined according to section 4.4 of appendix J2, and

C_{KWH} = the representative average unit cost, in dollars per kilowatt-hour, as provided by the Secretary.

(B) When gas-heated or oil-heated water is used,

$$(N_2 \times (((ME_{T2} + E_{TLP2}) \times C_{KWH}) + (HE_{TG2} \times C_{BTU})))$$

Where:

N_2, E_{TLP2}, and C_{KWH} are defined in (j)(1)(ii)(A) of this section,

ME_{T2} = the total weighted per-cycle machine electrical energy consumption, in kilowatt-hours per cycle, determined according to section 4.1.6 of appendix J2,

HE_{TG2} = the total per-cycle hot water energy consumption using gas-heated or oil-heated water, in Btu per cycle, determined according to section 4.1.4 of appendix J2, and

C_{BTU} = the representative average unit cost, in dollars per Btu for oil or gas, as appropriate, as provided by the Secretary.

(2) * * *

(ii) The energy efficiency ratio for automatic and semi-automatic clothes washers is determined according to section 4.9 of appendix J (when using appendix J). The result shall be rounded off to the nearest 0.1 pound per kilowatt-hour per cycle.

(3) * * *

(i) When using appendix J, the product of the representative average-use of 234 cycles per year and the total weighted per-cycle water consumption in gallons per cycle determined according to section 4.2.4 of appendix J.

* * * * *

(4)(i) The integrated water factor must be determined according to section 4.2.12 of appendix J2, with the result rounded to the nearest 0.1 gallons per cycle per cubic foot.

(ii) The water efficiency ratio for automatic and semi-automatic clothes washers is determined according to section 4.7 of appendix J (when using appendix J). The result shall be rounded off to the nearest 0.1 pound per gallon per cycle.

(5) Other useful measures of energy consumption for automatic or semi-automatic clothes washers shall be those measures of energy consumption that the Secretary determines are likely to assist consumers in making purchasing decisions and that are derived from the

application of appendix J or appendix J2, as appropriate.

* * * * *

■ 8. Appendix J to subpart B of part 430 is added to read as follows:

Appendix J to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

Note: Manufacturers must use the results of testing under Appendix J2 to determine compliance with the relevant standards for clothes washers from § 430.32(g)(4) and from § 431.156(b) as they appeared in January 1, 2021 edition of 10 CFR parts 200–499. Specifically, before [*Date 180 days following publication of the final rule*] representations must be based upon results generated either under Appendix J2 as codified on [*Date 30 days following publication of the final rule*] or under Appendix J2 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021. Any representations made on or after [*Date 180 days following publication of the final rule*] but before the compliance date of any amended standards for clothes washers must be made based upon results generated using Appendix J2 as codified on [*Date 30 days following publication of the final rule*].

Manufacturers must use the results of testing under Appendix J to determine compliance with any amended standards for clothes washers provided in § 430.32(g) and in § 431.156 that are published after January 1, 2021. Any representations related to energy or water consumption of residential or commercial clothes washers must be made in accordance with the appropriate appendix that applies (*i.e.,* Appendix J or Appendix J2) when determining compliance with the relevant standard. Manufacturers may also use Appendix J to certify compliance with any amended standards prior to the applicable compliance date for those standards.

1. Definitions

Active mode means a mode in which the clothes washer is connected to a mains power source, has been activated, and is performing one or more of the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing, or is involved in functions necessary for these main functions, such as admitting water into the washer or pumping water out of the washer. Active mode also includes delay start and cycle finished modes.

Active-mode energy efficiency ratio means the quotient of the weighted-average load size divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of the remaining moisture in the wash load.

Active washing mode means a mode in which the clothes washer is performing any of the operations included in a complete cycle intended for washing a clothing load, including the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing.

Adaptive water fill control system means a clothes washer automatic water fill control system that is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container.

Automatic water fill control system means a clothes washer water fill control system that does not allow or require the user to determine or select the water fill level, and includes adaptive water fill control systems and fixed water fill control systems.

Bone-dry means a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

Clothes container means the compartment within the clothes washer that holds the clothes during the operation of the machine.

Cold rinse means the coldest rinse temperature available on the machine, as indicated to the user on the clothes washer control panel.

Combined low-power mode means the aggregate of available modes other than active washing mode, including inactive mode, off mode, delay start mode, and cycle finished mode.

Cycle finished mode means an active mode that provides continuous status display, intermittent tumbling, or air circulation following operation in active washing mode.

Delay start mode means an active mode in which activation of active washing mode is facilitated by a timer.

Energy efficiency ratio means the quotient of the weighted-average load size divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of:

(a) The machine electrical energy consumption;

(b) The hot water energy consumption;

(c) The energy required for removal of the remaining moisture in the wash load; and

(d) The combined low-power mode energy consumption.

Energy test cycle means the complete set of wash/rinse temperature selections required for testing, as determined according to section 2.12 of this appendix.

Fixed water fill control system means a clothes washer automatic water fill control system that automatically terminates the fill when the water reaches a pre-defined level that is not based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring the user to determine or select the water fill level.

IEC 62301 means the test standard published by the International Electrotechnical Commission, entitled ''Household electrical appliances—Measurement of standby power,'' Publication 62301, Edition 2.0 2011–01 (incorporated by reference; see § 430.3).

Inactive mode means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

Load usage factor means the percentage of the total number of wash loads that a user would wash a particular size (weight) load.

Lot means a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process.

Manual water fill control system means a clothes washer water fill control system that requires the user to determine or select the water fill level.

Normal cycle means the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing. For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest EER or AEER value.

Off mode means a mode in which the clothes washer is connected to a mains power source and is not providing any active or standby mode function, and where the mode may persist for an indefinite time.

Standby mode means any mode in which the clothes washer is connected to a mains power source and offers one or more of the following user oriented or protective functions that may persist for an indefinite time:

(a) Facilitating the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

Temperature use factor means, for a particular wash/rinse temperature setting, the percentage of the total number of wash loads that an average user would wash with that setting.

User-adjustable automatic water fill control system means an automatic clothes washer fill control system that allows the user to adjust the amount of water that the machine provides, which is based on the size or weight of the clothes load placed in the clothes container.

Wash time means the wash portion of the cycle, which begins when the cycle is initiated and includes the agitation or tumble time, which may be periodic or continuous during the wash portion of the cycle.

Water efficiency ratio means the quotient of the weighted-average load size divided by the total weighted per-cycle water consumption for all wash cycles in gallons.

2. Testing Conditions and Instrumentation

2.1 *Electrical energy supply.*

2.1.1 *Supply voltage and frequency.* Maintain the electrical supply at the clothes washer terminal block within 2 percent of 120, 120/240, or 120/208Y volts as applicable

to the particular terminal block wiring system and within 2 percent of the nameplate frequency as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct test at the highest voltage specified by the manufacturer.

2.1.2 *Supply voltage waveform.* For the combined low-power mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (incorporated by reference; see § 430.3). If the power measuring instrument used for testing is unable to measure and record the total harmonic content during the test measurement period, total harmonic content may be measured and recorded immediately before and after the test measurement period.

2.2 *Supply water.* Maintain the temperature of the hot water supply at the water inlets between 120 °F (48.9 °C) and 125 °F (51.7 °C). Maintain the temperature of the cold water supply at the water inlets between 55 °F (12.8 °C) and 60 °F (15.6 °C).

2.3 *Water pressure.* Maintain the static water pressure at the hot and cold water inlet connection of the clothes washer at 35 pounds per square inch gauge (psig) ± 2.5 psig (241.3 kPa ± 17.2 kPa) when the water is flowing.

2.4 *Test room temperature.* For all clothes washers, maintain the test room ambient air temperature at 75 ± 5 °F (23.9 ± 2.8 °C) for active mode testing and combined low-power mode testing. Do not use the test room ambient air temperature conditions specified in Section 4, Paragraph 4.2 of IEC 62301 for combined low-power mode testing.

2.5 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.5.1 *Weighing scales.*

2.5.1.1 *Weighing scale for test cloth.* The scale used for weighing test cloth must have a resolution of no larger than 0.2 oz (5.7 g) and a maximum error no greater than 0.3 percent of the measured value.

2.5.1.2 *Weighing scale for clothes container capacity measurement.* The scale used for performing the clothes container capacity measurement must have a resolution no larger than 0.50 lbs (0.23 kg) and a maximum error no greater than 0.5 percent of the measured value.

2.5.2 *Watt-hour meter.* The watt-hour meter used to measure electrical energy consumption must have a resolution no larger than 1 Wh (3.6 kJ) and a maximum error no greater than 2 percent of the measured value for any demand greater than 50 Wh (180.0 kJ).

2.5.3 *Watt meter.* The watt meter used to measure combined low-power mode power consumption must comply with the requirements specified in Section 4, Paragraph 4.4 of IEC 62301. If the power measuring instrument used for testing is unable to measure and record the crest factor, power factor, or maximum current ratio during the test measurement period, the crest factor, power factor, and maximum current ratio may be measured and recorded immediately before and after the test measurement period.

2.5.4 *Water and air temperature measuring devices.* The temperature devices used to measure water and air temperature must have an error no greater than ±1 °F (±0.6 °C) over the range being measured.

2.5.4.1 Non-reversible temperature indicator labels, adhered to the inside of the clothes container, may be used to confirm that an extra-hot wash temperature greater than or equal to 140 °F has been achieved during the wash cycle, under the following conditions. The label must remain waterproof, intact, and adhered to the wash drum throughout an entire wash cycle; provide consistent maximum temperature readings; and provide repeatable temperature indications sufficient to demonstrate that a wash temperature of greater than or equal to 140 °F has been achieved. The label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F. If using a temperature indicator label to test a front-loading clothes washer, adhere the label along the interior surface of the clothes container drum, midway between the front and the back of the drum, adjacent to one of the baffles. If using a temperature indicator label to test a top-loading clothes washer, adhere the label along the interior surface of the clothes container drum, on the vertical portion of the sidewall, as close to the bottom of the container as possible.

2.5.4.2 Submersible temperature loggers placed inside the wash drum may be used to confirm that an extra-hot wash temperature greater than or equal to 140 °F has been achieved during the wash cycle, under the following conditions. The submersible temperature logger must have a time resolution of at least 1 data point every 5 seconds and a temperature measurement accuracy of ±1 °F. Due to the potential for a waterproof capsule to provide a thermal insulating effect, failure to measure a temperature of 140 °F does not necessarily indicate the lack of an extra-hot wash temperature. However, such a result would not be conclusive due to the lack of verification of the water temperature requirement, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than or equal to 140 °F has been achieved during the wash cycle.

2.5.5 *Water meter.* A water meter must be installed in both the hot and cold water lines to measure water flow and/or water consumption. The water meters must have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for the water flow rates being measured. If the volume of hot water for any individual cycle within the energy test cycle is less than 0.1 gallons (0.4 liters), the hot water meter must have a resolution no larger than 0.01 gallons (0.04 liters).

2.5.6 *Water pressure gauge.* A water pressure gauge must be installed in both the hot and cold water lines to measure water pressure. The water pressure gauges must have a resolution of 1 pound per square inch gauge (psig) (6.9 kPa) and a maximum error no greater than 5 percent of any measured value.

2.6 *Bone-dryer.* The dryer used for drying the cloth to bone-dry must heat the test cloth load above 210 °F (99 °C).

2.7 *Test cloths.* The test cloth material and dimensions must conform to the specifications in appendix J3 to this subpart. The energy test cloth and the energy stuffer cloths must be clean and must not be used for more than 60 test runs (after preconditioning as specified in section 5 of appendix J3 to this subpart). All energy test cloth must be permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer. The moisture absorption and retention must be evaluated for each new lot of test cloth using the standard extractor Remaining Moisture Content (RMC) procedure specified in appendix J3 to this subpart.

2.8 *Test Loads.*

2.8.1 *Test load sizes.* Create small and large test loads as defined in Table 5.1 of this appendix based on the clothes container capacity as measured in section 3.1 of this appendix.

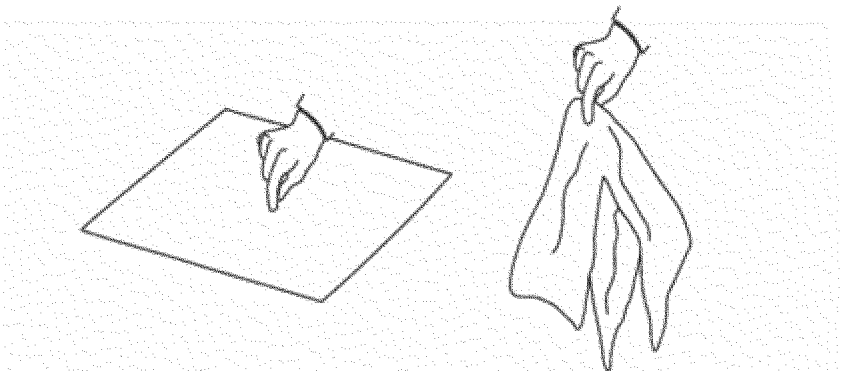
2.8.2 *Test load composition.* Test loads must consist primarily of energy test cloths and no more than five energy stuffer cloths per load to achieve the proper weight.

2.9 *Preparation and loading of test loads.* Use the following procedures to prepare and load each test load for testing in section 3 of this appendix.

2.9.1 Test loads for energy and water consumption measurements must be bone-dry prior to each test cycle.

2.9.2 Prepare the energy test cloths for loading by grasping them in the center, lifting, and shaking them to hang loosely, as illustrated in Figure 2.9.2 of this appendix.

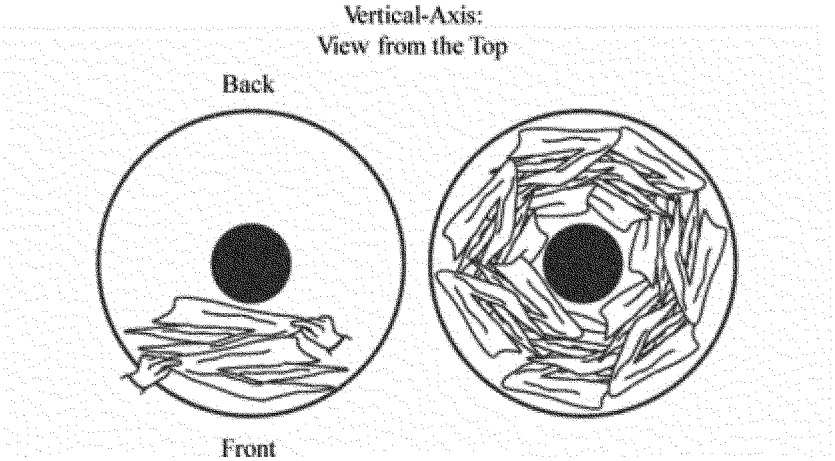
Figure 2.9.2—Grasping Energy Test Cloths in the Center, Lifting, and Shaking to Hang Loosely



For all clothes washers, follow any manufacturer loading instructions provided to the user regarding the placement of clothing within the clothes container. In the absence of any manufacturer instructions regarding the placement of clothing within the clothes container, the following loading instructions apply.

2.9.2.1 To load the energy test cloths in a top-loading clothes washer, arrange the cloths circumferentially around the axis of rotation of the clothes container, using alternating lengthwise orientations for adjacent pieces of cloth. Complete each cloth layer across its horizontal plane within the clothes container before adding a new layer. Figure 2.9.2.1 of this appendix illustrates the correct loading technique for a vertical-axis clothes washer.

Figure 2.9.2.1—Loading Energy Test Cloths into a Top-Loading Clothes Washer



2.9.2.2 To load the energy test cloths in a front-loading clothes washer, grasp each test cloth in the center as indicted in section 2.9.2 of this appendix, and then place each cloth into the clothes container prior to activating the clothes washer.

2.10 *Clothes washer installation.* Install the clothes washer in accordance with manufacturer's instructions.

2.10.1 *Water inlet connections.* If the clothes washer has 2 water inlets, connect the inlets to the hot water and cold water supplies, in accordance with the manufacturer's instructions. If the clothes washer has only 1 water inlet, connect the inlet to the cold water supply, in accordance with the manufacturer's instructions. Use the water inlet hoses provided with the clothes washer; otherwise use commercially available water inlet hoses, not to exceed 72 inches in length, in accordance with manufacturer's instructions.

2.10.2 *Low-power mode testing.* For combined low-power mode testing, install the clothes washer in accordance with Section 5, Paragraph 5.2 of IEC 62301, disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.11 *Clothes washer pre-conditioning.* If the clothes washer has not been filled with water in the preceding 96 hours, or if it has not been in the test room at the specified ambient conditions for 8 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.12 *Determining the energy test cycle.*

2.12.1 *Automatic clothes washers.* To determine the energy test cycle, evaluate the wash/rinse temperature selection flowcharts in the order in which they are presented in this section. Use the large load size to evaluate each flowchart. The determination of the energy test cycle must take into consideration all cycle settings available to the end user, including any cycle selections or cycle modifications provided by the manufacturer via software or firmware updates to the product, for the basic model under test. The energy test cycle does not include any cycle that is recommended by the manufacturer exclusively for cleaning, deodorizing, or sanitizing the clothes washer.

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Figure 2.12.1.1—Determination of Cold Wash/Cold Rinse

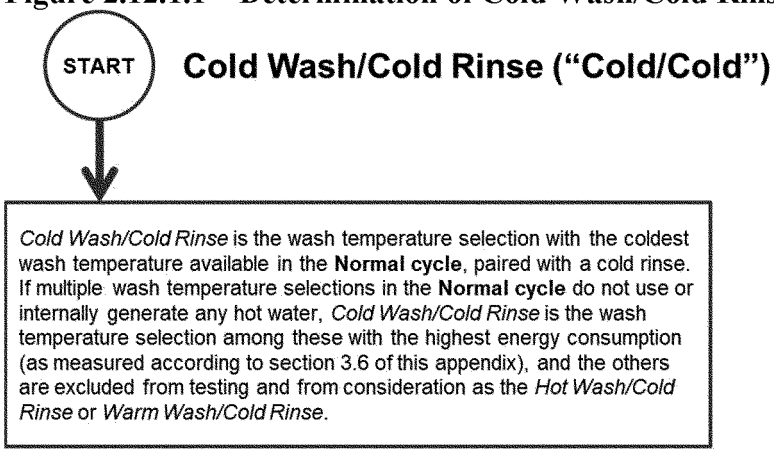


Figure 2.12.1.2—Determination of Hot Wash/Cold Rinse

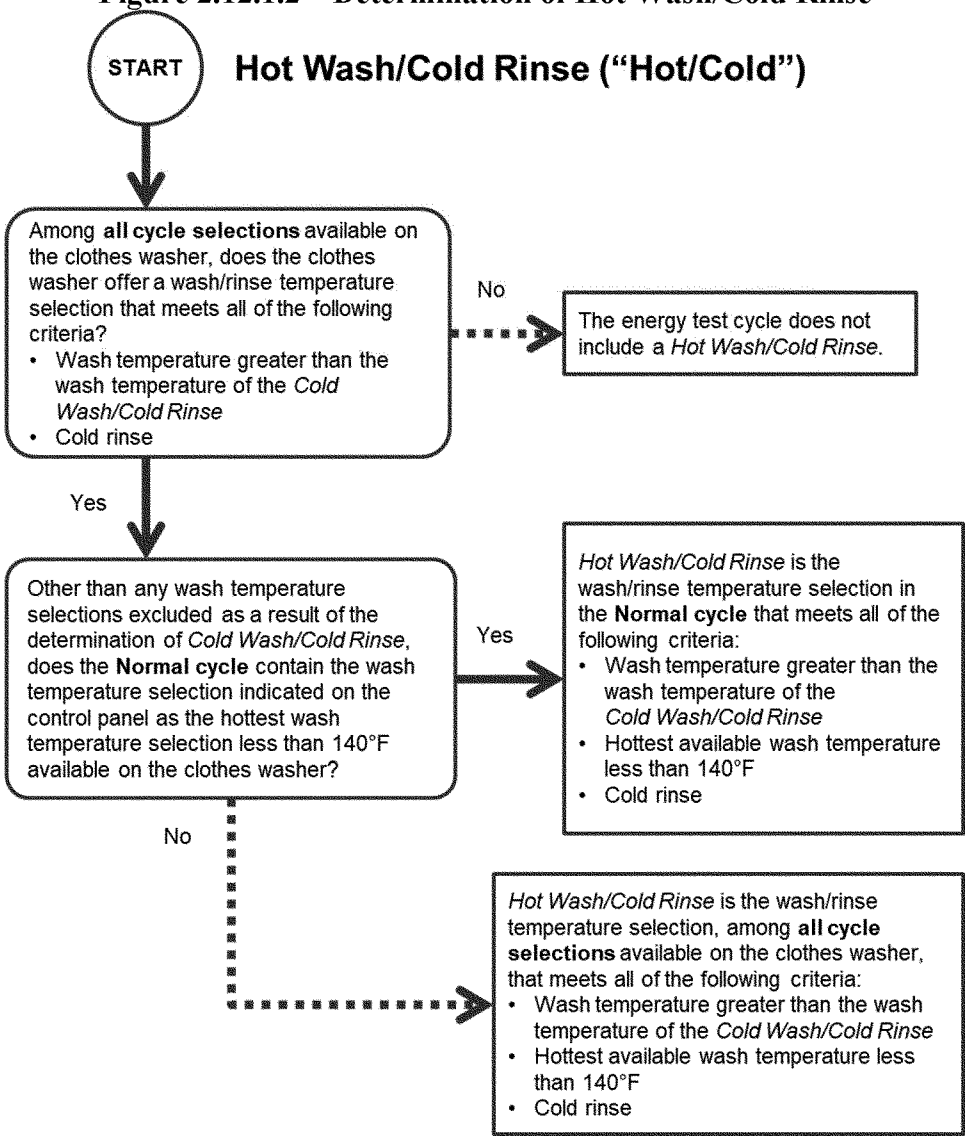


Figure 2.12.1.3—Determination of Warm Wash/Cold Rinse

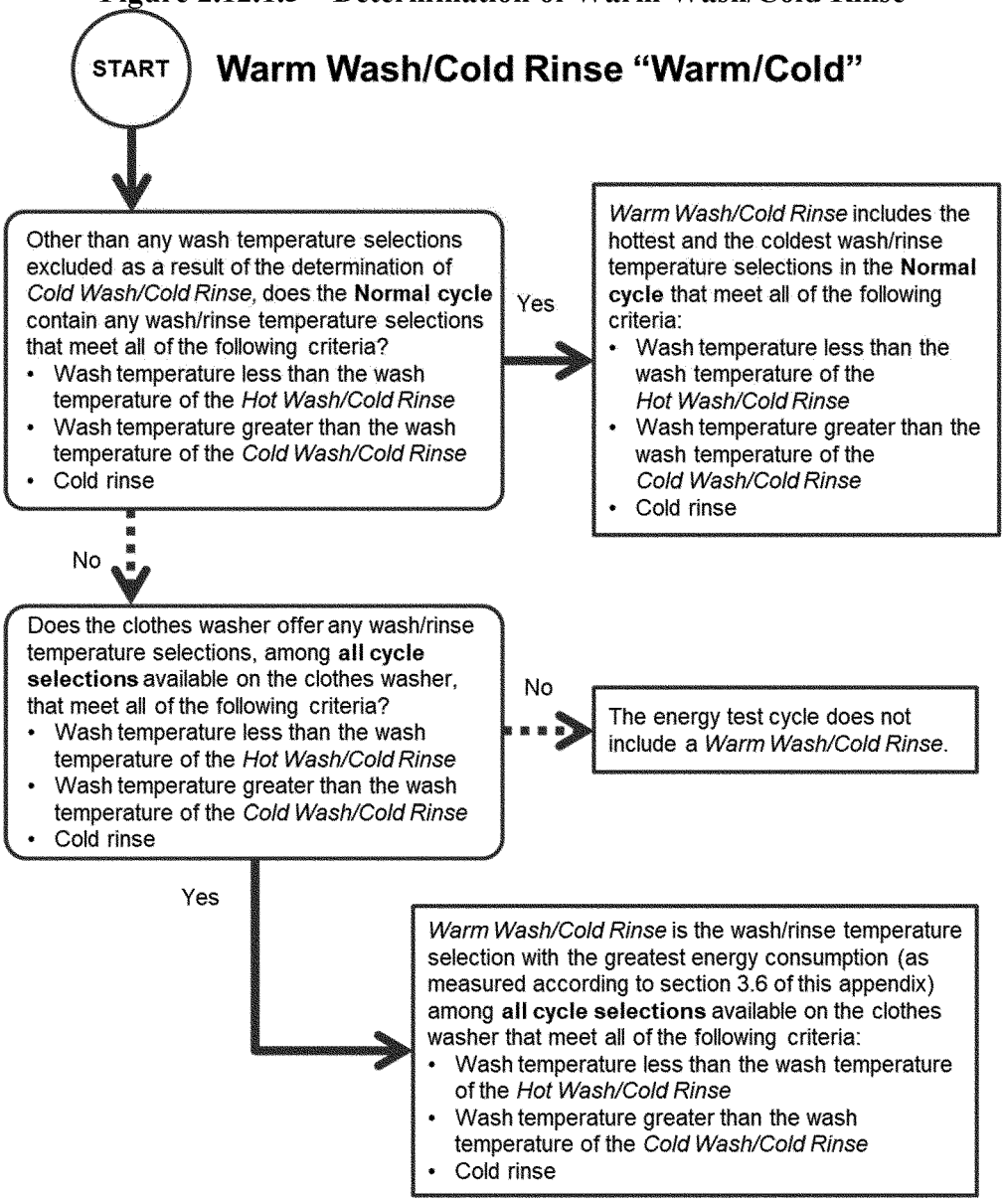


Figure 2.12.1.4—Determination of Warm Wash/Warm Rinse

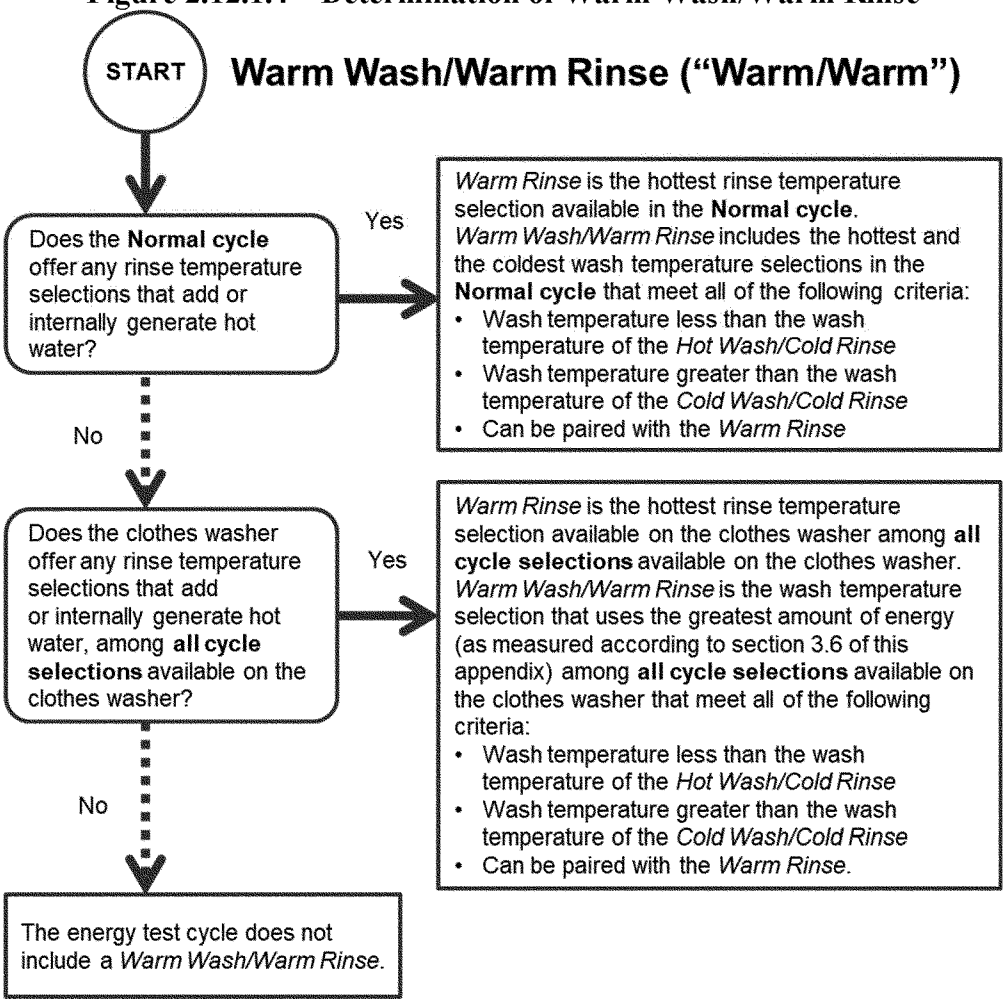
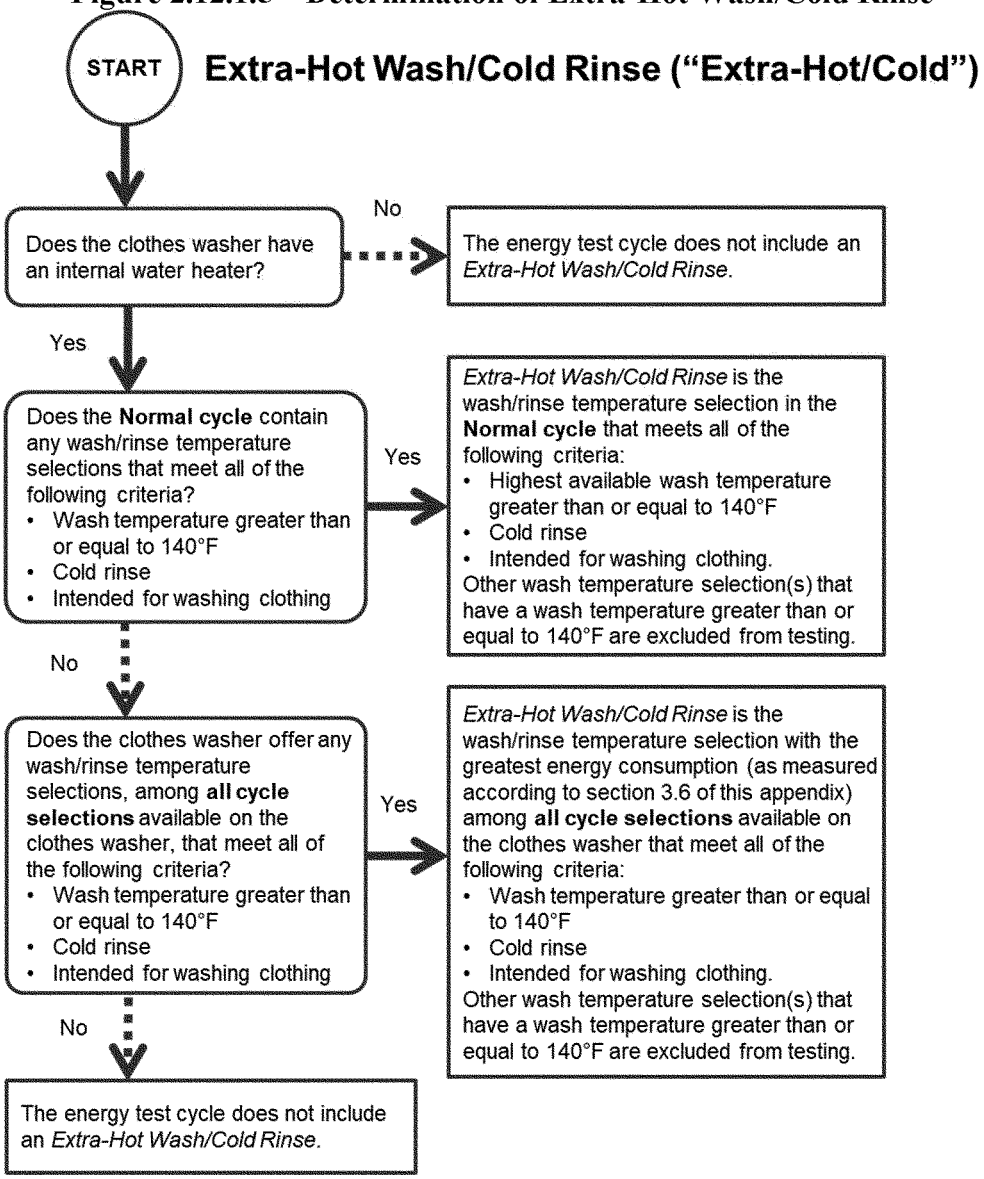


Figure 2.12.1.5—Determination of Extra-Hot Wash/Cold Rinse



2.12.2. *Semi-automatic clothes washers.* The energy test cycle for semi-automatic clothes washers includes only the Cold Wash/Cold Rinse (''Cold'') test cycle. Energy and water use for all other wash/rinse temperature combinations are calculated numerically in section 3.4.2 of this appendix.

3. Test Measurements

3.1 *Clothes container capacity.* Measure the entire volume that a clothes load could occupy within the clothes container during active mode washer operation according to the following procedures:

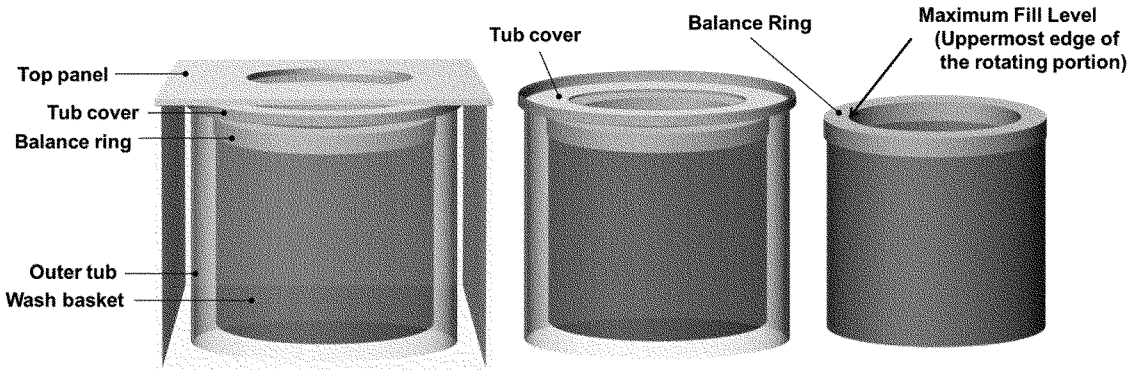
3.1.1 Place the clothes washer in such a position that the uppermost edge of the clothes container opening is leveled horizontally, so that the container will hold the maximum amount of water. For front-loading clothes washers, the door seal and shipping bolts or other forms of bracing hardware to support the wash drum during shipping must remain in place during the capacity measurement. If the design of a front-loading clothes washer does not include shipping bolts or other forms of bracing hardware to support the wash drum during shipping, a laboratory may support the wash drum by other means, including temporary bracing or support beams. Any temporary bracing or support beams must keep the wash drum in a fixed position, relative to the geometry of the door and door seal components, that is representative of the position of the wash drum during normal operation. The method used must avoid damage to the unit that would affect the results of the energy and water testing. For a front-loading clothes washer that does not include shipping bolts or other forms of bracing hardware to support the wash drum during shipping, the laboratory must fully document the alternative method used to support the wash drum during capacity measurement, include such documentation in the final test report, and pursuant to § 429.71 of this chapter, the manufacturer must retain such documentation as part its test records.

3.1.2 Line the inside of the clothes container with a 2 mil thickness (0.051 mm) plastic bag. All clothes washer components that occupy space within the clothes container and that are recommended for use during a wash cycle must be in place and must be lined with a 2 mil thickness (0.051 mm) plastic bag to prevent water from entering any void space.

3.1.3 Record the total weight of the machine before adding water.

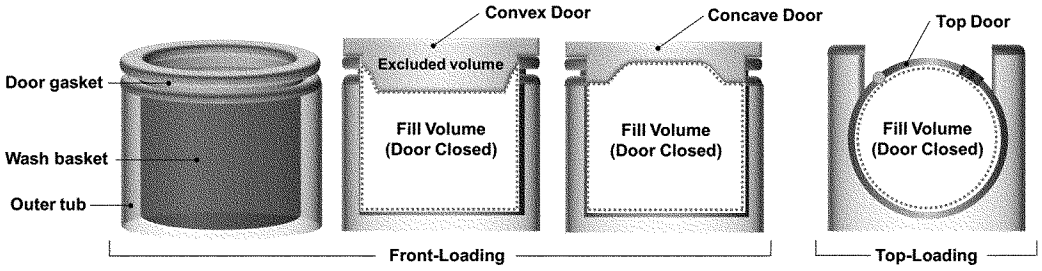
3.1.4 Fill the clothes container manually with either 60 °F ± 5 °F (15.6 °C ± 2.8 °C) or 100 °F ± 10 °F (37.8 °C ± 5.5 °C) water, with the door open. For a top-loading vertical-axis clothes washer, fill the clothes container to the uppermost edge of the rotating portion, including any balance ring. Figure 3.1.4.1 of this appendix illustrates the maximum fill level for top-loading clothes washers.

Figure 3.1.4.1—Maximum Fill Level for the Clothes Container Capacity Measurement of Top-Loading Vertical-Axis Clothes Washers



For a front-loading horizontal-axis clothes washer, fill the clothes container to the highest point of contact between the door and the door gasket. If any portion of the door or gasket would occupy the measured volume space when the door is closed, exclude from the measurement the volume that the door or gasket portion would occupy. For a front-loading horizontal-axis clothes washer with a concave door shape, include any additional volume above the plane defined by the highest point of contact between the door and the door gasket, if that area can be occupied by clothing during washer operation. For a top-loading horizontal-axis clothes washer, include any additional volume above the plane of the door hinge that clothing could occupy during washer operation. Figure 3.1.4.2 of this appendix illustrates the maximum fill volumes for all horizontal-axis clothes washer types.

Figure 3.1.4.2—Maximum Fill Level for the Clothes Container Capacity Measurement of Horizontal-Axis Clothes Washers



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For all clothes washers, exclude any volume that cannot be occupied by the clothing load during operation.

3.1.5 Measure and record the weight of water, W, in pounds.

3.1.6 Calculate the clothes container capacity as follows:

$$C = W/d$$

where:

C = Capacity in cubic feet (liters).
W = Mass of water in pounds (kilograms).
d = Density of water (62.0 lbs/ft^3 for 100 °F (993 kg/m^3 for 37.8 °C) or 62.3 lbs/ft^3 for 60 °F (998 kg/m^3 for 15.6 °C)).

3.1.7 Calculate the clothes container capacity, C, to the nearest 0.01 cubic foot for the purpose of determining test load sizes per Table 5.1 of this appendix and for all subsequent calculations that include the clothes container capacity.

3.2 *Cycle settings.*

3.2.1 *Wash/rinse temperature selection.* For automatic clothes washers, set the wash/rinse temperature selection control to obtain the desired wash/rinse temperature selection within the energy test cycle.

3.2.2 *Wash time setting.*

3.2.2.1 If the cycle under test offers a range of wash time settings, the wash time setting shall be the higher of either the minimum or 70 percent of the maximum wash time available for the wash cycle under test, regardless of the labeling of suggested dial locations. If 70 percent of the maximum wash time is not available on a dial with a discrete number of wash time settings, choose the next-highest setting greater than 70 percent.

3.2.2.2 If the clothes washer is equipped with an electromechanical dial or timer controlling wash time that rotates in both directions, reset the dial to the minimum wash time and then turn it in the direction of increasing wash time to reach the appropriate setting. If the appropriate setting is passed, return the dial to the minimum wash time and then turn in the direction of increasing wash time until the appropriate setting is reached.

3.2.3 *Water fill level settings.*

3.2.3.1 *Clothes washers with manual water fill control system.* For the large test load size, set the water fill level selector to the maximum water fill level setting available for the wash cycle under test. If the water fill level selector has two settings available for the wash cycle under test, for the small test load size, select the minimum water fill level setting available for the wash cycle under test.

If the water fill level selector has more than two settings available for the wash cycle under test, for the small test load size, select the second-lowest water fill level setting.

3.2.3.2 *Clothes washers with automatic water fill control system.*

3.2.3.2.1 *Not user-adjustable.* The water level is automatically determined by the water fill control system.

3.2.3.2.2 *User-adjustable.* For the large test load size, set the water fill selector to the setting that uses the most water. For the small test load size, set the water fill selector to the setting that uses the least water.

3.2.3.3 *Clothes washers with automatic water fill control system and alternate manual water fill control system.* If a clothes washer with an automatic water fill control system allows user selection of manual controls as an alternative, test both manual and automatic modes and, for each mode, calculate the energy consumption (HE_T, ME_T, and DE_T) and water consumption (Q_T) values as set forth in section 4 of this appendix. Then, calculate the average of the two values (one from each mode, automatic and manual) for each variable (HE_T, ME_T, DE_T, and Q_T)

and use the average value for each variable in the final calculations in section 4 of this appendix.

3.2.4 *Manufacturer default settings.* For clothes washers with electronic control systems, use the manufacturer default settings for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, or (3) network settings. If the clothes washer has network capabilities, the network settings must be disabled throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so. For all other cycle selections, the manufacturer default settings must be used for wash conditions such as agitation/tumble operation, soil level, spin speed, wash times, rinse times, optional rinse settings, water heating time for water heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Any optional wash cycle feature or setting (other than wash/rinse temperature, water fill level selection, or network settings on clothes washers with network capabilities) that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option, or recommend selecting a different option, for washing normally soiled cotton clothing. For clothes washers with control panels containing mechanical switches or dials, any optional settings, except for the temperature selection or the wash water fill levels, must be in the position recommended by the manufacturer for washing normally soiled cotton clothing. If the manufacturer instructions do not recommend a particular switch or dial position to be used for washing normally soiled cotton clothing, the setting switch or dial must remain in its as-shipped position.

3.2.5 For each wash cycle tested, include the entire active washing mode and exclude any delay start or cycle finished modes.

3.2.6 *Anomalous Test Cycles.* If during a wash cycle the clothes washer: a) signals to the user by means of a visual or audio alert that an out-of-balance condition has been detected; or b) terminates prematurely and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test, discard the test data and repeat the wash cycle. Document in the test report the rejection of data from any wash cycle during testing and the reason for the rejection.

3.3 *Test cycles for automatic clothes washers.* Perform testing on each wash/rinse temperature selection available in the energy test cycle was defined in section 2.12.1 of this appendix. Test each load size as defined in section 2.8 of this appendix with its associated water fill level defined in section 3.2.3 of this appendix. For each test cycle, measure and record the bone-dry weight of the test load before the start of the cycle. Place the test load in the clothes washer and initiate the cycle under test. Measure the values for hot water consumption, cold water consumption, electrical energy consumption, and cycle time for the complete cycle. Record the weight of the test load immediately after completion of the cycle. Table 3.3 of this appendix provides the symbol definitions for each measured value.

TABLE 3.3—SYMBOL DEFINITIONS OF MEASURED VALUES FOR AUTOMATIC CLOTHES WASHER TEST CYCLES

Wash/rinse temperature selection	Load size	Bone-dry weight	Hot water	Cold water	Electrical energy	Cycle time	Cycle complete weight
Extra-hot/cold	Large	WIx_L	Hx_L	Cx_L	Ex_L	Tx_L	WCx_L
	Small	WIx_S	Hx_S	Cx_S	Ex_S	Tx_S	WCx_S
Hot/Cold	Large	WIh_L	Hh_L	Ch_L	Eh_L	Th_L	WCh_L
	Small	WIh_S	Hh_S	Ch_S	Eh_S	Th_S	WCh_S
Warm/Cold *	Large	WIw_L	Hw_L	Cw_L	Ew_L	Tw_L	WCw_L
	Small	WIw_S	Hw_S	Cw_S	Ew_S	Tw_S	WCw_S
Warm/Warm *	Large	$WIww_L$	Hww_L	Cww_L	Eww_L	Tww_L	$WCww_L$
	Small	$WIww_S$	Hww_S	Cww_S	Eww_S	Tww_S	$WCww_S$
Cold/Cold	Large	WIc_L	Hc_L	Cc_L	Ec_L	Tc_L	WCc_L
	Small	WIc_S	Hc_S	Cc_S	Ec_S	Tc_S	WCc_S

* If two cycles are tested to represent the Warm/Cold selection or the Warm/Warm selection, calculate the average of the two tested cycles and use that value for all further calculations.

3.4 *Test cycles for semi-automatic clothes washers.*

3.4.1 *Test Measurements.* Perform testing on each wash/rinse temperature selection available in the energy test cycle as defined in section 2.12.2 of this appendix. Test each load size as defined in section 2.8 of this appendix with the associated water fill level defined in section 3.2.3 of this appendix. For each test cycle, measure and record the bone-dry weight of the test load before the start of the cycle. Place the test load in the clothes washer and initiate the cycle under test. Measure the values for cold water consumption, electrical energy consumption, and cycle time for the complete cycle. Record the weight of the test load immediately after completion of the cycle. Table 3.4.1 of this appendix provides symbol definitions for each measured value for the Cold temperature selection.

TABLE 3.4.1—SYMBOL DEFINITIONS OF MEASURED VALUES FOR SEMI-AUTOMATIC CLOTHES WASHER TEST CYCLES

Temperature selection	Load size	Bone-dry weight	Hot water	Cold water	Electrical energy	Cycle time	Cycle complete weight
Cold	Large	WIc_L	not measured	Cc_L	Ec_L	Tc_L	WCc_L
	Small	WIc_S	not measured	Cc_S	Ec_S	Tc_S	WCc_S

3.4.2 *Calculation of Hot and Warm measured values.* In lieu of testing, the measured values for the Hot and Warm cycles are calculated based on the measured values for the Cold cycle, as defined in section 3.4.1 of this appendix. Table 3.4.2 of this appendix provides the symbol definitions and calculations for each value for the Hot and Warm temperature selections.

TABLE 3.4.2—SYMBOL DEFINITIONS AND CALCULATION OF MEASURED VALUES FOR SEMI-AUTOMATIC CLOTHES WASHER TEST CYCLES

Temperature selection	Load size	Bone-dry weight	Hot water	Cold water	Electrical energy	Cycle time	Cycle complete weight
Hot	Large	$WIh_L = WIc_L$	$Hh_L = Cc_L$		$Eh_L = Ec_L$	$Th_L = Tc_L$	$WCh_L = WCc_L$
	Small	$WIh_S = WIc_S$	$Hh_S = Cc_S$		$Eh_S = Ec_S$	$Th_S = Tc_S$	$WCh_S = WCc_S$
Warm	Large	$WIw_L = WIc_L$	$Hw_L = Cc_L \div 2$	$Cw_L = Cc_L \div 2$	$Ew_L = Ec_L$	$Tw_L = Tc_L$	$WCw_L = WCc_L$
	Small	$WIw_S = WIc_S$	$Hw_S = Cc_S \div 2$	$Cw_S = Cc_S \div 2$	$Ew_S = Ec_S$	$Tw_S = Tc_S$	$WCw_S = WCc_S$

3.5 *Combined low-power mode power.* Connect the clothes washer to a watt meter as specified in section 2.5.3 of this appendix. Establish the testing conditions set forth in sections 2.1, 2.4, and 2.10.2 of this appendix.

3.5.1 Perform combined low-power mode testing after completion of an active mode wash cycle included as part of the energy test cycle; after removing the test load; without changing the control panel settings used for the active mode wash cycle; with the door closed; and without disconnecting the electrical energy supply to the clothes washer between completion of the active mode wash cycle and the start of combined low-power mode testing.

3.5.2 For a clothes washer that takes some time to automatically enter a stable inactive mode or off mode state from a higher power state as discussed in Section 5, Paragraph 5.1, note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the clothes washer to automatically reach the default inactive/off mode state before proceeding with the test measurement.

3.5.3 Once the stable inactive/off mode state has been reached, measure and record the default inactive/off mode power, $P_{default}$, in watts, following the test procedure for the sampling method specified in Section 5, Paragraph 5.3.2 of IEC 62301.

3.5.4 For a clothes washer with a switch, dial, or button that can be optionally selected by the end user to achieve a lower-power inactive/off mode state than the default inactive/off mode state measured in section 3.5.3 of this appendix, after performing the measurement in section 3.5.3 of this appendix, activate the switch, dial, or button to the position resulting in the lowest power consumption and repeat the measurement procedure described in section 3.5.3 of this appendix. Measure and record the lowest-power inactive/off mode power, P_{lowest}, in Watts.

3.6 *Energy consumption for the purpose of determining the cycle selection(s) to be included in the energy test cycle.* This section is implemented only in cases where the energy test cycle flowcharts in section 2.12.1 of this appendix require the determination of the wash/rinse temperature selection with the highest energy consumption.

3.6.1 For the wash/rinse temperature selection being considered under this section, establish the testing conditions set forth in section 2 of this appendix. Select the applicable cycle selection and wash/rinse temperature selection. For all wash/rinse temperature selections, select the cycle settings as described in section 3.2 of this appendix.

3.6.2 Measure each wash cycle's electrical energy consumption (E_L) and hot water consumption (H_L). Calculate the total energy consumption for each cycle selection (E_{TL}), as follows:

$$E_{TL} = E_L + (H_L \times T \times K)$$

Where:

E_L is the electrical energy consumption, expressed in kilowatt-hours per cycle.

H_L is the hot water consumption, expressed in gallons per cycle.

T = nominal temperature rise = 65 °F (36.1 °C).

K = Water specific heat in kilowatt-hours per gallon per degree F = 0.00240 kWh/gal-°F (0.00114 kWh/L-°C).

4. Calculation of Derived Results From Test Measurements

4.1 *Hot water and machine electrical energy consumption of clothes washers.*

4.1.1 *Per-cycle temperature-weighted hot water consumption for all load sizes tested.* Calculate the per-cycle temperature-weighted hot water consumption for the large test load size, Vh_L, and the small test load size, Vh_S, expressed in gallons per cycle (or liters per cycle) and defined as:

(a) $Vh_L = [Hx_L \times TUF_x] + [Hh_L \times TUF_h] + [Hw_L \times TUF_w] + [Hww_L \times TUF_{ww}] + [Hc_L \times TUF_c]$

(b) $Vh_S = [Hx_S \times TUF_x] + [Hh_S \times TUF_h] + [Hw_S \times TUF_w] + [Hww_S \times TUF_{ww}] + [Hc_S \times TUF_c]$

Where:

Hx_L, Hh_L, Hw_L, Hww_L, Hc_L, Hx_S, Hh_S, Hw_S, Hww_S, and Hc_S are the hot water consumption values, in gallons per-cycle (or liters per cycle) as measured in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

TUF_x, TUF_h, TUF_w, TUF_{ww}, and TUF_c are temperature use factors for Extra-Hot Wash/Cold Rinse, Hot Wash/Cold Rinse, Warm Wash/Cold Rinse, Warm Wash/Warm Rinse, and Cold Wash/Cold Rinse temperature selections, respectively, as defined in Table 4.1.1 of this appendix.

TABLE 4.1.1—TEMPERATURE USE FACTORS

Wash/rinse temperature selections available in the energy test cycle	Clothes washers with cold rinse only					Clothes washers with both cold and warm rinse		
	C/C	H/C C/C	H/C W/C C/C *	XH/C H/C C/C	XH/C H/C W/C C/C	HC/C W/C W/W C/C	XH/C H/C W/W C/C	XH/C H/C W/C W/W C/C
TUFx (Extra-Hot/Cold)				0.14	0.05		0.14	0.05
TUFh (Hot/Cold)		0.63	0.14	** 0.49	0.09	0.14	** 0.22	0.09
TUFw (Warm/Cold)			0.49		0.49	0.22		0.22
TUFww (Warm/Warm)						0.27	0.27	0.27
TUFc (Cold/Cold)	1.00	0.37	0.37	0.37	0.37	0.37	0.37	0.37

* This column applies to all semi-automatic clothes washers.

** On clothes washers with only two wash temperature selections <140 °F, the higher of the two wash temperatures is classified as a Hot Wash/Cold Rinse, in accordance with the wash/rinse temperature definitions within the energy test cycle.

4.1.2 *Total per-cycle hot water energy consumption for all load sizes tested.* Calculate the total per-cycle hot water energy consumption for the large test load size, HE_L, and the small test load size, HE_S, expressed in kilowatt-hours per cycle and defined as:

(a) $HE_L = [Vh_L \times T \times K]$ = Total energy when the large test load is tested.

(b) $HE_S = [Vh_S \times T \times K]$ = Total energy when the small test load is tested.

Where:

Vh_L and Vh_S are defined in section 4.1.1 of this appendix.

T = Temperature rise = 65 °F (36.1 °C).

K = Water specific heat in kilowatt-hours per gallon per degree F = 0.00240 kWh/gal-°F (0.00114 kWh/L-°C).

4.1.3 *Total weighted per-cycle hot water energy consumption.* Calculate the total weighted per-cycle hot water energy consumption, HE_T, expressed in kilowatt-hours per cycle and defined as:

$HE_T = [HE_L \times LUF_L] + [HE_S \times LUF_S]$

Where:

HE_L and HE_S are defined in section 4.1.2 of this appendix.

LUF_L = Load usage factor for the large test load = 0.5.

LUF_S = Load usage factor for the small test load = 0.5.

4.1.4 *Total per-cycle hot water energy consumption using gas-heated or oil-heated water, for product labeling requirements.* Calculate for the energy test cycle the per-cycle hot water consumption, HE_{TG}, using gas-heated or oil-heated water, expressed in Btu per cycle (or megajoules per cycle) and defined as:

$HE_{TG} = HE_T \times 1/e \times 3412$ Btu/kWh or $HE_{TG} = HE_T \times 1/e \times 3.6$ MJ/kWh.

Where:

e = Nominal gas or oil water heater efficiency = 0.75.

HE_T = As defined in section 4.1.3 of this appendix.

4.1.5 *Per-cycle machine electrical energy consumption for all load sizes tested.* Calculate the total per-cycle machine electrical energy consumption for the large test load size, ME_L, and the small test load size, ME_S, expressed in kilowatt-hours per cycle and defined as:

(a) $ME_L = [Ex_L \times TUF_x] + [Eh_L \times TUF_h] + [Ew_L \times TUF_w] + [Eww_L \times TUF_{ww}] + [Ec_L \times TUF_c]$

(b) $ME_S = [Ex_S \times TUF_x] + [Eh_S \times TUF_h] + [Ew_S \times TUF_w] + [Eww_S \times TUF_{ww}] + [Ec_S \times TUF_c]$

Where:

Ex_L, Eh_L, Ew_L, Eww_L, Ec_L, Ex_S, Eh_S, Ew_S, Eww_S, and Ec_S are the electrical energy consumption values, in kilowatt-hours per cycle as measured in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

TUF_x, TUF_h, TUF_w, TUF_{ww}, and TUF_c are defined in Table 4.1.1 of this appendix.

4.1.6 *Total weighted per-cycle machine electrical energy consumption.* Calculate the total weighted per-cycle machine electrical energy consumption, ME_T, expressed in kilowatt-hours per cycle and defined as:

$ME_T = [ME_L \times LUF_L] + [ME_S \times LUF_S]$

Where:

ME_L and ME_S are defined in section 4.1.5 of this appendix.

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

4.2 *Water consumption of clothes washers.*

4.2.1 *Per cycle total water consumption for each large load size tested.* Calculate the per-cycle total water consumption of the large test load for the Extra-Hot Wash/Cold Rinse cycle, Qx_L, Hot Wash/Cold Rinse cycle, Qh_L, Warm Wash/Cold Rinse cycle, Qw_L, Warm Wash/Warm Rinse cycle, Qww_L, and Cold Wash/Cold Rinse cycle, Qc_L, defined as:

(a) $Qx_L = Hx_L + Cx_L$

(b) $Qh_L = Hh_L + Ch_L$

(c) $Qw_L = Hw_L + Cw_L$

(d) $Qww_L = Hww_L + Cww_L$

(e) $Qc_L = Hc_L + Cc_L$

Where:

Hx_L, Hh_L, Hw_L, Hww_L, Hc_L, Cx_L, Ch_L, Cw_L, Cww_L, and Cc_L are defined in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

4.2.2 *Per cycle total water consumption for each small load size tested.* Calculate the per-cycle total water consumption of the small test load for the Extra-Hot Wash/Cold Rinse cycle, Qx_S, Hot Wash/Cold Rinse cycle, Qh_S, Warm Wash/Cold Rinse cycle, Qw_S, Warm Wash/Warm Rinse cycle, Qww_S, and Cold Wash/Cold Rinse cycle, Qc_S, defined as:

(a) $Qx_S = Hx_S + Cx_S$

(b) $Qh_S = Hh_S + Ch_S$

(c) $Qw_S = Hw_S + Cw_S$

(d) $Qww_S = Hww_S + Cww_S$

(e) $Qc_S = Hc_S + Cc_S$

Where:

Hx_S, Hh_S, Hw_S, Hww_S, Hc_S, Cx_S, Ch_S, Cw_S, Cww_S, and Cc_S are defined in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

4.2.3 *Per-cycle total water consumption for all load sizes tested.* Calculate the total per-cycle water consumption for the large test load size, Q_L, and the small test load size, Q_S, expressed in gallons per cycle (or liters per cycle) and defined as:

(a) $Q_L = [Qx_L \times TUFx] + [Qh_L \times TUFh] + [Qw_L \times TUFw] + [Qww_L \times TUFww] + [Qc_L \times TUFc]$

(b) $Q_S = [Qx_S \times TUFx] + [Qh_S \times TUFh] + [Qw_S \times TUFw] + [Qww_S \times TUFww] + [Qc_S \times TUFc]$

Where:

Qx_L, Qh_L, Qw_L, Qww_L, and Qc_L are defined in section 4.2.1 of this appendix.

Qx_S, Qh_S, Qw_S, Qww_S, and Qc_S are defined in section 4.2.2 of this appendix.

TUFx, TUFh, TUFw, TUFww, and TUFc are defined in Table 4.1.1 of this appendix.

4.2.4 *Total weighted per-cycle water consumption.* Calculate the total per-cycle water consumption, Q_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Q_T = [Q_L \times LUF_L] + [Q_S \times LUF_S]$

Where:

Q_L and Q_S are defined in section 4.2.3 of this appendix.

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

4.3 *Remaining moisture content (RMC).*

4.3.1 *Per cycle remaining moisture content for each large load size tested.* Calculate the per-cycle remaining moisture content of the large test load for the Extra-Hot Wash/Cold Rinse cycle, $RMCx_L$, Hot Wash/Cold Rinse cycle, $RMCh_L$, Warm Wash/Cold Rinse cycle, $RMCw_L$, Warm Wash/Warm Rinse cycle, $RMCww_L$, and Cold Wash/Cold Rinse cycle, $RMCc_L$, defined as:

(a) $RMCx_L = (WCx_L - WIx_L)/WIx_L$

(b) $RMCh_L = (WCh_L - WIh_L)/WIh_L$

(c) $RMCw_L = (WCw_L - WIw_L)/WIw_L$

(d) $RMCww_L = (WCww_L - WIww_L)/WIww_L$

(e) $RMCc_L = (WCc_L - WIc_L)/WIc_L$

Where:

WCx_L, WCh_L, WCw_L, $WCww_L$, WCc_L, WIx_L, WIh_L, WIw_L, $WIww_L$, and WIc_L are the bone-dry weights and cycle completion weights as measured in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

4.3.2 *Per cycle remaining moisture content for each small load size tested.* Calculate the per-cycle remaining moisture content of the small test load for the Extra-Hot Wash/Cold Rinse cycle, $RMCx_S$, Hot Wash/Cold Rinse cycle, $RMCh_S$, Warm Wash/Cold Rinse cycle, $RMCw_S$, Warm Wash/Warm Rinse cycle, $RMCww_S$, and Cold Wash/Cold Rinse cycle, $RMCc_S$, defined as:

(a) $RMCx_S = (WCx_S - WIx_S)/WIx_S$

(b) $RMCh_S = (WCh_S - WIh_S)/WIh_S$

(c) $RMCw_S = (WCw_S - WIw_S)/WIw_S$

(d) $RMCww_S = (WCww_S - WIww_S)/WIww_S$

(e) $RMCc_S = (WCc_S - WIc_S)/WIc_S$

Where:

WCx_S, WCh_S, WCw_S, $WCww_S$, WCc_S, WIx_S, WIh_S, WIw_S, $WIww_S$, and WIc_S are the bone-dry weights and cycle completion weights as measured in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

4.3.3 *Per-cycle remaining moisture content for all load sizes tested.* Calculate the per-cycle temperature-weighted remaining moisture content for the large test load size, RMC_L, and the small test load size, RMC_S, defined as:

(a) $RMC_L = [RMCx_L \times TUF_x] + [RMCh_L \times TUF_h] + [RMCw_L \times TUF_w] + [RMCww_L \times TUF_{ww}] + [RMCc_L \times TUF_c]$

(b) $RMC_S = [RMCx_S \times TUF_x] + [RMCh_S \times TUF_h] + [RMCw_S \times TUF_w] + [RMCww_S \times TUF_{ww}] + [RMCc_S \times TUF_c]$

Where:

$RMCx_L$, $RMCh_L$, $RMCw_L$, $RMCww_L$, and $RMCc_L$ are defined in section 4.3.1 of this appendix.

$RMCx_S$, $RMCh_S$, $RMCw_S$, $RMCww_S$, and $RMCc_S$ are defined in section 4.3.2 of this appendix.

TUF_x, TUF_h, TUF_w, TUF_{ww}, and TUF_c are defined in Table 4.1.1 of this appendix.

4.3.4 *Weighted per-cycle remaining moisture content.* Calculate the weighted per-cycle remaining moisture content, RMC_T, defined as:

$RMC_T = [RMC_L \times LUF_L] + [RMC_S \times LUF_S]$

Where:

RMC_L and RMC_S are defined in section 4.3.3 of this appendix.

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

4.3.5 Apply the RMC correction curve as described in section 9 of appendix J3 to this subpart to calculate the corrected remaining moisture content, RMC_{corr}, expressed as a percentage as follows:

$RMC_{corr} = (A \times RMC_T + B) \times 100\%$

Where:

A and B are the coefficients of the RMC correction curve as defined in section 8.7 of appendix J3 to this subpart.

RMC_T = As defined in section 4.3.4 of this appendix.

4.4 *Per-cycle energy consumption for removal of moisture from test load.* Calculate the per-cycle energy required to remove the remaining moisture of the test load, DE_T, expressed in kilowatt-hours per cycle and defined as:

$DE_T = [(LUF_L \times \text{Large test load weight}) + (LUF_S \times \text{Small test load weight})] \times (RMC_{corr} - 4\%) \times (DEF) \times (DUF)$

Where:

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

Large and small test load weights are defined in Table 5.1 of this appendix.

RMC_{corr} = As defined in section 4.3.5 of this appendix.

DEF = Nominal energy required for a clothes dryer to remove moisture from clothes = 0.5 kWh/lb (1.1 kWh/kg).

DUF = Dryer usage factor, percentage of washer loads dried in a clothes dryer = 0.91.

4.5 *Cycle time.*

4.5.1 *Per-cycle temperature-weighted cycle time for all load sizes tested.* Calculate the per-cycle temperature-weighted cycle time for the large test load size, T_L, and the small test load size, T_S, expressed in minutes, and defined as:

(a) $T_L = [Tx_L \times TUF_x] + [Th_L \times TUF_h] + [Tw_L \times TUF_w] + [Tww_L \times TUF_{ww}] + [Tc_L \times TUF_c]$

(b) $T_S = [Tx_S \times TUF_x] + [Th_S \times TUF_h] + [Tw_S \times TUF_w] + [Tww_S \times TUF_{ww}] + [Tc_S \times TUF_c]$

Where:

Tx_L, Th_L, Tw_L, Tww_L, Tc_L, Tx_S, Th_S, Tw_S, Tww_S, and Tc_S are the cycle time values, in minutes as measured in section 3.3 of this appendix for automatic clothes washers or section 3.4 of this appendix for semi-automatic clothes washers.

TUF_x, TUF_h, TUF_w, TUF_{ww}, and TUF_c are temperature use factors for Extra-Hot Wash/Cold Rinse, Hot Wash/Cold Rinse, Warm Wash/Cold Rinse, Warm Wash/Warm Rinse, and Cold Wash/Cold Rinse temperature selections, respectively, as defined in Table 4.1.1 of this appendix.

4.5.2 *Total weighted per-cycle cycle time.* Calculate the total weighted per-cycle cycle time, T_T, expressed in minutes, rounded to the nearest minute, and defined as:

$T_T = [T_L \times LUF_L] + [T_S \times LUF_S]$

Where:

T_L and T_S are defined in section 4.5.1 of this appendix.

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

4.6 *Combined low-power mode energy consumption.*

4.6.1 *Annual hours in default inactive/off mode.* Calculate the annual hours spent in default inactive/off mode, $S_{default}$, expressed in hours and defined as:

$S_{default} = [8{,}760 - (234 \times T_T/60)]/N$

Where:

T_T = As defined in section 4.5.2 of this appendix, in minutes.

N = Number of inactive/off modes, defined as 1 if no optional lowest-power inactive/off mode is available; otherwise 2.

8,760 = Total number of hours in a year.

234 = Representative average number of clothes washer cycles in a year.

60 = Conversion from minutes to hours.

4.6.2 *Per-cycle combined low-power mode energy consumption.* Calculate the per-cycle combined low-power mode energy consumption, E_{TLP}, expressed in kilowatt-hours per cycle and defined as:

$E_{TLP} = [(P_{default} \times S_{default}) + (P_{lowest} \times S_{lowest})] \times K_p/234$

Where:

$P_{default}$ = Default inactive/off mode power, in watts, as measured in section 3.5.3 of this appendix.

P_{lowest} = Lowest-power inactive/off mode power, in watts, as measured in section 3.5.4 of this appendix for clothes washers with a switch, dial, or button that can be optionally selected by the end user to achieve a lower-power inactive/off mode than the default inactive/off mode; otherwise, $P_{lowest} = 0$.

$S_{default}$ = Annual hours in default inactive/off mode, as calculated in section 4.6.1 of this appendix.

S_{lowest} = Annual hours in lowest-power inactive/off mode, defined as 0 if no optional lowest-power inactive/off mode is available; otherwise equal to $S_{default}$, as calculated in section 4.6.1 of this appendix.

K_p = Conversion factor of watt-hours to kilowatt-hours = 0.001.

234 = Representative average number of clothes washer cycles in a year.

4.7 *Water efficiency ratio.* Calculate the water efficiency ratio, WER, expressed in pounds per gallon per cycle (or kilograms per liter per cycle), as:

$WER = [(LUF_L \times \text{Large test load weight}) + (LUF_S \times \text{Small test load weight})]/Q_T$

Where:

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

Large and small test load weights are defined in Table 5.1 of this appendix.

Q_T = As defined in section 4.2.4 of this appendix.

4.8 *Active-mode energy efficiency ratio.* Calculate the active-mode energy efficiency ratio, AEER, expressed in pounds per kilowatt-hour per cycle (or kilograms per kilowatt-hour per cycle) and defined as:

$AEER = [(LUF_L \times \text{Large test load weight}) + (LUF_S \times \text{Small test load weight})]/(ME_T + HE_T + DE_T)$

Where:

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

Large and small test load weights are defined in Table 5.1 of this appendix.

ME_T = As defined in section 4.1.6 of this appendix.

HE_T = As defined in section 4.1.3 of this appendix.

DE_T = As defined in section 4.4 of this appendix.

4.9 *Energy efficiency ratio.* Calculate the energy efficiency ratio, EER, expressed in pounds per kilowatt-hour per cycle (or kilograms per kilowatt-hour per cycle) and defined as:

$EER = [(LUF_L \times \text{Large test load weight}) + (LUF_S \times \text{Small test load weight})]/(ME_T + HE_T + DE_T + E_{TLP})$

Where:

LUF_L and LUF_S are defined in section 4.1.3 of this appendix.

Large and small test load weights are defined in Table 5.1 of this appendix.

ME_T = As defined in section 4.1.6 of this appendix.

HE_T = As defined in section 4.1.3 of this appendix.

DE_T = As defined in section 4.4 of this appendix.

E_{TLP} = As defined in section 4.6.2 of this appendix.

5. Test Loads

TABLE 5.1—TEST LOAD SIZES

Container volume		Small load		Large load	
cu. ft.	liter	lb	kg	lb	kg
≥<	≥<				
0.00–0.80	0.00–22.7	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.10	1.41	3.35	1.52
0.90–1.00	25.5–28.3	3.20	1.45	3.70	1.68
1.00–1.10	28.3–31.1	3.30	1.50	4.00	1.81
1.10–1.20	31.1–34.0	3.40	1.54	4.30	1.95
1.20–1.30	34.0–36.8	3.45	1.56	4.60	2.09
1.30–1.40	36.8–39.6	3.55	1.61	4.95	2.25
1.40–1.50	39.6–42.5	3.65	1.66	5.25	2.38

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Small load		Large load	
cu. ft.	liter	lb	kg	lb	kg
≥<	≥<				
1.50–1.60	42.5–45.3	3.75	1.70	5.55	2.52
1.60–1.70	45.3–48.1	3.80	1.72	5.85	2.65
1.70–1.80	48.1–51.0	3.90	1.77	6.20	2.81
1.80–1.90	51.0–53.8	4.00	1.81	6.50	2.95
1.90–2.00	53.8–56.6	4.10	1.86	6.80	3.08
2.00–2.10	56.6–59.5	4.20	1.91	7.10	3.22
2.10–2.20	59.5–62.3	4.30	1.95	7.45	3.38
2.20–2.30	62.3–65.1	4.35	1.97	7.75	3.52
2.30–2.40	65.1–68.0	4.45	2.02	8.05	3.65
2.40–2.50	68.0–70.8	4.55	2.06	8.35	3.79
2.50–2.60	70.8–73.6	4.65	2.11	8.70	3.95
2.60–2.70	73.6–76.5	4.70	2.13	9.00	4.08
2.70–2.80	76.5–79.3	4.80	2.18	9.30	4.22
2.80–2.90	79.3–82.1	4.90	2.22	9.60	4.35
2.90–3.00	82.1–85.0	5.00	2.27	9.90	4.49
3.00–3.10	85.0–87.8	5.10	2.31	10.25	4.65
3.10–3.20	87.8–90.6	5.20	2.36	10.55	4.79
3.20–3.30	90.6–93.4	5.25	2.38	10.85	4.92
3.30–3.40	93.4–96.3	5.35	2.43	11.15	5.06
3.40–3.50	96.3–99.1	5.45	2.47	11.50	5.22
3.50–3.60	99.1–101.9	5.55	2.52	11.80	5.35
3.60–3.70	101.9–104.8	5.65	2.56	12.10	5.49
3.70–3.80	104.8–107.6	5.70	2.59	12.40	5.62
3.80–3.90	107.6–110.4	5.80	2.63	12.75	5.78
3.90–4.00	110.4–113.3	5.90	2.68	13.05	5.92
4.00–4.10	113.3–116.1	6.00	2.72	13.35	6.06
4.10–4.20	116.1–118.9	6.10	2.77	13.65	6.19
4.20–4.30	118.9–121.8	6.15	2.79	14.00	6.35
4.30–4.40	121.8–124.6	6.25	2.83	14.30	6.49
4.40–4.50	124.6–127.4	6.35	2.88	14.60	6.62
4.50–4.60	127.4–130.3	6.45	2.93	14.90	6.76
4.60–4.70	130.3–133.1	6.55	2.97	15.25	6.92
4.70–4.80	133.1–135.9	6.60	2.99	15.55	7.05
4.80–4.90	135.9–138.8	6.70	3.04	15.85	7.19
4.90–5.00	138.8–141.6	6.80	3.08	16.15	7.33
5.00–5.10	141.6–144.4	6.90	3.13	16.50	7.48
5.10–5.20	144.4–147.2	7.00	3.18	16.80	7.62
5.20–5.30	147.2–150.1	7.05	3.20	17.10	7.76
5.30–5.40	150.1–152.9	7.15	3.24	17.40	7.89
5.40–5.50	152.9–155.7	7.25	3.29	17.70	8.03
5.50–5.60	155.7–158.6	7.35	3.33	18.05	8.19
5.60–5.70	158.6–161.4	7.45	3.38	18.35	8.32
5.70–5.80	161.4–164.2	7.50	3.40	18.65	8.46
5.80–5.90	164.2–167.1	7.60	3.45	18.95	8.60
5.90–6.00	167.1–169.9	7.70	3.49	19.30	8.75
6.00–6.10	169.9–172.7	7.80	3.54	19.60	8.89
6.10–6.20	172.7–175.6	7.90	3.58	19.90	9.03
6.20–6.30	175.6–178.4	7.95	3.61	20.20	9.16
6.30–6.40	178.4–181.2	8.05	3.65	20.55	9.32
6.40–6.50	181.2–184.1	8.15	3.70	20.85	9.46
6.50–6.60	184.1–186.9	8.25	3.74	21.15	9.59
6.60–6.70	186.9–189.7	8.30	3.76	21.45	9.73
6.70–6.80	189.7–192.6	8.40	3.81	21.80	9.89
6.80–6.90	192.6–195.4	8.50	3.86	22.10	10.02
6.90–7.00	195.4–198.2	8.60	3.90	22.40	10.16
7.00–7.10	198.2–201.0	8.70	3.95	22.70	10.30
7.10–7.20	201.0–203.9	8.80	3.99	23.05	10.46
7.20–7.30	203.9–206.7	8.85	4.01	23.35	10.59
7.30–7.40	206.7–209.5	8.95	4.06	23.65	10.73
7.40–7.50	209.5–212.4	9.05	4.11	23.95	10.86
7.50–7.60	212.4–215.2	9.15	4.15	24.30	11.02
7.60–7.70	215.2–218.0	9.25	4.20	24.60	11.16
7.70–7.80	218.0–220.9	9.30	4.22	24.90	11.29
7.80–7.90	220.9–223.7	9.40	4.26	25.20	11.43
7.90–8.00	223.7–226.5	9.50	4.31	25.50	11.57

Notes:
(1) All test load weights are bone-dry weights.
(2) Allowable tolerance on the test load weights is ±0.10 lbs (0.05 kg).

Appendix J1 [Removed and Reserved]

■ 9. Remove and reserved Appendix J1 to subpart B of part 430.

■ 10. Appendix J2 to subpart B of part 430 is amended by:

■ a. Revising the introductory note and section 1;

■ b. Revising the heading for section 2;

■ c. Revising section 2.2;

■ d. Adding section 2.5.4.1 and 2.5.4.2;

■ e. Revising sections 2.5.5, 2.7 and 2.12;

■ f. Removing sections 2.7.1, 2.7.2, 2.7.3, 2.7.4, 2.7.4.1, 2.7.4.2, 2.7.4.3, 2.7.4.4, 2.7.4.5, 2.7.4.6, 2.7.4.6.1, 2.7.4.6.2, 2.7.4.7, and 2.7.5;

■ g. Removing ''energy stuffer clothes'' and adding in its place, ''energy stuffer cloths'' in section 2.8;

■ h. Removing ''Siszes'' and adding in its place, ''Sizes'' in the title of Table 2.8;

■ i. Revising section 3.2.5;

■ j. Adding sections 3.2.5.1 and 3.2.5.2;

■ k. Revising sections 3.2.6.2.2, 3.2.7 and 3.2.9;

■ l. Revising sections 3.3 and 3.6;

■ m. Removing ''section 7 of appendix J3'' and adding in its place, ''section 9 of appendix J3'', and removing ''section 6.1 of appendix J3'' and adding in its place, ''section 8.7 of appendix J3'' in sections 3.8.2.6, 3.8.3.2, and 3.8.3.4;

■ n. Removing section 4.2.12;

■ o. Redesignating section 4.2.13 as 4.2.12;

■ p. Revising Table 5.1; and

■ q. Removing section 6.

The additions and revisions read as follows:

Appendix J2 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

Note: Manufacturers must use the results of testing under Appendix J2 to determine compliance with the relevant standards for clothes washers from § 430.32(g)(4) and from § 431.156(b) as they appeared in January 1, 2021 edition of 10 CFR parts 200–499. Specifically, before [*Date 180 days following publication of the final rule*] representations must be based upon results generated either under Appendix J2 as codified on [*Date 30 days following publication of the final rule*] or under Appendix J2 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021. Any representations made on or after [*Date 180 days following publication of the final rule*] but before the compliance date of any amended standards for clothes washers must be made based upon results generated using Appendix J2 as codified on [*Date 30 days following publication of the final rule*]. Manufacturers must use the results of testing under Appendix J to determine compliance with any amended standards for clothes washers provided in 10 CFR 430.32(g) and in § 431.156 that are published after January 1, 2021. Any representations related to energy or water consumption of residential or commercial clothes washers must be made in accordance with the appropriate appendix that applies (*i.e.,* Appendix J or Appendix J2) when determining compliance with the relevant standard. Manufacturers may also use Appendix J to certify compliance with any amended standards prior to the applicable compliance date for those standards.

1. Definitions

Active mode means a mode in which the clothes washer is connected to a mains power source, has been activated, and is performing one or more of the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing, or is involved in functions necessary for these main functions, such as admitting water into the washer or pumping water out of the washer. Active mode also includes delay start and cycle finished modes.

Active washing mode means a mode in which the clothes washer is performing any of the operations included in a complete cycle intended for washing a clothing load, including the main functions of washing, soaking, tumbling, agitating, rinsing, and/or removing water from the clothing.

Adaptive water fill control system means a clothes washer automatic water fill control system that is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container.

Automatic water fill control system means a clothes washer water fill control system that does not allow or require the user to determine or select the water fill level, and includes adaptive water fill control systems and fixed water fill control systems.

Bone-dry means a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

Clothes container means the compartment within the clothes washer that holds the clothes during the operation of the machine.

Cold rinse means the coldest rinse temperature available on the machine, as indicated to the user on the clothes washer control panel.

Combined low-power mode means the aggregate of available modes other than active washing mode, including inactive mode, off mode, delay start mode, and cycle finished mode.

Cycle finished mode means an active mode that provides continuous status display, intermittent tumbling, or air circulation following operation in active washing mode.

Delay start mode means an active mode in which activation of active washing mode is facilitated by a timer.

Energy test cycle means the complete set of wash/rinse temperature selections required for testing, as determined according to section 2.12 of this appendix.

Fixed water fill control system means a clothes washer automatic water fill control system that automatically terminates the fill when the water reaches a pre-defined level that is not based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring the user to determine or select the water fill level.

IEC 62301 means the test standard published by the International Electrotechnical Commission, entitled ''Household electrical appliances—Measurement of standby power,'' Publication 62301, Edition 2.0 2011–01 (incorporated by reference; see § 430.3).

Inactive mode means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

Integrated modified energy factor means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of:

(a) The machine electrical energy consumption;

(b) The hot water energy consumption;

(c) The energy required for removal of the remaining moisture in the wash load; and

(d) The combined low-power mode energy consumption.

Integrated water factor means the quotient of the total weighted per-cycle water consumption for all wash cycles in gallons divided by the cubic foot (or liter) capacity of the clothes washer.

Load usage factor means the percentage of the total number of wash loads that a user would wash a particular size (weight) load.

Lot means a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process.

Manual water fill control system means a clothes washer water fill control system that requires the user to determine or select the water fill level.

Modified energy factor means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of the remaining moisture in the wash load.

Non-water-heating clothes washer means a clothes washer that does not have an internal water heating device to generate hot water.

Normal cycle means the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing. For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF value.

Off mode means a mode in which the clothes washer is connected to a mains

power source and is not providing any active or standby mode function, and where the mode may persist for an indefinite time.

Standby mode means any mode in which the clothes washer is connected to a mains power source and offers one or more of the following user oriented or protective functions that may persist for an indefinite time:

(a) Facilitating the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

(c) A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

Temperature use factor means, for a particular wash/rinse temperature setting, the percentage of the total number of wash loads that an average user would wash with that setting.

User-adjustable automatic water fill control system means an automatic clothes washer fill control system that allows the user to adjust the amount of water that the machine provides, which is based on the size or weight of the clothes load placed in the clothes container.

Wash time means the wash portion of the cycle, which begins when the cycle is initiated and includes the agitation or tumble time, which may be periodic or continuous during the wash portion of the cycle.

Water factor means the quotient of the total weighted per-cycle water consumption for cold wash divided by the cubic foot (or liter) capacity of the clothes washer.

Water-heating clothes washer means a clothes washer where some or all of the hot water for clothes washing is generated by a water heating device internal to the clothes washer.

2. Testing Conditions and Instrumentation

* * * * *

2.2 *Supply water.* Maintain the temperature of the hot water supply at the water inlets between 130 °F (54.4 °C) and 135 °F (57.2 °C). Maintain the temperature of the cold water supply at the water inlets between 55 °F (12.8 °C) and 60 °F (15.6 °C).

* * * * *

2.5.4 * * *

2.5.4.1 Non-reversible temperature indicator labels, adhered to the inside of the clothes container, may be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle, under the following conditions. The label must remain waterproof, intact, and adhered to the wash drum throughout an entire wash cycle; provide consistent maximum temperature readings; and provide repeatable temperature indications sufficient to demonstrate that a wash temperature of greater than 135 °F has been achieved. The label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F if the label provides a temperature indicator at 135 °F. If the label does not provide a temperature indicator at 135 °F, the label must have been verified to consistently indicate temperature measurements with an accuracy of ±1 °F if the next-highest temperature indicator is greater than 135 °F and less than 140 °F, or ±3 °F if the next-highest temperature indicator is 140 °F or greater. If the label does not provide a temperature indicator at 135 °F, failure to activate the next-highest temperature indicator does not necessarily indicate the lack of an extra-hot wash temperature. However, such a result would not be conclusive due to the lack of verification of the water temperature requirement, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle. If using a temperature indicator label to test a front-loading clothes washer, adhere the label along the interior surface of the clothes container drum, midway between the front and the back of the drum, adjacent to one of the baffles. If using a temperature indicator label to test a top-loading clothes washer, adhere the label along the interior surface of the clothes container drum, on the vertical portion of the sidewall, as close to the bottom of the container as possible.

2.5.4.2 Submersible temperature loggers placed inside the wash drum may be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle, under the following conditions. The submersible temperature logger must have a time resolution of at least 1 data point every 5 seconds and a temperature measurement accuracy of ±1 °F. Due to the potential for a waterproof capsule to provide a thermal insulating effect, failure to measure a temperature of 135 °F does not necessarily indicate the lack of an extra-hot wash temperature. However, such a result would not be conclusive due to the lack of verification of the water temperature requirement, in which case an alternative method must be used to confirm that an extra-hot wash temperature greater than 135 °F has been achieved during the wash cycle.

2.5.5 *Water meter.* A water meter must be installed in both the hot and cold water lines to measure water flow and/or water consumption. The water meters must have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for the water flow rates being measured. If the volume of hot water for any individual cycle within the energy test cycle is less than 0.1 gallons (0.4 liters), the hot water meter must have a resolution no larger than 0.01 gallons (0.04 liters).

* * * * *

2.7 *Test cloths.* The test cloth material and dimensions must conform to the specifications in appendix J3 to this subpart. The energy test cloth and the energy stuffer cloths must be clean and must not be used for more than 60 test runs (after preconditioning as specified in section 5 of appendix J3 to this subpart). All energy test cloth must be permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer. The moisture absorption and retention must be evaluated for each new lot of test cloth using the standard extractor Remaining Moisture Content (RMC) procedure specified in appendix J3 to this subpart.

* * * * *

2.12 *Determining the energy test cycle.* To determine the energy test cycle, evaluate the wash/rinse temperature selection flowcharts in the order in which they are presented in this section. Except for Cold Wash/Cold Rinse, use the maximum load size to evaluate each flowchart. The determination of the energy test cycle must take into consideration all cycle settings available to the end user, including any cycle selections or cycle modifications provided by the manufacturer via software or firmware updates to the product, for the basic model under test. The energy test cycle does not include any cycle that is recommended by the manufacturer exclusively for cleaning, deodorizing, or sanitizing the clothes washer.

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Figure 2.12.1—Determination of Cold Wash/Cold Rinse

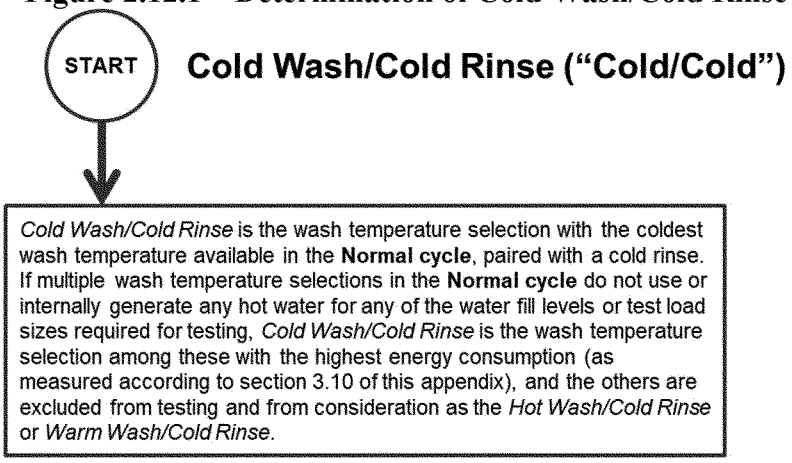


Figure 2.12.2—Determination of Hot Wash/Cold Rinse

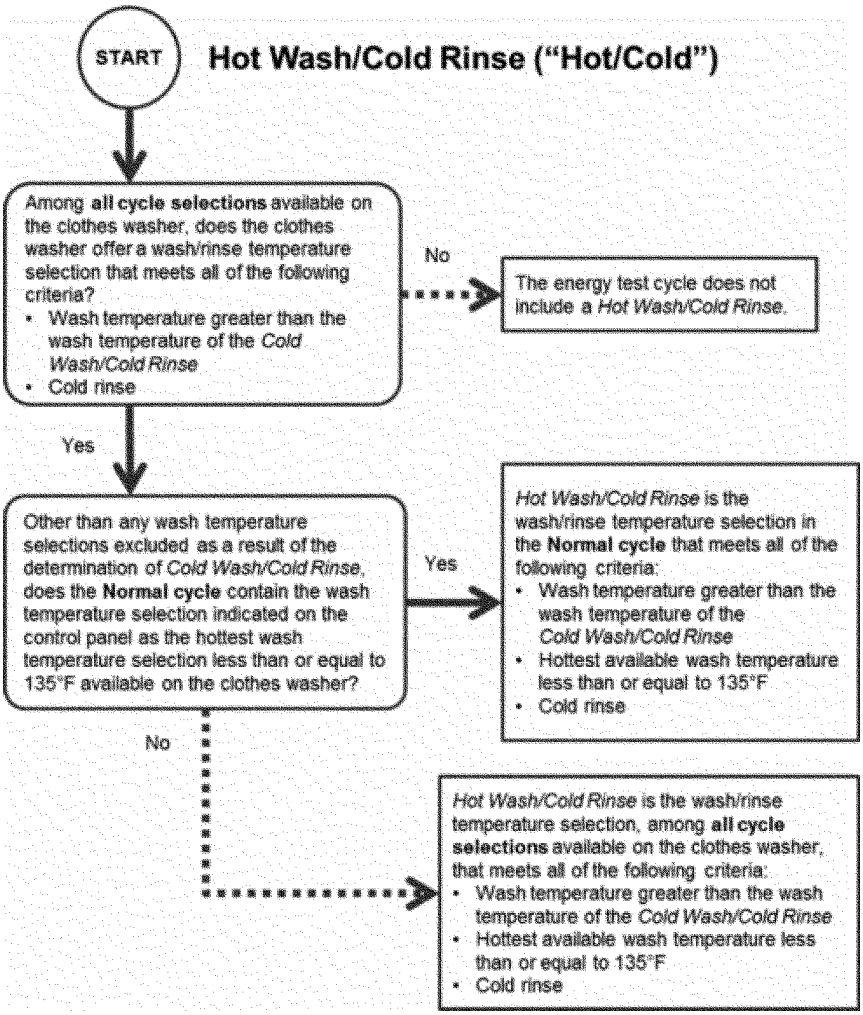


Figure 2.12.3—Determination of Warm Wash/Cold Rinse

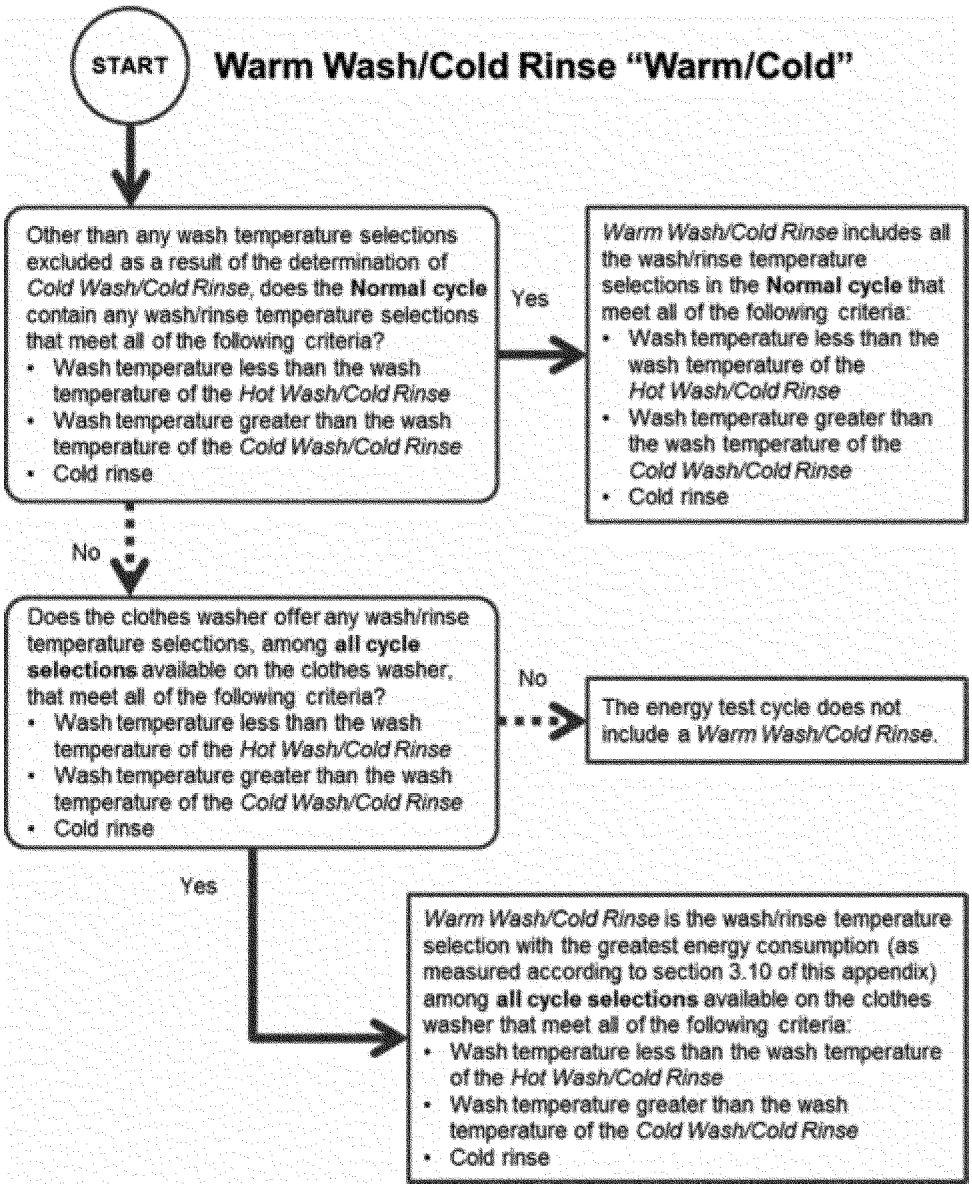


Figure 2.12.4—Determination of Warm Wash/Warm Rinse

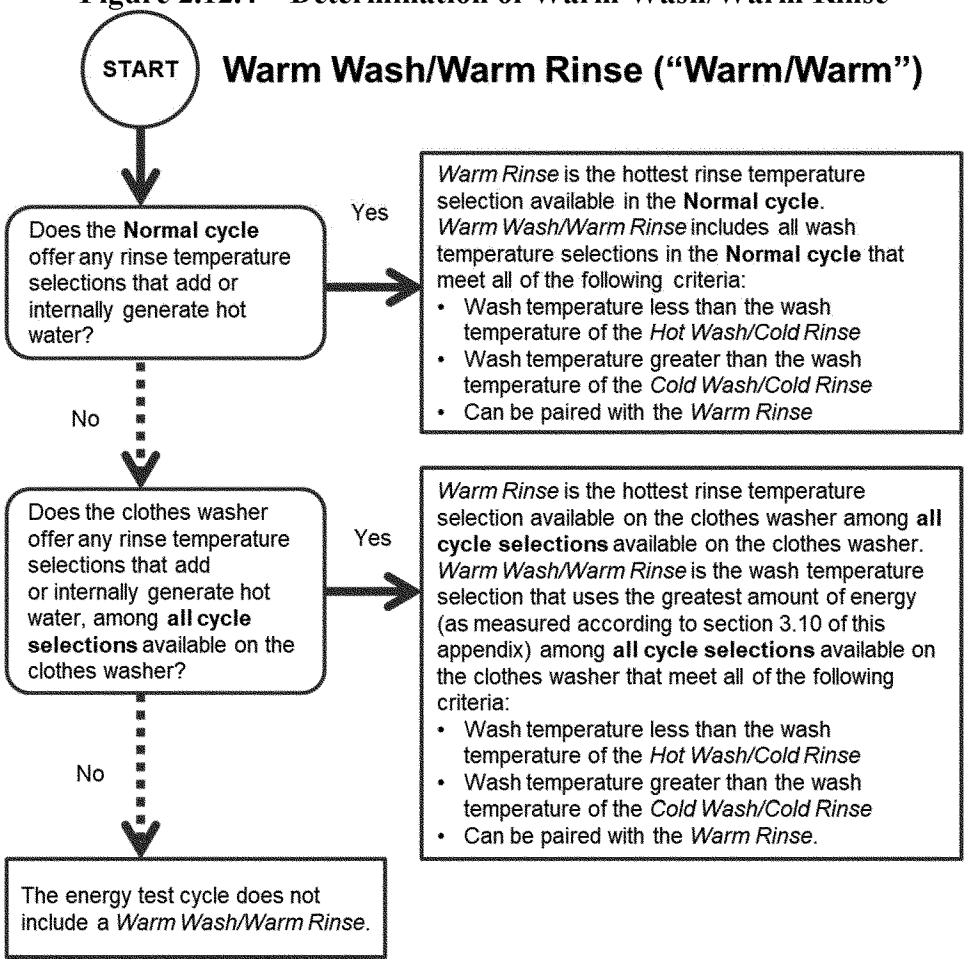
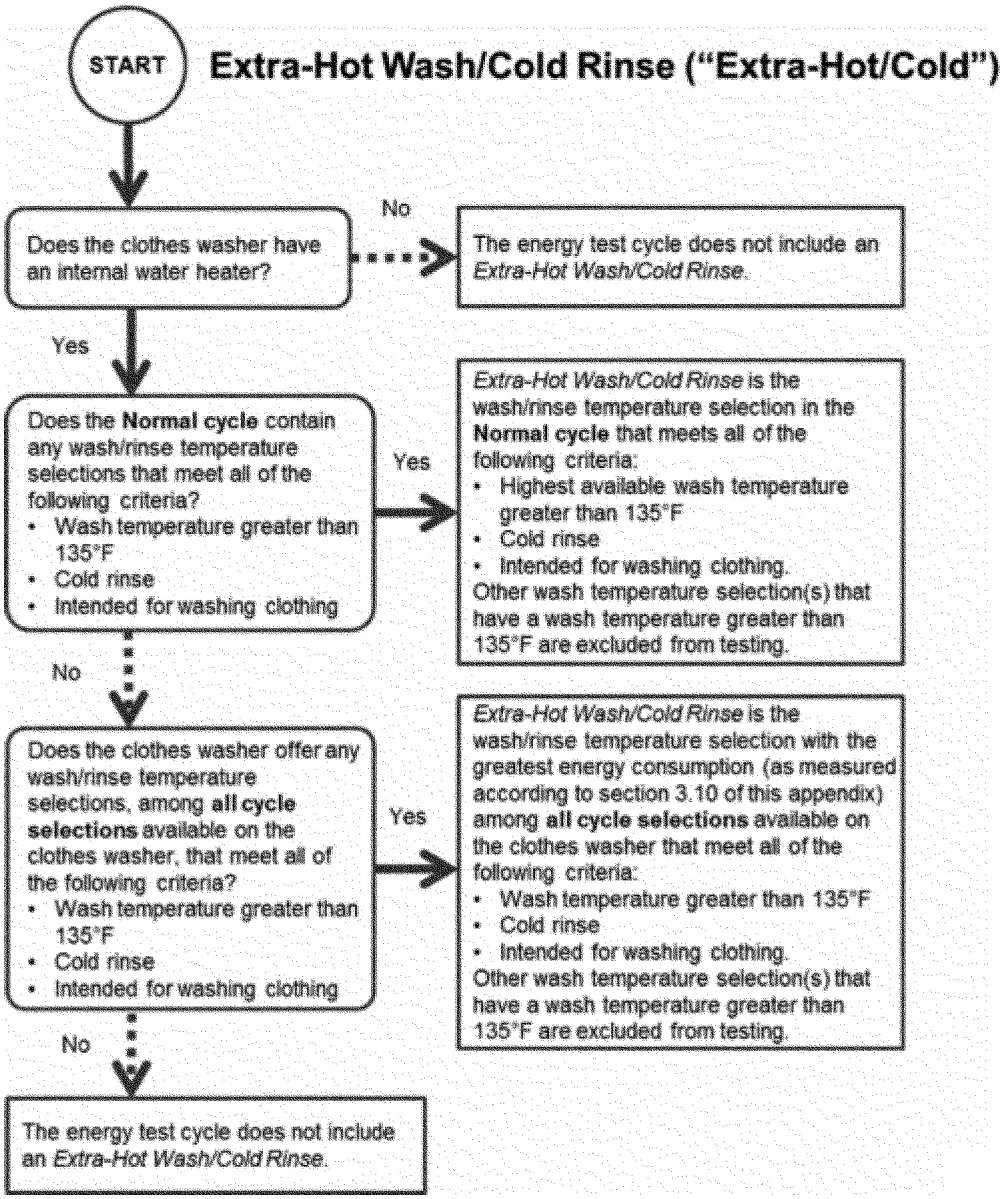


Figure 2.12.5—Determination of Extra-Hot Wash/Cold Rinse



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3. Test Measurements

* * * * *

3.2.5 *Wash time setting.*

3.2.5.1 If the cycle under test offers a range of wash time settings, the wash time setting shall be the higher of either the minimum or 70 percent of the maximum wash time available for the wash cycle under test, regardless of the labeling of suggested dial locations. If 70 percent of the maximum wash time is not available on a dial with a discrete number of wash time settings, choose the next-highest setting greater than 70 percent.

3.2.5.2 If the clothes washer is equipped with an electromechanical dial or timer controlling wash time that rotates in both directions, reset the dial to the minimum wash time and then turn it in the direction of increasing wash time to reach the appropriate setting. If the appropriate setting is passed, return the dial to the minimum wash time and then turn in the direction of increasing wash time until the appropriate setting is reached.

* * * * *

3.2.6 * * *

* * * * *

3.2.6.2.2 *User-adjustable.* Conduct four tests on clothes washers with user-adjustable automatic water fill controls. Conduct the first test using the maximum test load and with the automatic water fill control system set in the setting that uses the most water. Conduct the second test using the minimum test load and with the automatic water fill control system set in the setting that uses the least water. Conduct the third test using the average test load and with the automatic water fill control system set in the setting that uses the most water. Conduct the fourth test using the average test load and with the automatic water fill control system set in the setting that uses the least water. Average the results of the third and fourth tests to obtain the energy and water consumption values for the average test load size.

* * * * *

3.2.7 *Manufacturer default settings.* For clothes washers with electronic control systems, use the manufacturer default settings for any cycle selections, except for (1) the temperature selection, (2) the wash water fill levels, (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content, or (4) network settings. If the clothes washer has network capabilities, the network settings must be disabled throughout testing if such settings can be disabled by the end-user and the product's user manual provides instructions on how to do so. For all other cycle selections, the manufacturer default settings must be used for wash conditions such as agitation/tumble operation, soil level, spin

speed on wash cycles used to determine energy and water consumption, wash times, rinse times, optional rinse settings, water heating time for water heating clothes washers, and all other wash parameters or optional features applicable to that wash cycle. Any optional wash cycle feature or setting (other than wash/rinse temperature, water fill level selection, spin speed on wash cycles used to determine remaining moisture content, or network settings on clothes washers with network capabilities) that is activated by default on the wash cycle under test must be included for testing unless the manufacturer instructions recommend not selecting this option, or recommend selecting a different option, for washing normally soiled cotton clothing. For clothes washers with control panels containing mechanical switches or dials, any optional settings, except for (1) the temperature selection, (2) the wash water fill levels, or (3) if necessary, the spin speeds on wash cycles used to determine remaining moisture content, must be in the position recommended by the manufacturer for washing normally soiled cotton clothing. If the manufacturer instructions do not recommend a particular switch or dial position to be used for washing normally soiled cotton clothing, the setting switch or dial must remain in its as-shipped position.

* * * * *

3.2.9 *Anomalous Test Cycles.*

If during a wash cycle the clothes washer: (a) Signals to the user by means of a visual or audio alert that an out-of-balance condition has been detected; or (b) terminates prematurely and thus does not include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to the wash cycle under test, discard the test data and repeat the wash cycle. Document in the test report the rejection of data from any wash cycle during testing and the reason for the rejection.

3.3 *Extra-Hot Wash/Cold Rinse.* Measure the water and electrical energy consumption for each water fill level and test load size as specified in sections 3.3.1 through 3.3.3 of this appendix for the Extra-Hot Wash/Cold Rinse as defined within the energy test cycle.

* * * * *

3.6 *Warm Wash/Warm Rinse.* Measure the water and electrical energy consumption for each water fill level and/or test load size as specified in sections 3.6.1 through 3.6.3 of this appendix for the applicable Warm Wash/Warm Rinse temperature selection(s), as defined within the energy test cycle. For a clothes washer with fewer than four discrete Warm Wash/Warm Rinse temperature selections, test all Warm Wash/Warm Rinse selections. For a clothes washer that offers four or more Warm Wash/Warm Rinse selections, test at all discrete selections, or test at 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤135 °F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75 percent position, in place of each such unavailable selection use the next warmer setting. For each reportable value to be used for the Warm Wash/Warm Rinse temperature selection, calculate the average of all Warm Wash/Warm Rinse temperature selections tested pursuant to this section.

* * * * *

5. Test Loads

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥<	≥<						
0.00–0.80	0.00–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.85	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.05	5.00

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft.	liter	lb	kg	lb	kg	lb	kg
≥<	≥<						
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.25	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.45	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.85	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.05	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.25	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.45	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.65	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21
6.00–6.10	169.9–172.7	3.00	1.36	24.80	11.25	13.90	6.30
6.10–6.20	172.7–175.6	3.00	1.36	25.20	11.43	14.10	6.40
6.20–6.30	175.6–178.4	3.00	1.36	25.60	11.61	14.30	6.49
6.30–6.40	178.4–181.2	3.00	1.36	26.00	11.79	14.50	6.58
6.40–6.50	181.2–184.1	3.00	1.36	26.40	11.97	14.70	6.67
6.50–6.60	184.1–186.9	3.00	1.36	26.90	12.20	14.95	6.78
6.60–6.70	186.9–189.7	3.00	1.36	27.30	12.38	15.15	6.87
6.70–6.80	189.7–192.6	3.00	1.36	27.70	12.56	15.35	6.96
6.80–6.90	192.6–195.4	3.00	1.36	28.10	12.75	15.55	7.05
6.90–7.00	195.4–198.2	3.00	1.36	28.50	12.93	15.75	7.14
7.00–7.10	198.2–201.0	3.00	1.36	28.90	13.11	15.95	7.23
7.10–7.20	201.0–203.9	3.00	1.36	29.30	13.29	16.15	7.33
7.20–7.30	203.9–206.7	3.00	1.36	29.70	13.47	16.35	7.42
7.30–7.40	206.7–209.5	3.00	1.36	30.10	13.65	16.55	7.51
7.40–7.50	209.5–212.4	3.00	1.36	30.50	13.83	16.75	7.60
7.50–7.60	212.4–215.2	3.00	1.36	31.00	14.06	17.00	7.71
7.60–7.70	215.2–218.0	3.00	1.36	31.40	14.24	17.20	7.80
7.70–7.80	218.0–220.9	3.00	1.36	31.80	14.42	17.40	7.89
7.80–7.90	220.9–223.7	3.00	1.36	32.20	14.61	17.60	7.98
7.90–8.00	223.7–226.5	3.00	1.36	32.60	14.79	17.80	8.07

■ 11. Appendix J3 to subpart B of part 430 is revised to read as follows:

Appendix J3 to Subpart B of Part 430—Energy Test Cloth Specifications and Procedures for Determining Correction Coefficients of New Energy Test Cloth Lots

Note: DOE maintains an historical record of the standard extractor test data and final correction curve coefficients for each approved lot of energy test cloth. These can be accessed through DOE's web page for standards and test procedures for residential clothes washers at DOE's Building Technologies Office Appliance and Equipment Standards website.

1. Objective

This appendix includes the following: (1) Specifications for the energy test cloth to be used for testing clothes washers; (2) procedures for verifying that new lots of energy test cloth meet the defined material specifications; and (3) procedures for developing a set of correction coefficients that correlate the measured remaining moisture content (RMC) values of each new test cloth lot with a set of standard RMC values established as an historical reference point. These correction coefficients are applied to the RMC measurements performed during testing according to appendix J or appendix J2 to this subpart, ensuring that the final corrected RMC measurement for a clothes washer remains independent of the test cloth lot used for testing.

2. Definitions

AHAM means the Association of Home Appliance Manufacturers.

Bone-dry means a condition of a load of test cloth that has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

Lot means a quantity of cloth that has been manufactured with the same batches of cotton and polyester during one continuous process.

Roll means a subset of a lot.

3. Energy Test Cloth Specifications

The energy test cloths and energy stuffer cloths must meet the following specifications:

3.1 The test cloth material should come from a roll of material with a width of approximately 63 inches and approximately 500 yards per roll. However, other sizes may be used if the test cloth material meets the specifications listed in sections 3.2 through 3.6 of this appendix.

3.2 *Nominal fabric type.* Pure finished bleached cloth made with a momie or granite weave, which is nominally 50 percent cotton and 50 percent polyester.

3.3 *Fabric weight.* 5.60 ± 0.25 ounces per square yard (190.0 ± 8.4 g/m^2).

3.4 *Thread count.* 65 × 57 per inch (warp × fill), ±2 percent.

3.5 *Fiber content of warp and filling yarn.* 50 percent ± 4 percent cotton, with the balance being polyester, open end spun, 15/1 ± 5 percent cotton count blended yarn.

3.6 Water repellent finishes, such as fluoropolymer stain resistant finishes, must not be applied to the test cloth.

3.7. *Test cloth dimensions.*

3.7.1 *Energy test cloth.* The energy test cloth must be made from energy test cloth material, as specified in section 3.1 of this appendix, that is 24 ± ½ inches by 36 ± ½ inches (61.0 ± 1.3 cm by 91.4 ± 1.3 cm) and has been hemmed to 22 ± ½ inches by 34 ± ½ inches (55.9 ± 1.3 cm by 86.4 ± 1.3 cm) before washing.

3.7.2 *Energy stuffer cloth.* The energy stuffer cloth must be made from energy test cloth material, as specified in section 3.1 of this appendix, that is 12 ± ¼ inches by 12 ± ¼ inches (30.5 ± 0.6 cm by 30.5 ± 0.6 cm) and has been hemmed to 10 ± ¼ inches by 10 ± ¼ inches (25.4 ± 0.6 cm by 25.4 ± 0.6 cm) before washing.

3.8 The test cloth must be clean and must not be used for more than 60 test runs (after pre-conditioning as specified in section 5 of this appendix). All test cloth must be permanently marked identifying the lot number of the material. Mixed lots of material must not be used for testing a clothes washer according to appendix J or appendix J2 to this subpart.

4. Equipment Specifications

4.1 *Extractor.* Use a North Star Engineered Products Inc. (formerly Bock) Model 215 extractor (having a basket diameter of 20 inches, height of 11.5 inches, and volume of 2.09 ft^3), with a variable speed drive (North Star Engineered Products, P.O. Box 5127, Toledo, OH 43611) or an equivalent extractor with same basket design (*i.e.,* diameter, height, volume, and hole configuration) and variable speed drive. Table 4.1 of this appendix shows the extractor spin speed, in revolutions per minute (RPM), that must be used to attain each required g-force level.

TABLE 4.1—EXTRACTOR SPIN SPEEDS FOR EACH TEST CONDITION

"g Force"	RPM
100	594 ± 1
200	840 ± 1
350	1,111 ± 1
500	1,328 ± 1
650	1,514 ± 1

4.2 *Bone-dryer.* The dryer used for drying the cloth to bone-dry must heat the test cloth and energy stuffer cloths above 210 °F (99 °C).

5. Test Cloth Pre-Conditioning Instructions

Use the following instructions for performing pre-conditioning of new energy test cloths and energy stuffer cloths as specified throughout section 7 and section 8 of this appendix, and before any clothes washer testing using appendix J or appendix J2 to this subpart:

Perform five complete wash-rinse-spin cycles, the first two with current AHAM Standard detergent Formula 3 and the last three without detergent. Place the test cloth in a clothes washer set at the maximum water level. Wash the load for ten minutes in soft water (17 ppm hardness or less) using 27.0 grams + 4.0 grams per pound of cloth load of AHAM Standard detergent Formula 3. The wash temperature is to be controlled to 135 °F ± 5 °F (57.2 °C ± 2.8 °C) and the rinse temperature is to be controlled to 60 °F ± 5 °F (15.6 °C ± 2.8 °C). Dry the load to bone-dry between each of the five wash-rinse-spin cycles. The maximum shrinkage after preconditioning must not be more than 5 percent of the length and width. Measure per AATCC Test Method 135–2010 (incorporated by reference; see § 430.3).

6. Extractor Run Instructions

Use the following instructions for performing each of the extractor runs specified throughout section 7 and section 8 of this appendix:

6.1 *Test load size.* Use a test load size of 8.4 lbs.

6.2 Measure the average RMC for each sample loads as follows:

6.2.1 Dry the test cloth until it is bone-dry according to the definition in section 2 of this appendix. Record the bone-dry weight of the test load (WI).

6.2.2 Prepare the test load for soak by grouping four test cloths into loose bundles. Create the bundles by hanging four cloths vertically from one corner and loosely wrapping the test cloth onto itself to form the bundle. Bundles should be wrapped loosely to ensure consistency of water extraction. Then place the bundles into the water to soak. Eight to nine bundles will be formed depending on the test load. The ninth bundle may not equal four cloths but can incorporate energy stuffer cloths to help offset the size difference.

6.2.3 Soak the test load for 20 minutes in 10 gallons of soft (<17 ppm) water. The entire test load must be submerged. Maintain a water temperature of 100 °F ± 5 °F (37.8 °C ± 2.8 °C) at all times between the start and end of the soak.

6.2.4 Remove the test load and allow each of the test cloth bundles to drain over the water bath for a maximum of 5 seconds.

6.2.5 Manually place the test cloth bundles in the basket of the extractor, distributing them evenly by eye. The draining and loading process must take no longer than 1 minute. Spin the load at a fixed speed corresponding to the intended centripetal acceleration level (measured in units of the acceleration of gravity, g) ± 1g for the intended time period ± 5 seconds. Begin the timer when the extractor meets the required spin speed for each test.

6.2.6 Record the weight of the test load immediately after the completion of the extractor spin cycle (WC).

6.2.7 Calculate the remaining moisture content of the test load as (WC − WI)/WI.

6.2.8 Draining the soak tub is not necessary if the water bath is corrected for water level and temperature before the next extraction.

6.2.9 Drying the test load in between extraction runs is not necessary. However, the bone-dry weight must be checked after every 12 extraction runs to make sure the bone-dry weight is within tolerance (8.4 ± 0.1 lbs). Following this, the test load must be soaked and extracted once before continuing with the remaining extraction runs. Perform this extraction at the same spin speed used for the extraction run prior to checking the bone-dry weight, for a time period of 4 minutes. Either warm or cold soak temperature may be used.

7. Test Cloth Material Verification Procedure

7.1 *Material Properties Verification.* The test cloth manufacturer must supply a certificate of conformance to ensure that the energy test cloth and stuffer cloth samples used for prequalification testing meet the specifications in section 3 of this appendix. The material properties of one energy test cloth from each of the first, middle, and last rolls must be evaluated as follows, prior to pre-conditioning:

7.1.1 *Dimensions.* Each hemmed energy test cloth must meet the size specifications in section 3.7.1 of this appendix. Each hemmed stuffer cloth must meet the size specifications in section 3.7.2 of this appendix.

7.1.2 *Oil repellency.* Perform AATCC Test Method 118–2007, Oil Repellency: Hydrocarbon Resistance Test, (incorporated by reference, see § 430.3), to confirm the absence of Scotchguard™ or other water-repellent finish. An Oil Repellency Grade of 0 (Fails Kaydol) is required.

7.1.3 *Absorbency.* Perform AATCC Test Method 79–2010, Absorbency of Textiles, (incorporated by reference, see § 430.3), to confirm the absence of Scotchguard™ or other water-repellent finish. The time to absorb one drop must be on the order of 1 second.

7.2 *Uniformity Verification.* The uniformity of each test cloth lot must be evaluated as follows.

7.2.1 *Pre-conditioning.* Pre-condition the energy test cloths and energy stuffer cloths used for uniformity verification, as specified in section 5 of this appendix.

7.2.2 *Distribution of samples.* Test loads must be comprised of cloth from three different rolls from the sample lot. Each roll from a lot must be marked in the run order that it was made. The three rolls are selected based on the run order such that the first, middle, and last rolls are used. As the rolls are cut into cloth, fabric must be selected from the beginning, middle, and end of the roll to create separate loads from each location, for a total of nine sample loads according to Table 7.2.2.

TABLE 7.2.2—DISTRIBUTION OF SAMPLE LOADS FOR PREQUALIFICATION TESTING

Roll No.	Roll location
First	Beginning. Middle. End.
Middle	Beginning. Middle. End.
Last	Beginning. Middle. End.

7.2.3 Measure the remaining moisture content of each of the nine sample test loads, as specified in section 6 of this appendix, using a centripetal acceleration of 350g (corresponding to 1111 ± 1 RPM) and a spin duration of 15 minutes ± 5 seconds.

7.2.4 Repeat section 7.2.3 of this appendix an additional two times and calculate the arithmetic average of the three RMC values to determine the average RMC value for each sample load. It is not necessary to dry the load to bone-dry the load before the second and third replications.

7.2.5 Calculate the coefficient of variation (CV) of the nine average RMC values from each sample load. The CV must be less than or equal to 1 percent for the test cloth lot to be considered acceptable and to perform the standard extractor RMC testing.

8. RMC Correction Curve Procedure

8.1 *Pre-conditioning.* Pre-condition the energy test cloths and energy stuffer cloths

used for RMC correction curve measurements, as specified in section 5 of this appendix.

8.2 *Distribution of samples.* Test loads must be comprised of randomly selected cloth at the beginning, middle and end of a lot. Two test loads may be used, with each load used for half of the total number of required tests. Separate test loads must be used from the loads used for uniformity verification.

8.3 Measure the remaining moisture content of the test load, as specified in section 6 of this appendix at five g-force levels: 100 g, 200 g, 350 g, 500 g, and 650 g, using two different spin times at each g level: 4 minutes and 15 minutes. Table 4.1 of this appendix provides the corresponding spin speeds for each g-force level.

8.4 Repeat section 8.3 of this appendix using soft (<17 ppm) water at 60 °F ± 5 °F (15.6 °C ± 2.8 °C).

8.5 Repeat sections 8.3.3 and 8.3.4 of this appendix an additional two times, so that three replications at each extractor condition are performed. When this procedure is performed in its entirety, a total of 60 extractor RMC test runs are required.

8.6 Average the values of the 3 replications performed for each extractor condition specified in section 8.3 of this appendix.

8.7 Perform a linear least-squares fit to determine coefficients A and B such that the standard RMC values shown in Table 8.7 of this appendix ($RMC_{standard}$) are linearly related to the average RMC values calculated in section 8.6 of this appendix (RMC_{cloth}):

$$RMC_{standard} \sim A \times RMC_{cloth} + B$$

where A and B are coefficients of the linear least-squares fit.

TABLE 8.7—STANDARD RMC VALUES ($RMC_{standard}$)

"g Force"	RMC percentage			
	Warm soak		Cold soak	
	15 min. spin (percent)	4 min. spin (percent)	15 min. spin (percent)	4 min. spin (percent)
100	45.9	49.9	49.7	52.8
200	35.7	40.4	37.9	43.1
350	29.6	33.1	30.7	35.8
500	24.2	28.7	25.5	30.0
650	23.0	26.4	24.1	28.0

8.8 Perform an analysis of variance with replication test using two factors, spin speed and lot, to check the interaction of speed and lot. Use the values from section 8.6 of this appendix and Table 8.7 of this appendix in the calculation. The "P" value of the F-statistic for interaction between spin speed and lot in the variance analysis must be greater than or equal to 0.1. If the "P" value is less than 0.1, the test cloth is unacceptable. "P" is a theoretically based measure of interaction based on an analysis of variance.

9. Application of the RMC Correction Curve

9.1 Using the coefficients A and B calculated in section 8.7 of this appendix:

$$RMC_{corr} = A \times RMC + B$$

9.2 Apply this RMC correction curve to measured RMC values in appendix J and appendix J2 to this subpart.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 12. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 13. Section 431.152 is revised to read as follows:

§ 431.152 Definitions concerning commercial clothes washers.

AEER means active-mode energy efficiency ratio, in pounds per kilowatt-hour per cycle (lbs/kWh/cycle), as determined in section 4.8 of appendix J to subpart B of part 430 of this chapter (when using appendix J).

Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer, having the same primary energy source, and which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency.

Commercial clothes washer means a soft-mounted front-loading or soft-mounted top-loading clothes washer that—

(1) Has a clothes container compartment that—

(i) For horizontal-axis clothes washers, is not more than 3.5 cubic feet; and

(ii) For vertical-axis clothes washers, is not more than 4.0 cubic feet; and

(2) Is designed for use in—

(i) Applications in which the occupants of more than one household will be using the clothes washer, such as multi-family housing common areas and coin laundries; or

(ii) Other commercial applications.

IWF means integrated water factor, in gallons per cubic feet per cycle (gal/cu ft/cycle), as determined in section 4.2.12 of appendix J2 to subpart B of part 430 of this chapter (when using appendix J2).

MEF_{J2} means modified energy factor, in cu ft/kWh/cycle, as determined in section 4.5 of appendix J2 to subpart B of part 430 (when using appendix J2).

WER means water efficiency ratio, in pounds per gallon per cycle (lbs/gal/cycle), as determined in section 4.7 of appendix J to subpart B of part 430 of this chapter (when using appendix J).

■ 14. Section 431.154 is revised to read as follows:

§ 431.154 Test procedures.

The test procedures for clothes washers in appendix J2 to subpart B of part 430 of this chapter must be used to determine compliance with the energy conservation standards at § 431.156(b).

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