AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 87 Tuesday

No. 210 November 1, 2022

Pages 65649–66074

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 87 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register

Vol. 87, No. 210

Tuesday, November 1, 2022

Agency for Healthcare Research and Quality
NOTICES
Patient Safety Organizations:
Voluntary Relinquishment for the SimCore Patient Safety Organization, LLC, 65773

Agricultural Marketing Service
PROPOSED RULES
Adjustments to Mango Board Representation, 65683–65687

Agriculture Department
See Agricultural Marketing Service
See Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65732–65737, 65739
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Improving Customer Experience, 65738–65739

Bureau of Consumer Financial Protection
RULES
Debt Collection Practices (Regulation F):
Corrections, 65668–65670

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Field Tests and Evaluations, 65742–65743

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare and Medicaid Programs:
Policy and Technical Changes to the Medicare Advantage Program, etc., 65723–65724
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Medicaid and Children's Health Insurance Program, 65773–65774

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Operation Allies Welcome Survey of Resettled Afghans, 65774–65775
The Role of Licensing in Early Care and Education, 65775

Civil Rights Commission
NOTICES
Meetings:
District of Columbia Advisory Committee, 65741
Puerto Rico Advisory Committee, 65741–65742
South Dakota Advisory Committee, 65742

Commerce Department
See Census Bureau
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application Package for AmeriCorps All-Partner Training and Technical Assistance Survey, 65753–65754

Defense Department
NOTICES
Charter Amendments, Establishments, Renewals and Terminations:
United States Military Academy Board of Visitors, United States Naval Academy Board of Visitors, and Board of Visitors of the United States Air Force Academy, 65754–65755

Education Department
RULES
Institutional Eligibility under the Higher Education Act:
Student Assistance General Provisions; Federal Perkins Loan Program; Federal Family Education Loan Program; and William D. Ford Federal Direct Loan Program, 65904–66073
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Debt Collection Improvement Act Aging and Compliance Data Requirements for Guaranty Agencies, 65755

Energy Department
See Federal Energy Regulatory Commission
RULES
Energy Conservation Program:
Energy Conservation Standards for Direct Expansion-Dedicated Outdoor Air Systems, 65651–65668
Test Procedure for Automatic Commercial Ice Makers, 65856–65902
PROPOSED RULES
Energy Conservation Program:
Energy Conservation Standards for Consumer Furnace Fans, 65687–65694

Environmental Protection Agency
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
New York; Gasoline Dispensing Stage I, Stage II, and Transport Vehicles, 65714–65719
Finding of Failure to Attain and Reclassification as Serious Nonattainment for the 2012 Annual Fine Particulate Standard:
Plumas County, CA, 65719–65723

Federal Aviation Administration
RULES
Airspace Designations and Reporting Points:
Bloomfield, IA, 65673–65674
Duluth, MN, 65674–65675
Fort Yukon, AK, 65679–65680
Multiple Indiana Towns, 65677–65679
Vicinity of Clear, AK, 65675–65677
Yakutat, AK, 65680–65681

Airworthiness Directives:
Hoffmann GmbH and Co. KG Propellers, 65670–65673
PROPOSED RULES
Airworthiness Directives:
General Electric Company Turboprop Engines, 65694–65700
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Air Carrier Contract Maintenance Requirements, 65843–65844
Notice of Landing Area Proposal, 65844
Quality System Audit Customer Feedback Report, 65845
Suspected Unapproved Parts Report, 65845–65846

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 65766

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65758–65759, 65763–65765
Application:
Tres Palacios Gas Storage, LLC, 65756–65758
Authorization for Continued Project Operation:
Moon Lake Electric Association, Inc., 65766
Combined Filings, 65762–65763, 65765–65766
Environmental Impact Statements; Availability, etc.:
Columbia Gas Transmission, LLC, Transcontinental Gas Pipe Line Co., LLC; Virginia Reliability Project and Commonwealth Energy Connector Project, 65759–65762
Records Governing Off-the-Record Communications, 65755–65756

Federal Highway Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65846–65847

Federal Motor Carrier Safety Administration
NOTICES
Exemption Application:
Qualification of Drivers; Epilepsy and Seizure Disorders, 65847–65849
Qualification of Drivers; Hearing, 65849–65851

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 65766–65767

Federal Trade Commission
NOTICES
Proposed Consent Order:
Drizly, LLC; Analysis, 65767–65771

Fish and Wildlife Service
NOTICES
Meetings:
Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 65815–65817

Food and Drug Administration
RULES
Guidance:
Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products, 65681–65682
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Biologics License Applications Procedures and Requirements, 65776–65779
Special Protocol Assessment; Guidance for Industry, 65779–65781
Guidance:
Measuring Growth and Evaluating Pubertal Development in Pediatric Clinical Trials, 65781–65782

Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Supplemental Nutrition Assistance Program's Quality Control Review Schedule, 65739–65741

General Services Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Four Buildings at 202, 208–212, 214 and 220 South State Street, Chicago, IL, 65771–65773

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Broad Agency Announcement for Water Monitoring Technologies, 65817–65818

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
National Committee on Vital and Health Statistics, 65782–65784

Homeland Security Department
See U.S. Customs and Border Protection
NOTICES
Senior Executive Service Performance Review Board, 65792–65794

Housing and Urban Development Department
NOTICES
Annual Factors for Determining Administrative Fees for the Section 8 Housing Choice Voucher, Mainstream, and Moderate Rehabilitation Programs for Calendar Year 2021:
Correction, 65794–65815

Industry and Security Bureau
NOTICES
Meetings:
Emerging Technology Technical Advisory Committee, 65743–65744

Transportation and Related Equipment Technical Advisory Committee, 65743

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Advance Notification of Sunset Review, 65748
Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 65744–65746
Initiation of Five-Year Sunset Reviews, 65746–65747
Opportunity to Request Administrative Review and Join Annual Inquiry Service List, 65750–65753
Phosphor Copper from the Republic of Korea, 65747–65748
Welded Carbon Steel Standard Pipes and Tubes from India, 65749–65750

International Trade Commission
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
High Pressure Steel Cylinders from China, 65825–65827
Pure Magnesium from China, 65822–65823
Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines, 65819–65822
Complaint, 65824–65825
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Video Security Equipment and Systems, Related Software, Components Thereof, and Products Containing Same, 65827–65828

Labor Department
See Occupational Safety and Health Administration

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 65784–65787
National Institute of Environmental Health Sciences, 65785
Requests for Nominations:
Interagency Pain Research Coordinating Committee, 65785–65786

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fisheries of the Exclusive Economic Zone off Alaska:
Revisions to the Economic Data Reports Requirements; Amendment 52 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands, 65724–65731

National Science Foundation
NOTICES
Meetings:
National Artificial Intelligence Research Resource Task Force, 65829

National Transportation Safety Board
NOTICES
Performance Review Board Membership, 65829–65830

Nuclear Regulatory Commission
NOTICES
Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations, 65830–65837

Occupational Safety and Health Administration
NOTICES
Meetings:
National Advisory Committee on Occupational Safety and Health, 65828–65829

Presidential Documents
PROCLAMATIONS
Special Observances:
National First Responders Day (Proc. 10482), 65649–65650

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65841–65842
Self-Regulatory Organizations; Proposed Rule Changes:
Nasdaq MRX, LLC, 65837–65841

Small Business Administration
NOTICES
Disaster Declaration:
Arizona; Public Assistance Only, 65842
Surrender of License of Small Business Investment Company, 65842

State Department
NOTICES
Request for Information:
African and Diaspora Young Leaders Forum—U.S.-Africa Leaders Summit, 65843

Substance Abuse and Mental Health Services Administration
NOTICES
Current List of Certified Laboratories and Instrumented Initial Testing Facilities that Meet Minimum Standards to Engage in Urine and Oral Fluid Drug Testing, 65787–65788

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
General Reclamation Requirements, 65819
Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors, 65818

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration

Treasury Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 65851–65852

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers, 65790–65791
Administrative Rulings, 65792
African Growth and Opportunity Act Textile Certificate of Origin, 65791–65792
Cargo Container and Road Vehicle Certification for Transport under Customs Seal, 65788–65789
Protest, 65789–65790

Veterans Affairs Department
PROPOSED RULES
Loan Guaranty:
Guaranteed or Insured Interest Rate Reduction Refinancing Loans, 65700–65714
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pilot Program on Graduate Medical Education and Residency, 65852–65853
Requests for Nominations:
Veterans' Advisory Committee on Rehabilitation, 65853–65854

Separate Parts In This Issue

Part II
Energy Department, 65856–65902

Part III
Education Department, 65904–66073

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

10482 65649

7 CFR

Proposed Rules:

1206 65683

10 CFR

429 (2 documents) 65651, 65856

431 (2 documents) 65651, 65856

Proposed Rules:

430 65687

12 CFR

1006 65668

14 CFR

39 65670

71 (6 documents) 65673, 65674, 65675, 65677, 65679, 65680

Proposed Rules:

39 65694

21 CFR

1271 65861

34 CFR

600 65904

668 65904

674 65904

682 65904

685 65904

38 CFR

Proposed Rules:

36 65700

40 CFR

Proposed Rules:

52 (2 documents) 65714, 65719

81 65719

42 CFR

Proposed Rules:

422 65723

423 65723

438 65723

498 65723

50 CFR

Proposed Rules:

679 65724

680 65724

Federal Register
Vol. 87, No. 210
Tuesday, November 1, 2022

Presidential Documents

Title 3—

The President

Proclamation 10482 of October 27, 2022

National First Responders Day, 2022

By the President of the United States of America

A Proclamation

On National First Responders Day, we honor the bravery of our Nation's heroes who put their lives on the line for their fellow Americans each and every day—from law enforcement officers who keep our streets safe and firefighters who rush into burning buildings, to relief workers who care for our families after natural disasters and EMTs, paramedics, and other public health workers who provide life-saving emergency care at a moment's notice. When tragedies strike, these women and men are always there to help us, and we thank them for their extraordinary service to our country.

I have witnessed up close the courage, character, and valor of first responders across the Nation. In Florida, Puerto Rico, and Kentucky, search and rescue teams swooped in to save lives in the aftermath of Hurricanes Ian and Fiona and historic flooding. In Idaho, Colorado, New Mexico, and California, firefighters battled raging wildfires, even when some of their own homes had been destroyed. In Buffalo, New York, a retired police officer lost his life protecting his community from a mass shooter. Living a life of service and sacrifice is not just what first responders do—it is who they are.

We ask more of our first responders today than ever before. Being a police officer not only means keeping our communities safe but also acting as a counselor and a social worker. Being a firefighter means not only combatting fires in homes and businesses but also suiting up to fight raging wildfires made more frequent and ferocious by the climate crisis. Throughout the pandemic, medical teams and community health workers have been on the frontlines, working around the clock to save lives. Yet, even when first responders are stretched thin, their courage and commitment to service never wavers.

That is why my Administration's American Rescue Plan committed over $10 billion in funds for public safety and violence prevention, including billions of dollars to recruit and retain first responders, avoid public safety layoffs, and purchase emergency vehicles and other equipment to keep our communities safe. We increased Federal funding for State and local law enforcement by almost 30 percent last year. With my Safer America Plan, I am asking the Congress for additional funding to provide our law enforcement officers with more mental health and wellness resources and to recruit and hire 100,000 more police officers who are trained in safe, effective, and accountable community policing. When it comes to strengthening public safety, the answer is not to defund the police: It is to provide them with the tools, training, and support they need to fight crime and build trust with the communities they are sworn to protect.

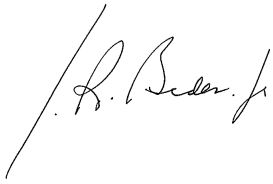
The same goes for fighting fires, which is why I, in partnership with the Congress, substantially increased wages for Federal wildland firefighters, implemented new programs to support their mental and physical health, and created a wildland firefighter job series to improve recruitment, retention, and professional opportunities. The American Rescue Plan and the 2023 Budget include combined increases of $320 million for Federal firefighting

grants, helping to fund 1,200 more local firefighters, hundreds more emergency response vehicles, and thousands of protective gear sets. In addition, I signed into law the Protecting America's First Responders Act, reducing red tape for firefighters and other first responders with disabilities to qualify for critical benefits and extending benefits to surviving families of firefighters who lost their lives in training. Because cancer is a leading cause of death among firefighters, my Administration created a special unit at the Department of Labor to help process cancer claims, and I am calling on the Congress to pass the Federal Firefighters Fairness Act to ensure cancer patients and their families get the compensation they deserve.

Today and every day, America's first responders remain on alert and on call, always there for us when we need them. As we celebrate these patriots who have answered the call of duty, we honor the memory of the heroes we have lost. They are woven into the fabric of our national character—embodying the extraordinary selflessness, rare commitment to others, and remarkable bravery that has inspired us for generations. Our first responders remind us that we are a great country because we are made up of good people. Let us renew our commitment as a Nation to standing by them and their families just as they stand by us, shaping a stronger, safer, and more resilient America.

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 October 28, 2022, as National First Responders Day. I call upon all the people of the United States to observe this day with appropriate programs, ceremonies, and activities to honor our brave first responders and to pay tribute to those who have lost their lives in the line of duty.

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



[FR Doc. 2022–23853
Filed 10–31–22; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register

Vol. 87, No. 210

Tuesday, November 1, 2022

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

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

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–STD–0017]

RIN 1904–AD92

Energy Conservation Program: Energy Conservation Standards for Direct Expansion-Dedicated Outdoor Air Systems

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: In this final rule, DOE is establishing energy conservation standards for direct expansion-dedicated outdoor air systems (''DX–DOASes'') that are of equivalent stringency as the minimum levels specified in the most recent publication of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') Standard 90.1 ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE 90.1–2019'') when tested pursuant to the DOE test procedure for DX–DOASes—which incorporates by reference the most recent applicable industry standard for this equipment. DOE has determined that it lacks clear and convincing evidence to adopt standards more stringent than the levels specified in ASHRAE 90.1–2019.

DATES: The effective date of this rule is January 3, 2023. Compliance with the standards established for DX–DOASes in this final rule is required on and after May 1, 2024.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, 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, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-STD-0017.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, 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) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Final Rule
II. Introduction
A. Authority
B. Background
1. ASHRAE 90.1 Efficiency Levels for DX–DOASes
2. Update to the Industry Metric
3. History of Standards Rulemaking for DX–DOASes
III. General Discussion
A. Scope of Coverage
B. Equipment Classes
C. Test Procedure
D. Discussion of Specific Comments
1. Non-Standard Indoor Fans
2. Representation Requirement for Moisture Removal Capacity
3. Compliance Date
4. Certification Requirements
5. Market and Technology Assessment
E. Energy Conservation Standards
F. Consideration of Energy Conservation Standards
1. Technological Feasibility
a. General
b. Maximum Technologically Feasible Levels
2. Energy Savings
3. Economic Justification
a. Economic Impact on Manufacturers and Consumers
h. Rebuttable Presumption
G. Conclusions
IV. Procedural Issues and Regulatory Review
A. Review Under Executive Orders 12866 and 13563
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Information Quality
M. Congressional Notification
V. Approval of the Office of the Secretary

I. Synopsis of the Final Rule

The Energy Policy and Conservation Act, Public Law 94–163, 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 C of the EPCA [2] established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317). Such equipment includes DX–DOASes, the subject of this rulemaking.

Pursuant to EPCA, DOE is to consider amending the energy efficiency standards for certain types of commercial and industrial equipment, including the equipment at issue in this document, whenever ASHRAE amends the standard levels or design requirements prescribed in ASHRAE/IES Standard 90.1, and at a minimum, every six 6 years. (42 U.S.C. 6313(a)(6)(A)–(C)) More specifically, for each type of equipment, which includes small, large, and very large commercial package air conditioning and heating equipment (of which DX–DOASes are a category), EPCA directs that if ASHRAE 90.1 is amended, DOE must adopt amended energy conservation standards at the updated efficiency level in ASHRAE 90.1, unless clear and

[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), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

convincing evidence supports a determination that adoption of a more stringent efficiency level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii))

If DOE adopts as a uniform national standard the efficiency levels specified in the amended ASHRAE 90.1, DOE must establish such standard not later than 18 months after publication of the amended industry standard. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) If DOE determines that a more-stringent standard is appropriate under the statutory criteria, DOE must establish such more-stringent standard not later than 30 months after publication of the revised ASHRAE 90.1. (42 U.S.C. 6313(a)(6)(B))

ASHRAE officially released the 2016 edition of ASHRAE 90.1 (''ASHRAE 90.1–2016'') on October 26, 2016, which for the first time created separate equipment classes for DX–DOASes with corresponding standards, thereby triggering DOE's above referenced obligations pursuant to EPCA to either: (1) establish uniform national standards for DX–DOASes at the minimum levels specified in the amended ASHRAE 90.1; or (2) adopt more stringent standards based on clear and convincing evidence that adoption of such standards would produce significant additional energy savings and be technologically feasible and economically justified. ASHRAE 90.1–2016 set minimum efficiency levels using the integrated seasonal moisture removal efficiency (''ISMRE'') metric for all DOAS classes and the integrated seasonal coefficient of performance (''ISCOP'') metric for air-source heat pump and water-source heat pump DX–DOAS classes. ASHRAE 90.1–2016 specifies that both metrics are measured in accordance with Air-conditioning, Heating, and Refrigeration Institute (''AHRI'') Standard 920–2015, ''Performance Rating of DX-Dedicated Outdoor Air System Units'' (''ANSI/AHRI 920–2015'').

In October 2019, ASHRAE officially released the 2019 edition of ASHRAE Standard 90.1 (''ASHRAE 90.1–2019''). ASHRAE 90.1 did not update the energy efficiency levels for DX–DOASes established in ASHRAE 90.1–2016. On February 4, 2020 AHRI officially released the 2020 edition of AHRI 920 (''AHRI 920–2020''), which addresses a number of issues with the prior test procedure and provides an updated ISMRE metric (*i.e.,* ISMRE2) and an updated ISCOP metric (*i.e.,* ISCOP2). DOE has recently established a test procedure for DX–DOASes which incorporates by reference AHRI 920–2020, and includes provisions for determining DX–DOAS performance in terms of ISMRE2 and ISCOP2. 87 FR 45164.

In accordance with the EPCA provisions previously discussed, DOE is establishing energy conservation standards for DX–DOASes in this final rule. The adopted standards, which are expressed in terms of ISMRE2 for all DX–DOAS classes in dehumidification mode, and ISCOP2 for heat pump DX–DOAS classes in heating mode, are shown in Table I.1. DOE has determined (as discussed in more detail in section III.E) that the adopted ISMRE2 and ISCOP2 standards are of equivalent stringency as the standards in ASHRAE 90.1–2016 (and ASHRAE 90.1–2019), which are expressed in terms of ISMRE and ISCOP. The standards adopted in this final rule apply to all DX–DOASes listed in Table I.1 manufactured in, or imported into, the United States starting on the date 18 months following the publication of this final rule.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR DX–DOASES

[Compliance starting 18 months following the publication of this final rule]

Equipment type	Subcategory	Efficiency level
Direct expansion-dedicated outdoor air systems.	(AC)—Air-cooled without ventilation energy recovery systems	ISMRE2 = 3.8.
	(AC w/VERS)—Air-cooled with ventilation energy recovery systems	ISMRE2 = 5.0.
	(ASHP)—Air-source heat pumps without ventilation energy recovery systems	ISMRE2 = 3.8. ISCOP2 = 2.05.
	(ASHP w/VERS)—Air-source heat pumps with ventilation energy recovery systems	ISMRE2 = 5.0. ISCOP2 = 3.20.
	(WC)—Water-cooled without ventilation energy recovery systems	ISMRE2 = 4.7.
	(WC w/VERS)—Water-cooled with ventilation energy recovery systems	ISMRE2 = 5.1.
	(WSHP)—Water-source heat pumps without ventilation energy recovery systems	ISMRE2 = 3.8. ISCOP2 = 2.13.
	(WSHP w/VERS)—Water-source heat pumps with ventilation energy recovery systems	ISMRE2 = 4.6. ISCOP2 = 4.04.

DOE has determined that, based on the information presented and its own analyses, there is not clear and convincing evidence that a more stringent efficiency level for this equipment would result in a significant additional amount of energy savings and is technologically feasible and economically justified. DOE normally performs multiple in-depth analyses to determine whether there is clear and convincing evidence to support more stringent energy conservation standards (*i.e.,* whether more stringent standards would produce significant additional conservation of energy and be technologically feasible and economically justified). However, as discussed in the sections III.E and III.F of this final rule, due to the lack of available market and performance data in terms of the recently published AHRI 920–2020 performance metrics (*i.e.,* ISMRE2 and ISCOP2), DOE is unable to conduct the analysis necessary to evaluate the potential energy savings or evaluate whether more stringent standards would be technologically feasible or economically justifiable, with sufficient certainty. As such, DOE is not establishing standards at levels more stringent than those specified in ASHRAE 90.1–2016 (and ASHRAE 90.1–2019).

II. Introduction

The following section briefly discusses the statutory authority underlying this final rule, as well as some of the relevant historical background related to the establishment of standards for DX–DOASes.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA, added by Public Law 95–619,

Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. Small, large, and very large commercial package air conditioning and heating equipment are included in the list of ''covered equipment'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. As discussed in the following section, this includes unitary DOASes and, more specifically, direct expansion DOASes, which are the subject of this final rule. (42 U.S.C. 6311(1)(B)–(D))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (*See* 42 U.S.C. 6316(b)(2)(D))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6314) Manufacturers of covered equipment must use the Federal test procedures as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

ASHRAE 90.1 sets industry energy efficiency levels for small, large, and very large commercial package air-conditioning and heating equipment, packaged terminal air conditioners, packaged terminal heat pumps, warm air furnaces, packaged boilers, storage water heaters, instantaneous water heaters, and unfired hot water storage tanks (collectively ''ASHRAE equipment''). For each type of listed equipment, EPCA directs that if ASHRAE amends 90.1, DOE must adopt amended standards at the new ASHRAE efficiency level, unless DOE determines, supported by clear and convincing evidence, that adoption of a more stringent level would produce significant additional conservation of energy and would be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) Under EPCA, DOE must also review energy efficiency standards for covered equipment, including DX–DOASes, every six years and either: (1) issue a notice of determination that the standards do not need to be amended as adoption of a more stringent level is not supported by clear and convincing evidence; or (2) issue a notice of proposed rulemaking including new proposed standards based on certain criteria and procedures in subparagraph (B) of 42 U.S.C. 6316(a)(6). (42 U.S.C. 6313(a)(6)(C))

In deciding whether a more-stringent standard is economically justified, under either the provisions of 42 U.S.C. 6313(a)(6)(A) or 42 U.S.C. 6313(a)(6)(C), DOE must determine whether the benefits of the standard exceed its burdens. DOE must make this determination after receiving comments on the proposed standard, and by considering, to the maximum extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product that complies with the standard will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(iii)) However, while this rebuttable presumption analysis applies to most commercial and industrial equipment (42 U.S.C. 6316(a)), it is not a required analysis for ASHRAE equipment (42 U.S.C. 6316(b)(1)). Nonetheless, DOE considered the criteria for this rebuttable presumption as part of its economic justification analysis.

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6313(a)(6)(B)(iii)(I)) Also, the Secretary may not prescribe an amended or new standard if 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. (42 U.S.C. 6313(a)(6)(B)(iii)(II)(aa))

B. Background

EPCA defines ''commercial package air conditioning and heating equipment'' as air-cooled, water-cooled, evaporatively-cooled, or water source (not including ground water source) electrically operated, unitary central air conditioners and central air conditioning heat pumps for commercial application. (42 U.S.C. 6311(8)(A); 10 CFR 431.92) Industry standards generally describe unitary central air conditioning equipment as one or more factory-made assemblies that normally include an evaporator or cooling coil and a compressor and condenser combination. Units equipped to also perform a heating function are included as well. Unitary DOASes provide conditioning of outdoor ventilation air using a refrigeration cycle (which normally consists of a compressor, condenser, expansion valve, and evaporator), and therefore,

DOE has concluded that unitary DOASes are a category of commercial package air conditioning and heating equipment subject to EPCA.

From a functional perspective, unitary DOASes operate similarly to other categories of commercial package air conditioning and heat pump equipment, in that they provide conditioning using a refrigeration cycle. Unitary DOASes provide ventilation and conditioning of 100-percent outdoor air to the conditioned space, whereas for typical commercial package air conditioners that are central air conditioners, outdoor air makes up only a small portion of the total airflow (usually less than 50 percent). Unitary DOASes are typically installed in addition to a local, primary cooling or heating system (*e.g.,* commercial unitary air conditioner, variable refrigerant flow system, central air conditioner or distributed fan-coil units served by a chilled water system, water-source heat pumps)—the unitary DOAS conditions the outdoor ventilation air, while the primary system provides cooling or heating to balance building shell and interior loads and solar heat gain.

An industry consensus test standard has been established for a subset of unitary DOASes, direct expansion-dedicated outdoor air systems (DX–DOASes). On July 27, 2022, DOE published a test procedure final rule (''July 2022 TP final rule''), adopting definitions, a new Federal test procedure, energy efficiency metrics, and representation requirements for DX–DOASes. 87 FR 45164.

1. ASHRAE 90.1 Efficiency Levels for DX–DOASes

As first established in ASHRAE 90.1–2016, ASHRAE 90.1–2019 specifies 14 separate equipment classes for DX–DOASes and sets minimum efficiency levels using the ISMRE metric for all DX–DOAS classes and also the ISCOP metric for air-source heat pump and water-source heat pump DX–DOAS classes. ASHRAE 90.1–2019 specifies that both metrics are to be measured in accordance with ANSI/AHRI 920–2015. ANSI/AHRI 920–2015 specifies the method for testing DX–DOASes, in part, through a reference to ANSI/ASHRAE 198–2013, ''Method of Test for Rating DX-Dedicated Outdoor Air Systems for Moisture Removal Capacity and Moisture Removal Efficiency'' (''ANSI/ASHRAE 198–2013''). The energy efficiency standards specified in ASHRAE 90.1, based on ANSI/AHRI 920–2015 and ANSI/ASHRAE 198–2013, are shown in Table II.1.

TABLE II.1—ASHRAE 90.1 EFFICIENCY LEVELS FOR DX–DOASES

Equipment class	Energy efficiency levels
Air-cooled: without energy recovery	4.0 ISMRE.
Air-cooled: with energy recovery	5.2 ISMRE.
Air-source heat pumps: without energy recovery	4.0 ISMRE, 2.7 ISCOP.
Air-source heat pumps: with energy recovery	5.2 ISMRE, 3.3 ISCOP.
Water-cooled: cooling tower condenser water, without energy recovery	4.9 ISMRE.
Water-cooled: cooling tower condenser water, with energy recovery	5.3 ISMRE.
Water-cooled: chilled water, without energy recovery	6.0 ISMRE.
Water-cooled: chilled water, with energy recovery	6.6 ISMRE.
Water-source heat pumps: ground-source, closed loop, without energy recovery	4.8 ISMRE, 2.0 ISCOP.
Water-source heat pumps: ground-source, closed loop, with energy recovery	5.2 ISMRE, 3.8 ISCOP.
Water-source heat pumps: ground-water source, without energy recovery	5.0 ISMRE, 3.2 ISCOP.
Water-source heat pumps: ground-water source, with energy recovery	5.8 ISMRE, 4.0 ISCOP.
Water-source heat pumps: water-source, without energy recovery	4.0 ISMRE, 3.5 ISCOP.
Water-source heat pumps: water-source, with energy recovery	4.8 ISMRE, 4.8 ISCOP.

2. Update to the Industry Metric

As discussed in the July 2022 TP final rule, AHRI revised AHRI 920 and published AHRI 920–2020, which contains several revisions, including revised test conditions and weighting factors for ISMRE and ISCOP. 87 FR 45164. These metrics were redesignated as ISMRE2 and ISCOP2, respectively. The test standard revisions also more accurately reflect the actual energy use for DX–DOASes, improve the repeatability and reproducibility of the test methods, and also reduce testing burden compared to ISMRE and ISCOP. For example, the revised weighting factors reflect the number of hours per year for each test condition, and the revised test conditions are based on weather data from Typical Meteorological Year 2 (TMY2). 86 FR 36018, 36029. A detailed discussion of the summary of the AHRI 920 updates is provide in the DX–DOAS test procedure notice of proposed rulemaking (''NOPR'') published on July 7, 2021. 86 FR 36018.

The July 2022 TP final rule adopted a new appendix B to subpart F of part 431 (''appendix B''), titled ''Uniform test method for measuring the energy consumption of direct expansion-dedicated outdoor air systems,'' that includes the new test procedure requirements for DX–DOASes. 87 FR 46164. The test procedure in appendix B incorporates by reference AHRI 920–2020, the most recent version of AHRI 920, the test procedure recognized by ASHRAE Standard 90.1 for DX–DOASes, and the relevant industry standards referenced therein.

The amendments adopted in AHRI 920–2020 result in different efficiency metric values, ISMRE2 and ISCOP2, than the ISMRE and ISCOP values measured using ANSI/AHRI 920–2015, which as noted previously, is the test standard upon which the DX–DOAS efficiency levels in 90.1–2016 and 90.1–2019 are based. Accordingly, because the ISMRE2 and ISCOP2 metrics adopted in the July 2022 TP final rule are different from the metrics used in ASHRAE 90.1–2019 (ISMRE and ISCOP), DOE has developed a crosswalk analysis which translates the existing ASHRAE 90.1–2019 ISMRE and ISCOP standards to the ISMRE2 and ISCOP2 metrics adopted in the July 2022 TP final rule. This crosswalk analysis is further discussed in section III.E of this document.

3. History of Standards Rulemaking for DX–DOASes

On February 1, 2022, DOE published a NOPR (''February 2022 NOPR'') which proposed to adopt energy conservation standards for DX–DOASes based on ISMRE2 and ICOP2 metrics. 87 FR 5560. DOE, based on a crosswalk analysis, tentatively determined that the proposed ISMRE2 and ISCOP2 standards were of equivalent stringency to the ISMRE and ISCOP standards in ASHRAE 90.1–2019. 87 FR 5561–5562.

DOE requested comment on the proposals included in the February 2022 NOPR, including the energy conservations and equipment classes that were proposed. 87 FR 5588.

DOE received six comments relevant to DX–DOASes in response to the February 2022 NOPR from the interested parties listed in Table II.2.

TABLE II.2—FEBRUARY 2022 NOPR WRITTEN COMMENTS

Commenter(s)	Abbreviation	Comment No. in the docket	Commenter type
Madison Indoor Air Quality	MIAQ	12	Manufacturer.
Carrier Corporation	Carrier	11	Manufacturer.
Appliance Standards Awareness Project, New York State Energy Research and Development Authority, American Council for an Energy-Efficient Economy, Natural Resources Defense Council.	Joint Advocates	13	Efficiency Advocate.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	15	Industry Representative.
Pacific Gas and Electric Company, Southern California Edison, San Diego Gas and Electric Company.	CA IOUs	14	Utility.
Northwest Energy Efficiency Alliance	NEEA	16	Efficiency Advocate.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[3]

III. General Discussion

DOE developed this final rule after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Scope of Coverage

As discussed previously, and in the February 2022 NOPR, unitary DOASes meet the EPCA definition for ''commercial package air conditioning and heating equipment,'' and, thus, are to be considered as a category of that covered equipment (42 U.S.C. 6311(8)(A)). In the July 2022 TP final rule, DOE established a definition for unitary DOAS and DX–DOAS as follows:

(1) ''Unitary dedicated outdoor air system, or unitary DOAS, means a category of small, large, or very large commercial package air-conditioning and heating equipment that is capable of providing ventilation and conditioning of 100-percent outdoor air and is marketed in materials (including but not limited to, specification sheets, insert sheets, and online materials) as having such capability''

(2) ''Direct expansion-dedicated outdoor air system, or DX–DOAS, means a unitary dedicated outdoor air system that is capable of dehumidifying air to a 55 °F dew point—when operating under Standard Rating Condition A as specified in Table 4 or Table 5 of AHRI 920–2020 (incorporated by reference, see § 431.95) with a barometric pressure of 29.92 in Hg—for any part of the range of airflow rates advertised in manufacturer materials, and has a moisture removal capacity of less than 324 lb/h.''
87 FR 45176.

DOE did not request comment on the DX–DOAS or unitary DOAS definition in the February 2022 NOPR, however DOE received a comment from Carrier, who asserted that unitary DOASes that are not DX–DOASes do not have specified energy conservation standards. (Carrier, No. 11, pp. 1–2) Carrier noted that these units are typically based on commercial unitary air conditioner and commercial unitary heat pump (''CUAC/HP'') designs, that they meet the current CUAC/HP energy conservations standards, and that like CUAC/HPs, they are used to meet both sensible and latent cooling needs. Carrier also stated that both unitary DOASes that are not DX–DOASes and CUAC/HPs are used in similar applications. Therefore, Carrier recommended unitary DOASes that are not DX–DOASes be required to test to the CUAC/HP test procedure and meet the CUAC/HP standards. *Id.*

DOE notes that the definition of a unitary DOAS, as established in the July 2022 TP final rule, states that unitary DOAS is capable of providing ventilation and conditioning of 100-percent outdoor air *and* is marketed in materials (including but not limited to, specification sheets, insert sheets, and online materials) as having such capability. 87 FR 45170. As stated in the July 2022 TP final rule, to determine whether a unit is distributed in commerce for a certain application, DOE reviews manufacturer literature (*e.g.,* brochures, product data, installation manuals, engineering specifications) sales data, and available material. Additionally, DOE stated that equipment that is marketed and/or distributed in commerce for both CUAC/CUHP applications and unitary DOAS applications must comply with the requirements applicable to both CUAC/HPs *and* unitary DOASes. 87 FR 45170. Currently there are no requirements, and none proposed, for unitary DOASes that are not also DX–DOASes. However, in response to Carrier's comment, DOE notes that units that meet the unitary DOAS definition but not the DX–DOAS definition, that are marketed and/or distributed in commerce for CUAC/CUHP applications, are required to test to the CUAC/HP test procedure and meet the CUAC/HP standards.

As noted, DOE finalized the definition of ''unitary dedicated outdoor air system'' and ''direct expansion-dedicated outdoor air system'' in the July 2022 TP final rule. Those definitions are applicable to the energy conservation standards established in this final rule.

B. Equipment Classes

When evaluating and establishing energy conservation standards, DOE divides covered equipment into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards.

EPCA generally requires DOE to establish energy conservation standards for commercial package air-conditioning and heating equipment at the minimum efficiencies set forth in ASHRAE 90.1. (See 42 U.S.C. 6313(a)(6)(A)) As discussed in the February 2022 NOPR, ASHRAE 90.1–2016 created 14 separate equipment classes for DX–DOASes differentiated by, among other characteristics, condensing type (air-cooled, air-source heat pump, water-cooled, and water-source heat pump).

[3] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for DX–DOASes. (Docket No. EERE–2017–BT–STD–0017, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

87 FR 5560, 5566. More specifically, ASHRAE 90.1–2016 divides water-cooled condensing equipment into two subcategories (cooling tower condenser water and chilled water), and water-source heat pump equipment into three subcategories (ground-source closed loop, ground-water-source, and water-source). These subcategories were maintained in ASHRAE Standard 90.1–2019.

In the February 2022 NOPR, DOE noted that these subcategories are meant to represent different application conditions for the same equipment. 87 FR 5560, 5566. Additionally, DOE noted that ground-water-source equipment are excluded from the commercial package air conditioning and heating equipment definition in EPCA (see 42 U.S.C. 6311(8)(A)), and that the ground-source closed loop and chilled water conditions are optional application ratings. Therefore, DOE proposed to establish eight DX–DOAS equipment classes, as shown below in Table III.1. 87 FR 5560, 5566–5567.

TABLE III.1—EQUIPMENT CLASSES FOR DX–DOASES

Equipment class in ASHRAE 90.1	Proposed equipment class in Federal energy conservation standards
Air-cooled: without energy recovery	(AC)—Air-cooled without ventilation energy recovery systems.
Air-cooled: with energy recovery	(AC w/VERS)—Air-cooled with ventilation energy recovery systems.
Air-source heat pumps: without energy recovery	(ASHP)—Air-source heat pumps without ventilation energy recovery systems.
Air-source heat pumps: with energy recovery	(ASHP w/VERS)—Air-source heat pumps with ventilation energy recovery systems.
Water-cooled: cooling tower condenser water, without energy recovery	(WC)—Water-cooled without ventilation energy recovery systems.
Water-cooled: cooling tower condenser water, with energy recovery	(WC w/VERS)—Water-cooled with ventilation energy recovery systems.
Water-source heat pumps: water-source, without energy recovery	(WSHP)—Water-source heat pumps without ventilation energy recovery systems.
Water-source heat pumps: water-source, with energy recovery	(WSHP w/VERS)—Water-source heat pumps with ventilation energy recovery systems.

In the February 2022 NOPR, DOE requested comment on these proposed equipment classes. 87 FR 5560, 5568.

AHRI, MIAQ, Carrier, and the CA IOUs all supported the eight equipment classes. (AHRI, No. 15, p. 4; MIAQ, No. 12, p. 3; Carrier, No. 11, p. 1; CA IOUs, No. 14, p. 1). The Joint Advocates and NEEA however recommended DOE merge equipment classes for DX–DOASes with VERS, and DX–DOASes without VERS, because VERS should be treated as a design option used to improve efficiency. (Joint Advocates, No. 13, p. 2; NEEA, No. 16, p. 2)

Specifically, NEEA stated that DOE's proposed minimum efficiency standards are unfair to DX–DOAS units with VERS, which would be required to meet increasing standards over time by improving their energy recovery efficiency when units without VERS are allowed to persist with effectively zero energy recovery efficiency. NEEA also stated that DOE has established precedence for considering equipment components as technology options rather than performance related features in their rulemakings for other products such as consumer and commercial water heaters, and residential furnaces. (NEEA, No. 16, p. 2) NEEA noted that combining equipment classes for units with or without VERS provides an opportunity to expand the DX–DOAS standard in the future to effectively require VERS for all DX–DOAS systems, and that this approach would allow there to be an opportunity for a significant amount of energy savings in the future. NEEA also noted that it published an energy efficiency analysis final report for commercial DX–DOAS systems which discovered a whole-building energy cost increase of up to 40% for DX–DOAS systems without VERS, depending on building type, and that this is further evidence that DX–DOASes with and without VERS should be treated as one equipment class. (NEEA, No. 16, p. 3)

The Joint Advocates stated that they understand that DOASes without energy recovery does not offer distinct customer utility and that both types of equipment provide ventilation and dehumidification of 100% outdoor air, with the VERS functioning to precondition the outdoor air. The Joint Advocates stated that, due to this preconditioning, a DX–DOAS with VERS can consume significantly less energy than a model without energy recovery, and noted DOE's estimate in the 2019 NODA/RFI DOE that an air-cooled baseline unit (*i.e.,* just meeting ASHRAE 90.1 levels) with VERS consumes 23 percent less energy than a baseline unit without VERS. The Joint Advocates stated their belief that energy recovery, which offers significant potential for energy savings, should be treated as a design option to improve efficiency. (Joint Advocates, No. 13, p. 2)

As previously mentioned, DOE cannot determine, supported by clear and convincing evidence, that a more stringent standard is warranted. As such, DOE must adopt the efficiency levels specified for DOASes in ASHRAE 90.1, which includes distinct efficiency levels for DOASes with VERS, and for DOASes without VERS. (42 U.S.C. 6313(a)(6)(A)ii)(I)) Therefore, DOE declines to consider combining DOASes with VERS and without VERS into the same equipment classes in this final rule.

C. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6314(a)) Manufacturers of covered equipment must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product.

As discussed, DOE adopted a test procedure for DX–DOASes in the July 2022 TP final rule. The standards adopted in this final rule shall be determined using DOE's test procedure for DX–DOASes, as specified in appendix B.

DOE received a comment from AHRI and MIAQ in response to the February 2022 NOPR stating that while they agree with DOE's proposed energy conservation standards, they believe that DOE should not adopt AHRI 920–2020 as the DOE test procedure and should not adopt energy conservation standards for DX–DOAS based on AHRI 920–2020 before AHRI 920–2020 is formally adopted in ASHRAE 90.1. (AHRI, No. 15, pp. 1–3; MIAQ, No. 12, pp. 1–3) AHRI and MIAQ also noted that the ASHRAE 90.1 SSPC committee has voted to release addendum cv to ASHRAE 90.1 which will adopt AHRI

920–2020, however they noted that it is unlikely to publish until after June 2022.[4] *Id.* DOE notes that since AHRI and MIAQ have submitted these comments, the ASHRAE 90.1 SPPC committee has published a public review draft of Addendum cv, which contains an updated reference to AHRI 920–2020 rather than ANSI/AHRI 920–2015 as the test standard for DX–DOAS.

As discussed in the July 2022 TP final rule, DOE disagreed with AHRI that it is premature to adopt AHRI 920–2020, and that DOE lacks the authority to do so. As discussed in the July 2022 TP final rule, the industry test procedure for DX–DOASes referenced in ASHRAE Standard 90.1–2019, AHRI 920–2015, was superseded in the intervening years since DOE was first triggered to review the DX–DOAS provisions of ASHRAE Standard 90.1–2016. As supported by many of the comments that DOE received in the test procedure rulemaking, including from AHRI itself, DOE determined, by clear and convincing evidence, that AHRI 920–2015 is not reasonably designed to produce test results which reflect energy efficiency of DX–DOASes during a representative average use cycle and that some components of AHRI 920–2015 are unnecessarily burdensome. Accordingly, DOE incorporated by reference AHRI 920–2020 in the July 2022 TP final rule, and the test procedure established in that rule must be used to demonstrate compliance with the energy conservation standards established in this final rule. Further discussion of DOE's justification to adopt AHRI 920–2020 may be found in the July 2022 TP final rule. 87 FR 45174.

D. Discussion of Specific Comments

1. Non-Standard Indoor Fans

In the February 2022 NOPR, DOE did not specifically request comment on how non-standard indoor fans should be treated when determining DX–DOAS basic models. However, in response to the February 2022 NOPR, Carrier stated that it supported DOE's determination of a DX–DOAS basic model, while AHRI and MIAQ stated that while they generally support DOE's determination of a DX–DOAS basic model, they believe that because AHRI 920–2020 does not include non-standard indoor fan motors as an optional feature for testing and because many model lines offer multiple higher static indoor fan motor options for higher static installations, separate basic models are required to accommodate each of the different indoor fan motor options. (AHRI, No. 15, pp. 5–6; MIAQ, No. 12, p. 5; Carrier, No. 11, p. 3) AHRI and MIAQ also stated that this would greatly increase the number of DX–DOAS basic models, and that this would be at great cost to small and large manufacturers. AHRI and MIAQ therefore recommended that DOE treat non-standard indoor fan motors consistent with section D4 of AHRI Standard 340/360–2022 ''Performance Rating of Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment'' (''AHRI 340/360–2022''),[5] which allows non-standard indoor fan motors to be optional for basic model representations, provided they have an efficiency that is ''equivalent'' or better than that of the standard fan motor (the test standard provides a definition for equivalent efficiency that takes into consideration that trend for efficiency increase as motor power increases). *Id.*

DOE acknowledges that AHRI 920–2020 does not include an approach similar to AHRI 340/360–2022 regarding the treatment of non-standard indoor fans, as described by AHRI. However, DOE notes that the supply air external static pressure (ESP) requirements in AHRI 920–2020 are significantly higher than those found in AHRI 340/360–2022 and ANSI/AHRI 920–2015.[6] Hence, the potential mismatch between the power required to operate a unit as required by the test procedure and the shaft power rating of a non-standard high-static motor should make much less difference to results as compared to equipment tested under AHRI 340/360–2022. AHRI did not provide information suggesting the potential range of such a mismatch.

While the comment claims that the approach finalized in the test procedure would ''greatly increase the number of DX–DOAX basic models,'' no specific details were provided explaining this significant increase. For example, the comment did not claim that such units with non-standard high-static motors would not be able to meet the proposed efficiency standards. DOE notes that the test procedure indicates that representations be based on the least-efficient of the individual models within the basic model (with certain allowances for certain components) but that no limit is imposed regarding the allowable efficiency difference among those individual models. 87 FR 45183. Thus, it is not clear why the number of basic models should greatly increase.

DOE does not have sufficient data or information to consider the impacts of amending the DOE test procedure to adopt a non-standard indoor fan approach similar to the one implemented in AHRI 340/360–2022. DOE notes that manufacturer literature for DX–DOASes does not have nearly as much detail on the ESP operation ranges of the motors offered within a model line, unlike the literature for CUACs which typically includes such information. Hence, DOE does not have data regarding the distribution of DX–DOASes with non-standard indoor fans compared to DX–DOASes with standard indoor fans, which could be used to indicate how representative a DX–DOAS with a non-standard indoor fan is with respect to the overall market. Accordingly, DOE is not at this time considering revision of the test procedure requirements regarding non-standard fans.

2. Representation Requirement for Moisture Removal Capacity

In the February 2022 NOPR, DOE proposed to require that the represented value of MRC be either the mean of the MRCs measured for the units in the selected sample rounded to the nearest lb/hr multiple according to Table 3 of AHRI 920–2020 or the MRC output simulated by an AEDM rounded to the nearest lb/hr multiple according to Table 3 of AHRI 920–2020, and requested feedback on this proposal. 87 FR 5560, 5580.

AHRI and MIAQ supported DOE's proposed representation requirements regarding MRC. (AHRI, No. 15, p. 5; MIAQ, No. 12, p. 4) Carrier agreed that the MRC should be based on tested values or an AEDM output, however Carrier recommended that the represented value of MRC should be between 95 and 100 percent of the mean of the measured capacities in the selected sample. (Carrier, No. 11, p. 3) Carrier stated that this process is not a burden for manufacturers and includes the impact of variation between the samples. *Id.*

DOE notes that Carrier's recommendation is consistent with the requirements for making btu/h representations for CUAC/HPs. 10 CFR 429.43(a)(1)(iv) DOE notes that this approach would allow manufacturers the option to make conservative (*i.e.,* avoid overstating) MRC representations. As such, and to align with the representation requirements of CUAC/HP, DOE has determined to amend its proposal in the February 2022 final rule

[4] DOE understands that AHRI was not indicating DOE should act upon the publication of addendum cv public review draft, or the publication of addendum cv, but that DOE should wait to adopt energy conservation standards for DX–DOASes based on AHRI 920–2020 until ASHRAE 90.1–2022 is published with a reference to AHRI 920–2020.

[5] AHRI 340/360–2022 is the most recent publication of the industry test procedure for CUAC/HPs.

[6] Supply air ESPs in AHRI 920–2020 range from 0.64–1.35 in H_2O. ESPs in AHRI 340/360–2022 and ANSI/AHRI 920–2015 range from 0.10–0.75 in H_2O.

and is adopting Carrier's recommendation in this final rule. Therefore, DOE is requiring that the represented value of MRC be either between 95 and 100 percent of the mean of the measured capacities of the units in the selected sample rounded to the nearest lb/hr multiple according to Table 3 of AHRI 920–2020 or the MRC output simulated by an AEDM rounded to the nearest lb/hr multiple according to Table 3 of AHRI 920–2020. DOE is adopting these provisions in 10 CFR 429.43(a)(3)(ii), and is including the rounding requirements from Table 3 of AHRI 920–2020 in Table 2 to paragraph (a)(3)(i)(B) of § 429.43.

NEEA supported DOE's proposal to incorporate MRC as the primary capacity representation, however, NEEA recommended DOE represent capacity information for DX–DOAS in both MRC and Btu/h because (1) manufacturers will already know the capacity of units expressed in Btu/h, thus the addition of this capacity information will not add extra burden to manufactures; (2) all other heating, ventilation, and air conditioning (HVAC) regulated DOE products have capacity represented in Btu/h; (3) there is no statutory limitation for describing capacity in multiple ways; and (4) capacity represented by Btu/h can be used to represent total capacity, including both sensible and latent cooling capacity, and capacity represented by MRC only represents the latent capacity of the unit. (NEEA, No. 16, pp. 3–4) Additionally, NEEA noted that the calculation from 760,000 Btu/h to 324 MRC has been performed by DOE, and asserted that it should be possible for other capacities if necessary in the future and recommended that if such a calculation is not specified in AHRI 920–2020, that DOE should include provisions that provide instructions for how the calculation should be performed. (NEEA, No. 16, p. 4)

DOE understands that representing capacity in Btu/h in addition to MRC may provide customers capacity representations in a term they are more familiar with (*i.e.,* Btu/h). However, DOE has determined that DX–DOASes, whose primary purpose is to dehumidify, are best represented solely by the MRC capacity measurement. DOE notes that AHRI 920–2020 includes test methods to determine capacity for dehumidification mode in terms of MRC, not Btu/h—none of its test provisions indicate how to determine capacity in terms of Btu/h. At this time, DOE does not have sufficient data or information to consider the impacts of making DX–DOAS capacity representations in terms of both MRC and Btu/h, and DOE has determined that there is not clear and convincing evidence to deviate from AHRI 920–2020 by making such representations in terms of Btu/h. Accordingly, DOE declines to follow NEEA's recommendation in this final rule.

3. Compliance Date

When establishing energy conservation standards at the same level as in ASHRAE Standard 90.1, DOE must establish such standards no later than 18 months following the ASHRAE Standard 90.1 update (in this case, ASHRAE 90.1–2016), and manufacturers must comply with such standards 2 to 3 years after the ASHRAE Standard 90.1 update, depending on the size of the equipment.[7] (42 U.S.C. 6313(a)(6)(A)(ii)(I) and (a)(6)(D)) In order to provide DX–DOAS manufacturers with a reasonable lead-time to comply with the standards proposed in the February 2022 NOPR, DOE proposed that manufacturers would be required to comply with the new standards for DX–DOASes 18 months following the publication date of this final rule. 87 FR 5560, 5582.

MIAQ stated that the HVAC industry has petitioned the Environmental Protection Agency to implement a January 1, 2025 compliance date requiring less than 750 GWP refrigerants for many HVAC appliances, which includes DOAS systems, as a result of the American Innovation and Manufacturing Act. MIAQ requests DOE implement an energy conservation standard compliance date for DOAS no sooner than January 1, 2025, given the complexity and expense of this low GWP refrigerant transition, and because this would help to ensure a smoother transition. (MIAQ, No. 12, p. 6)

DOE notes that its approach to energy conservation standards rulemakings, and the compliance dates adopted in such rulemakings, are dictated by the requirements in EPCA. As discussed, the publication of ASHRAE 90.1–2016 triggered DOE's obligation to establish uniform national standards for DX–DOASes no later than 18 months after its publication. (42 U.S.C. 6313(a)(6)(A)(ii)(I)) DOE's action to establish the ASHRAE 90.1–2016 DX–DOAS standards in this final rule is already 4 years late. Manufacturers have had these years of additional time in excess of the lead time specified by the statute to prepare for meeting these standards. Therefore, DOE is not deviating from the approach discussed in the February 2022 NOPR, and is adopting a compliance date for DX–DOASes 18 months after the publication of this final rule. As such, DOE is maintaining the same lead time between final rule and compliance date as would have occurred if DOE had met the requirements specified in EPCA regarding finalizing the amended standards and establishing a compliance date (using a compliance date 3 years after the update to ASHRAE 90.1 with amended standards established 18 months after the update to ASRHAE 90.1).

4. Certification and Enforcement Requirements

In the February 2022 NOPR, DOE proposed that the enforcement provisions generally applicable to commercial package air-conditioning and heating equipment would be applicable to DX–DOASes. 87 FR 5560, 5581. DOE also proposed to establish provisions in 10 CFR 429.134 that specify how DOE would determine the ISMRE2 and ISCOP2 for DX–DOASes with VERS. *Id.* DOE received comments from AHRI and MIAQ generally supporting these proposals and did not receive any additional comments on this subject. (AHRI, No. 15, p. 5; MIAQ, No. 12, pp. 4–5) As such, DOE has determined to adopt the enforcement provisions proposed in the February 2022 NOPR, but has done so by directly referencing DOE's test procedure, rather than industry standards.

In the February 2022 NOPR, DOE did not propose certification or reporting requirements for DX–DOASes and noted it would consider proposals to establish certification requirements and reporting for DX–DOASes under a separate rulemaking regarding appliance and equipment certification. 87 FR 5560, 5584. AHRI and MIAQ expressed concern that DOE is not currently proposing to establish certification requirements for DX–DOASes and urged DOE to swiftly establish said certification requirements and certification template. (AHRI, No. 15, p. 5; MIAQ, No. 12, pp. 4–5) The Joint Advocates also encouraged DOE to finalize all pertinent certification provisions for DX–DOASes as soon as possible, to allow time for stakeholders to review and submit feedback. (Joint Advocates, No. 13, p. 2)

DOE appreciates stakeholder feedback regarding this topic and will take it into consideration upon developing a separate rulemaking regarding equipment certification.

[7] In the February 2022 NOPR, DOE decided to assign a three-year compliance date regardless of equipment size because ASHRAE Standard 90.1–2016 established equipment classes for DX–DOASes that do not distinguish units based on the small, large, or very large categories.

5. Market and Technology Assessment

Although DOE has determined it does not have sufficient information to conduct a proper market and technology assessment, in the February 2022 NOPR DOE sought information that may inform a market and technology assessment for the DX–DOAS industry, including data on technology options which may increase the ISMRE2 and/or ISCOP2 efficiencies of DX–DOASes. 87 FR 5560, 5571.

AHRI and MIAQ stated that in general, small equipment (below 10 tons) utilize two stage or digital compressors, without inverter control, with small heat exchangers; whereas equipment above 10 tons typically utilizes four-stage or digital compressors, without inverter control, with larger heat exchangers. (AHRI, No. 15, p. 4; MIAQ, No. 12, p. 4) AHRI and MIAQ also noted that DOE contractors have also had extensive conversations with manufacturers to assess the market and technology. *Id.*

NEEA noted that while features that increase ISMRE2 ratings will save energy, there may be other energy saving features that aren't accounted for in the ISMRE2 metric. (NEEA, No. 16, pp. 5–6) Therefore, NEEA recommended DOE consider and request information from stakeholders on all technology options that reduce energy consumption, not just ones that affect ISMRE2, and that if such technology options are not accounted for in the ISMRE2 rating, DOE reconsider if the current TP sufficiently represents DX–DOAS equipment. NEEA also listed several energy saving technology options they recommend DOE consider in a future standards and test procedure rulemaking.[8] *Id.*

The comment provided by AHRI is informative, and DOE appreciates such feedback. DOE notes that AHRI's comment is generally consistent with the information DOE has collected regarding typical DX–DOAS designs, including in discussions with manufacturers. In response to NEEA, DOE has already finalized the DX–DOAS test procedure. 87 FR 45164. DOE will consider whether the test procedure should be modified to better address the potential benefits of additional technologies mentioned in NEEA's comment when considering future revisions to the DX–DOAS test procedure and standards. Therefore, DOE has determined that the feedback provided by NEEA and AHRI does not warrant making any adjustments to the proposals in the February 2022 NOPR.

NEEA also noted that the February 2022 NOPR requested information only on the market of DX–DOASes and did not broadly request information on the market of unitary DOASes. (NEEA, No. 16, pp. 4–5) NEEA expressed concerns that DOE's definition and scope for DX–DOAS and unitary DOAS equipment does not align with how the market differentiates them, and that market size and overlap between DX–DOAS and unitary DOAS is an unknown, which inhibits NEEA from providing meaningful comment on DOE's scope, test procedure, and proposed standard efficiency levels for these products. NEEA therefore recommends DOE collect and publish data on unitary DOAS through this product rulemaking in addition to the information requested for DX–DOAS to better understand the market size and overlap between the two. *Id.*

As discussed in section III.C, DOE established definitions for unitary DOASes and DX–DOASes in the July 2022 TP final rule and discussed any potential overlap between unitary DOASes and CUAC/HPs in that final rule. As discussed in section II.B, DX–DOASes (*i.e.,* the equipment for which DOE is establishing standards in this final rule) are a subset of unitary DOASes. While DOE did not specifically request data on unitary DOASes, commenters were free to provide information relevant to the DOAS market (unitary DOASes and DX–DOASes) that would inform DOE's analyses. In response to the NOPR, DOE was not presented with any data or information on the category of unitary DOASes that are not DX–DOASes. However, DOE may investigate and request additional related information on this specific category (unitary DOASes that are not DX–DOASes) in the future.

E. Energy Conservation Standards

As discussed in the February 2022 NOPR, the efficiency levels established for DX–DOASes in the ASHRAE 90.1 standard are based on the ISMRE and ISCOP metrics used in AHRI 920–2015. However, as noted previously, DOE has incorporated by reference into its test procedure the most recent version of AHRI 920, AHRI 920–2020. AHRI 920–2020 uses the ISMRE2 and ISCOP2 metrics. DOE was unable to conduct the analysis necessary to evaluate the potential energy savings or evaluate whether more stringent standards would be technologically feasible or economically justifiable, with sufficient certainty due to the lack of available market and performance data with the IMSRE2 and ISCOP2 metrics. Therefore, in the February 2022 NOPR, DOE proposed establishing ISMRE2 and ISCOP2 minimum efficiency levels of equivalent stringency to the ISMRE and ISCOP minimum efficiency levels currently published in ASHRAE 90.1 via a ''crosswalk'' analysis using the procedures of 42 U.S.C. 6293(e).[9] 87 FR 5560, 5575. As noted in the February 2022 NOPR, DOE preliminarily determined that, in the present case given the limited data available, conducting a crosswalk analysis generally consistent with the process prescribed in 42 U.S.C. 6293(e) would result in efficiency levels that are of the same stringency as those in ASHRAE Standard 90.1–2019. The proposed ISMRE2 and ISCOP2 levels DOE determined using the crosswalk analysis are shown below in Table III.2. 87 FR 5560, 5562.

TABLE III.2—ENERGY CONSERVATION STANDARDS FOR DX–DOASES

Equipment type	Subcategory	Efficiency level
DX–DOASes	(AC)—Air-cooled without ventilation energy recovery systems	ISMRE2 = 3.8.
	(AC w/VERS)—Air-cooled with ventilation energy recovery systems	ISMRE2 = 5.0.
	(ASHP)—Air-source heat pumps without ventilation energy recovery systems	ISMRE2 = 3.8. ISCOP2 = 2.05.

[8] NEEA listed the following features: Decreased fan energy consumption, low energy defrost, reduced VERS leakage, improved VERS heat recovery effectiveness, heat recovery bypass control capability, and low leakage dampers.

[9] As DOE noted in the February 2022 NOPR, EPCA prescribes requirements to amend the applicable energy conservation standard so that products or equipment that complied under the prior test procedure remain compliant under the amended test procedure. (*See generally* 42 U.S.C. 6293(e); 42 U.S.C. 6314(a)(4)(C)) While these provisions are not explicitly applicable to DX–DOASes in the present case because DOE had no test procedure at the time of the NOPR or energy conservation standards for DX–DOASes, DOE considers those procedures as generally instructive for conducting the crosswalk analysis.

TABLE III.2—ENERGY CONSERVATION STANDARDS FOR DX–DOASES—Continued

Equipment type	Subcategory	Efficiency level
	(ASHP w/VERS)—Air-source heat pumps with ventilation energy recovery systems	ISMRE2 = 5.0. ISCOP2 = 3.20.
	(WC)—Water-cooled without ventilation energy recovery systems	ISMRE2 = 4.7.
	(WC w/VERS)—Water-cooled with ventilation energy recovery systems	ISMRE2 = 5.1.
	(WSHP)—Water-source heat pumps without ventilation energy recovery systems	ISMRE2 = 3.8. ISCOP2 = 2.13.
	(WSHP w/VERS)—Water-source heat pumps with ventilation energy recovery systems	ISMRE2 = 4.6. ISCOP2 = 4.04.

To evaluate the ISMRE2 levels for the crosswalk analysis, DOE conducted investigative testing on four DX–DOASes and collaborated with Pacific Gas and Electric on testing of a fifth DX–DOAS to measure the average impact of the test procedure updates on the dehumidification efficiency metric. To evaluate the ISCOP2 levels, DOE considered the updates in AHRI 920–2020 in a calculation to determine the proper ISCOP2 levels. Details of the crosswalk analysis used to determine ISMRE2 and ISCOP2 levels can be found in the Crosswalk Analysis Support Document (''CASD'').[10]

In the February 2022 NOPR, DOE requested comment on its proposal to adopt the ISMRE2 and ISCOP2 levels determined in DOE's crosswalk analysis. 87 FR 5560, 5579. AHRI and MIAQ stated that many stakeholders, including DOE consultants, came together to develop an appropriate crosswalk between ISMRE and ISMRE2. (AHRI, No. 15, pp. 1–2, 4; MIAQ, No. 12, p. 4) AHRI and MIAQ noted that approximately 23 meetings were held since June 2020 to discuss the crosswalk, that multiple data points that had both ISMRE & ISMRE2 ratings were collected by AHRI, DOE, and the CA IOUs, and that all AHRI data collected was provided to DOE consultants. AHRI and MIAQ noted that the crosswalk was delayed by the low calculated correlation between ISMRE and ISMRE2 and consequently required more complex modeling to map the relationship between the two metrics. AHRI and MIAQ stated that while work was ongoing to map the relationship between ISCOP to ISCOP2 through the AHRI group, DOE continued a separate analysis (*i.e.,* the ISCOP2 crosswalk analysis) culminating in the publication of the February 2022 NOPR and the proposed standards therein. AHRI and MIAQ stated that while DOE proposed ISMRE2 standards in the February 2022 NOPR before ASHRAE completed their crosswalk, AHRI and MIAQ supports the standards proposed in the February 2022 NOPR. *Id.* The CA IOUs also supported DOE's crosswalk analysis, and the proposed ISMRE2 and ISCOP2 levels. (CA IOUs, No. 14, p. 2)

Carrier and the Joint Advocates however disagreed with the proposed ISMRE2 and ISCOP2 levels in the February 2022 NOPR. (Carrier, No. 11, p. 2; Joint Advocates, No. 13, pp. 1–2) Specifically, they disagreed with the proposed levels because of the high variation in the test results, because models not close to the baseline ISMRE levels in ASHRAE 90.1–2016 were considered in the crosswalk analysis, and because while the overall crosswalk showed a decrease in efficiency levels when moving from ANSI/AHRI 920–2015 to AHRI 920–2020, there was an increase in efficiency levels for the units tested which had efficiency levels near the ASHRAE 90.1–2016 baseline. (Carrier, No. 11, pp. 2–3) Therefore, Carrier and the Joint Advocates expressed concern that the efficiency levels being proposed in the February 2022 NOPR are too low because DOE averaged the crosswalk results across all DX–DOASes analyzed (including units near, and further from the ISMRE levels in ASHRAE 90.1), which could potentially lead to market demand for equipment with lower efficiency than baseline DX–DOAS currently on the market. Carrier and the Joint Advocates stated that the models with efficiency levels closest to the ASHRAE 90.1–2016 baseline levels should be the only models considered in the crosswalk and recommended DOE collect more data from units close to the baseline levels. *Id.* Additionally, Carrier asserted that their internal investigations found that the ISMRE2 and ISCOP2 levels should be at the same ISMRE and ISCOP levels in ASHRAE 920–2016 and ASHRAE 90.1–2019, however Carrier did not provide any additional data or information to support that conclusion. (Carrier, No. 11, p. 3)

DOE acknowledges that a crosswalk consistent with the process prescribed at 42 U.S.C. 6293(e) would typically involve testing minimally compliant units, or in this case, testing units that had efficiencies at the minimum level specified in ASHRAE 90.1–2016 and ASHRAE 90.1–2019. However, as noted in the February 2022 NOPR, ISMRE ratings for DX–DOASes are generally not available to determine which models may perform at the minimum ISMRE levels in ASHRAE 90.1–2019 because the market for DX–DOASes is still developing, and efficiency in terms of ISMRE and ISCOP is generally not provided by manufacturers. DOE stated in the February 2022 NOPR that it would consider additional crosswalk data from DX–DOAS models which are minimally compliant with the ASHRAE Standard 90.1–2019 ISMRE levels should such data become publicly available. 87 FR 5560, 5577. While Carrier and the Joint Advocates expressed concern that the standards proposed in the February 2022 NOPR may be too low, DOE has not received any additional data on this subject, and DOE is not aware of any public data that has been made available. Therefore, DOE evaluated five DX–DOASes with a range of moisture removal capacities and ISMRE ratings, as detailed in the CASD, to develop the standard levels proposed in the February 2022 NOPR.

Separately, the CA IOUs urged DOE to employ more recent weather data than what was used to create Typical Meteorological Year 2 (TMY2) files to establish ISMRE2 and ISCOP2 weighting factors, and assert that more recent weather data would be more appropriate for DOEs analysis.

In response to the CA IOUs comment about more recent weather data, DOE notes that the purpose of the TMY data is to create hourly weather data over an average year, based on time series of weather data over 25 to 30 years. While there is a more current version than TMY2, version TMY3, the impact of a change in TMY data on the outcome of the weighting factors would be minor. In Chapter 7 of the technical support document for the 2016 Final Rule for

[10] The CASD is available at *www.regulations.gov/document/EERE-2017-BT-STD-0017-0009.*

CUACs/CUHPs,[11] DOE compared the cooling degree days (CDD) for the TMY2 and TMY3 datasets. Nationally, TMY3 had about 5 percent more CDDs however, the average summer maximum daily temperature increased by less than 1 degree F. Given that each ISMRE bin represents a range of temperature conditions and this is a small change in average temperatures, a transition to TMY3 would result in small, if any, change in the average conditions for test conditions A, B, C, and D, and also very small change in the weighting factors for the tests. Ultimately, there is no evidence that it would result in a change in test results that would make a significant change in an efficiency-level ranking of DX–DOAS designs.

DOE did not receive any additional data or information to inform DOE's crosswalk from ISMRE to ISMRE2, or ISCOP to ISCOP2, and absent such data, DOE has determined that DOE's crosswalk is appropriate. A such, in this final rule, DOE is establishing ISMRE2 and ISCOP2 efficiency levels as proposed in the February 2022 NOPR in Table 14 of 10 CFR 431.97.

F. Consideration of Energy Conservation Standards

As discussed in section II.A of this document, EPCA requires DOE to amend the existing Federal energy conservation standard for covered equipment each time ASHRAE amends[12] ASHRAE 90.1 with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) When triggered in this manner, DOE must adopt the minimum level specified in the amended ASHRAE 90.1, unless DOE determines that there is clear and convincing evidence to support a determination that a more stringent standard level would produce significant additional conservation of energy and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)) If DOE makes such a determination, it must publish a final rule to establish the more stringent standards. (42 U.S.C. 6313(a)(6)(B))

As discussed in the February 2022 NOPR, DOE normally performs multiple in-depth analyses to determine whether there is clear and convincing evidence to support more stringent energy conservation standards *(i.e.,* whether more stringent standards would produce significant additional conservation of energy and be technologically feasible and economically justified). 87 FR 5560, 5562. However, DOE tentatively determined in the February 2022 NOPR that a lack of data precluded such an analysis and therefore precluded a finding, by clear and convincing evidence, that more stringent energy conservation standards are justified. But DOE did provide a technical support document (TSD)[13] to present initial findings for certain of these analyses for DX–DOASes based on the information available to DOE at the time. As described in the following subsections, DOE does not have sufficient data to revise and expand upon these analyses presented in the TSD at this time.

1. Technological Feasibility

a. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available equipment or in working prototypes to be technologically feasible. See generally 10 CFR 431.4; sections 6(b)(3)(i) and 7(b)(1) of appendix A to 10 CFR part 430 subpart C (''Process Rule''). After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety and (4) unique-pathway proprietary technologies.

DOE received a number of comments in response to the 2019 NODA/RFI regarding technology options for DOE to include in its analysis. DOE incorporated this feedback into aspects of the crosswalk performed by DOE when developing the ISMRE2 and ISCOP2 levels proposed in the February 2022 NOPR. A summary of those comments and the technology options DOE considered as part of its analysis for the February 2022 NOPR may be found in the February 2022 NOPR. 87 FR 5570–5571. DOE also received several comments from AHRI and MIAQ related to the technology options used in DX–DOASes in response to the February 2022 NOPR, which are discussed in section III.D.5. DOE has determined that information provided by AHRI and MIAQ does not indicate any updates to DOE's analysis are needed. DOE did not receive additional information from stakeholders on these issues after publication of the February 2022 NOPR, and DOE has not found any additional relevant information. Accordingly, DOE maintained the same inputs for its technology and market assessment analyses as it did in the February 2022 NOPR. Additionally, as discussed in the February 2022 NOPR, DOE is not aware of an existing database or compilation containing a comprehensive list of DX–DOAS models and performance metrics, and DOE was not able to find ISMRE and ISCOP, or ISMRE2 and ISCOP2 ratings in much of the manufacturer equipment specifications. 87 FR 5560, 5570. Currently, DOE is still not aware of any such database.

b. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it typically determines the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE would typically determine the maximum technologically feasible (''max-tech'') improvements in energy efficiency for DX–DOASes, using the design parameters for the most efficient equipment available on the market or in working prototypes.

As discussed in the February 2022 NOPR, DOE was unable to identify the most efficient equipment available on the market in terms of ISMRE2 and ISCOPE2 because of the lack of data available to DOE. 87 FR 5560, 5571. Therefore, DOE was unable to estimate the field-installed energy use and cost of the most efficient equipment (in terms of ISMRE2 and ISCOP2) available on the market (factoring in parameters such as price markups, installation application, life-cycle cost and payback period, and overall shipments), and was unable to evaluate the technological feasibility of

[11] Available at: *https://www.regulations.gov/document/EERE-2013-BT-STD-0007-0105,* p. 7–18.

[12] Although EPCA does not explicitly define the term ''amended'' in the context of what type of revision to ASHRAE 90.1 would trigger DOE's obligation, DOE's longstanding interpretation has been that the statutory trigger is an amendment to the standard applicable to that equipment under ASHRAE 90.1 that increases the energy efficiency level for that equipment. *See* 72 FR 10038, 10042 (March 7, 2007).

[13] The September 2019 NODA/RFI TSD is available as Document No. 2 at *www.regulations.gov/docket/EERE-2017-BT-STD-0017.*

standards more stringent than the levels in the updated ASHRAE 90.1. *Id.*

DOE did not receive any additional information in response to the February 2022 that would assist DOE in assessing ISMRE2 and ISCOP2 levels more stringent than the levels in AHSRAE 90.1–2019. Therefore, in this final rule, DOE has determined that it is unable to assess more stringent levels than those presented in ASHRAE 90.1–2019.

2. Energy Savings

In setting a more stringent standard for ASHRAE equipment, DOE must have ''clear and convincing evidence'' that doing so ''would result in significant additional conservation of energy'' in addition to being technologically feasible and economically justified. 42 U.S.C. 6313(a)(6)(A)(ii)(II). This language indicates that Congress intended for DOE to determine that, in addition to the savings from the ASHRAE standards, DOE's standards would yield additional energy savings that are significant. As under the statutory provision applicable to covered products and non-ASHRAE equipment, this provision requires DOE to determine that its standards will produce a ''significant conservation of energy,'' (42 U.S.C. 6295(o)(3)(B)), but here also requires that DOE make that determination supported by ''clear and convincing evidence''. *See* 85 FR 8626, 8666–8667.

In the February 2022 NOPR, DOE initially determined that there is insufficient data on the developing DX–DOAS market to conduct an analysis of potential energy savings resulting from more stringent standards because AHRI 920–2020 is a relatively recent industry test standard, and thus, no database with ISMRE2 and ISCOP2 ratings has been established to show the general distribution of DX–DOAS efficiencies currently on the market. 87 FR 5560, 5571. Since then, DOE has not received or obtained sufficient data and information needed to conduct an analysis of potential energy savings resulting from more stringent standards. While DOE has received data from stakeholders comparing energy savings of DX–DOASes with VERS and DX–DOASes without VERS (as discussed in section III.B), DOE has not received data detailing energy savings of DX–DOASes with varying efficiencies. DOE is also currently still not aware of any database with ISMRE2 and ISCOP2 ratings which could contribute to an analysis of DX–DOAS efficiency distributions or energy savings analysis. As such, DOE has not conducted an analysis of potential energy savings resulting from more stringent standards, and DOE is adopting ISMRE2 and ISCOP2 DX–DOASes standards that are equivalent to the ISMRE and ISCOP standards presented in ASHRAE 90.1–2019, in part because it is unable to establish clear and convincing evidence to support more stringent standards.

3. Economic Justification

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (*See* 42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII)) As required by EPCA, DOE has considered each of these factors ''to the maximum extent practicable''.[14] The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

For individual consumers, measures of economic impact include the changes in LCC and payback period (''PBP'') associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

As noted, DOE is unaware of any database or compilation containing a comprehensive list of DX–DOAS models and performance metrics. This presents significant challenges to performing an accurate assessment of the DX–DOAS industry structure.

In determining the impacts of a potential standard on manufacturers, DOE typically conducts a manufacturer impact analysis (MIA). DOE did not perform an MIA for this rulemaking because there is not enough information available on the DX–DOAS market to determine which entities are already compliant with the finalized energy conservation standards (*i.e.,* producing DX–DOASes which currently meet or exceed the ISMRE2 and ISCOP2 minimum efficiency levels in this final rule) and what portion of annual cash flow these DX–DOASes comprise. However, DOE did examine the potential impacts on small manufacturers in its regulatory flexibility analysis, which is presented in section VII.B of this final rule.

DOE notes that a full consideration of more stringent levels, if undertaken, would assess manufacturer impacts including cumulative burden. However, because DOE is adopting energy conservation standards for DX–DOASes of equivalent stringency as those in present in ASHRAE 90.1–2019, and in the absence of more stringent standards, DOE has determined that the proposals set forth in this final rule would not add additional burden to manufacturers.

For individual consumers, DOE measures the economic impact by calculating the changes in LCC and PBP associated with new or amended standards. For consumers in the aggregate, DOE would also calculate the national net present value of the consumer costs and benefits expected to result from particular standards, while taking into account the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

DOE did not perform an LCC or an assessment of NPV for this rulemaking because there was not enough information available to develop the inputs required to measure the individual or aggregate consumer savings from higher standards. The LCC would require an engineering analysis, an energy use analysis, operating cost inputs, and a distribution of efficiencies that are available on the market. These inputs allow DOE to develop equipment prices, representative efficiency levels, annual operating costs, and a no-standards case distribution of equipment efficiencies to determine which consumers will be impacted by a higher standard. The NIA takes the weighted average national results from the LCC and combines them with shipments forecasts by equipment class and efficiency level in order to measure the national impact, in terms of consumer NPV and full-fuel-cycle energy savings. As stated previously, DOE was unable to develop cost-efficiency curves for DX–DOASes or to conduct an energy use analysis with enough degree of certainty that would allow it to consider a standard level more stringent than ASHRAE 90.1 (see section III.F.2 of this document). Without these inputs, DOE is unable to produce the LCC and NIA for this final rule. Accordingly, DOE did not perform LCC and NIA analyses.

b. Savings in Operating Costs Compared To Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared

[14] *See Am. Pub. Gas Ass'n* v. *United States Dep't of Energy,* 22 F.4th 1018, 1025 (D.C. Cir. 2022).

to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (*See* 42 U.S.C. 6313(a)(6)(B)(ii)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating cost (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more-stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For a LCC and PBP analysis, DOE assumes that consumers will purchase the covered equipment in the first year of compliance with new or amended standards. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards.

DOE did not perform an LCC and PBP analysis for this final rule. As discussed in the preceding paragraphs there is not enough information available to develop the inputs to the LCC and PBP models.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (*See* 42 U.S.C. 6313(a)(6)(B)(ii)(III)) As discussed, DOE was unable to conduct an energy use analysis with sufficient certainty. Therefore, DOE has not conducted or updated an NES analysis for this final rule.

d. Lessening of Utility or Performance of Products

In establishing equipment classes, and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered equipment. (*See* 42 U.S.C. 6313(a)(6)(B)(ii)(IV)) Based on data available to DOE, the standards adopted in this document would not reduce the utility or performance of the equipment under consideration in this rulemaking because DOE is establishing standards of equivalent stringency to those already found in ASHRAE 90.1, which have applied to DX–DOASes for several years.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a standard. (*See* 42 U.S.C. 6313(a)(6)(B)(ii)(V)) To assist the Department of Justice (''DOJ'') in making such a determination, DOE transmitted copies of its proposed rule and the NOPR TSD to the Attorney General for review, with a request that the DOJ provide its determination on this issue. In its assessment letter responding to DOE, DOJ concluded that the adopted energy conservation standards for DX–DOASes are unlikely to have a significant adverse impact on competition. The Attorney General's assessment is available for review in the rulemaking docket.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (*See* 42 U.S.C. 6313(a)(6)(B)(ii)(VI)) The energy savings from the adopted standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The adopted standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (''GHGs'') associated with energy production and use.

The utility impact analysis, emissions analysis, and emissions monetization all rely on the national energy savings estimates from the NIA. As discussed previously, DOE did not conduct an NIA and as a result could not conduct these downstream analyses.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (*See* 42 U.S.C. 6313(a)(6)(B)(ii)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.'' DOE did not identify any relevant ''other factors'' for this final rule.

h. Rebuttable Presumption

EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of the equipment that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that amended energy conservation standards would have on the PBP for consumers. These analyses include, but are not limited to, the 3-year PBP contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6313(a)(6)(B)(ii) and 42 U.S.C. 6313(a)(6)(C)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

As discussed, DOE did not perform an LCC and PBP analysis for this final rule because there is not enough information available to develop the inputs to the LCC and PBP models. Therefore, DOE does not have sufficient information to perform this analysis.

G. Conclusions

EPCA requires DOE to establish an amended uniform national standard for small, large, and very large commercial package air conditioning and heating equipment, which includes DX–

DOASes, at the minimum level specified in the amended ASHRAE 90.1 unless DOE determines, by rule published in the **Federal Register**, and supported by clear and convincing evidence, that adoption of a uniform national standard more stringent than the amended ASHRAE 90.1 would result in significant additional conservation of energy and is technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(ii)(I)–(II)). As discussed throughout this document, due to the lack of available market and performance data with the IMSRE2 and ISCOP2 metrics, DOE is unable to conduct the analysis necessary to evaluate the potential energy savings or evaluate whether more stringent standards would be technologically feasible or economically justified at this time, with sufficient certainty. Therefore, DOE has determined it lacks clear and convincing evidence that adoption of more stringent standards would result in additional conservation of energy and would be technologically feasible and economically justified. Accordingly, DOE is establishing energy conservation standards for DX–DOASes that are of equivalent stringency as the minimum levels specified in ASHRAE 90.1–2019.

DOE is establishing standards using the ISMRE2 and ISCOP2 metrics, which are the metrics used in the most recent version of the industry test procedure for DX–DOAS recognized by ASHRAE 90.1–2019 (*i.e.,* AHRI 920–2020). Based on DOE's crosswalk analysis and the discussion in section III.E, DOE has determined that the adopted energy conservation standards in terms of ISMRE2 and ISCOP2 are of equivalent stringency to the standards for DX–DOAS in ASHRAE 90.1–2019, which rely on the ISMRE and ISCOP metrics. The adopted standards for DX–DOASes are shown in Table III.2 of this final rule. The adopted standards apply to all DX–DOASes with an MRC of less than 324 lbs moisture/hr manufactured in, or imported into, the United States starting 18 months after the publication of this final rule.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'')12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed/final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review.

OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

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'') and a final regulatory flexibility analysis (''FRFA'') 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 E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 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 rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-general-counsel*).

On October 26, 2016, ASHRAE officially released the 2016 edition of ASHRAE 90.1 (''ASHRAE 90.1–2016''), which for the first time created separate equipment classes for DX–DOASes with corresponding standards, thereby triggering DOE's obligations pursuant to EPCA to either: (1) establish uniform national standards for DX–DOASes at the minimum levels specified in the amended ASHRAE 90.1; or (2) adopt more stringent standards based on clear and convincing evidence that adoption of such standards would produce significant additional energy savings and be technologically feasible and economically justified.

As result of the ASHRAE trigger, DOE published a NOPR (''February 2022 NOPR'') on February 1, 2022 in which DOE proposed to adopt energy conservation standards for DX–DOASes. 87 FR 5560. In this final rule, DOE is establishing energy conservation standards for DX–DOASes at the stringency levels specified in ASHRAE 90.1–2019, relying on updated metrics: ISMRE2 (for all DX–DOASes) and ISCOP2 (for heat pump DX–DOASes).

For manufacturers of small, large, and very large air-conditioning and heating equipment (including DX–DOASes), the Small Business Administration (''SBA'') has set a size threshold which defines those entities classified as ''small businesses.'' DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of this rule. *See* 13 CFR part 121. The equipment covered by this final rule are classified under North American Industry Classification System (''NAICS'') code 333415,[15] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

In reviewing the DX–DOAS market, DOE used company websites, marketing research tools, product catalogues, and other public information to identify

[15] The business size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support—table-size-standards* (Last Accessed July 29th, 2021).

companies that manufacture DX–DOASes. DOE screened out companies that do not meet the definition of ''small business'' or are foreign-owned and operated. DOE used subscription-based business information tools to determine headcount, revenue, and geographic presence of the small businesses.

As noted in the February 2022 NOPR, DOE identified 12 manufacturers of DX–DOASes, of which one met the definition of a domestic small businesses. DOE understands the annual revenue of the small manufacturer to be approximately $66 million. 87 FR 5560, 5584.

In this final rule, DOE adopts energy conservation standards for DX–DOAS based on the ISMRE2 and ISCOP2 metrics. In the July 2022 TP final rule, DOE adopted the test procedure for DX–DOASes, as specified in appendix B. In that test procedure final rule, DOE determined that manufacturers would be unlikely to incur a significant increase in burden, given that DOE referenced the prevailing industry test procedure (*i.e.,* AHRI 920–2020). 87 FR 45189. Additionally, DOE has determined that the adopted ISMRE2 and ISCOP2 standards are of equivalent stringency as the standards in ASHRAE 90.1–2016 (and ASHRAE 90.1–2019), which are expressed in terms of ISMRE and ISCOP. In the absence of available market and performance data, DOE is unable to conduct the analysis necessary to evaluate the potential energy savings or evaluate whether more stringent standards would be technologically feasible or economically justifiable, with sufficient certainty. As such, DOE is not establishing standards at levels more stringent than those specified in ASHRAE 90.1–2019.

Therefore, DOE has determined that manufacturers would only incur costs as result of this final rule if a manufacturer was not already testing to current industry practice. However, in the July 2022 TP final rule, DOE determined that it would be unlikely for manufacturers to incur testing costs given that DOE is referencing the prevailing industry test procedure. DOE determined that its adoption as part of the Federal test procedure would be expected to result in little additional cost, even with the minor modifications proposed. DOE also determined that the test procedure would not require manufacturers to redesign any of the covered equipment, would not require changes to how the equipment is manufactured, and would not impact the utility of the equipment. 87 FR 45189.

DOE identified only one domestic small manufacturer affected by this rulemaking, and received no comments stating otherwise. Furthermore, DOE is not establishing standards at levels more stringent than those specified in ASHRAE 90.1–2019. Therefore, on the basis of the *de minimis* compliance burden and that DOE is not proposing more-stringent standards than those specified in ASHRAE 90.1–2016 (and ASHRAE 90.1–2019), DOE certifies that this final rule does not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE will transmit a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless that collection of information displays a currently valid OMB Control Number.

OMB Control Number 1910–1400, Compliance Statement Energy/Water Conservation Standards for Appliances, is currently valid and assigned to the certification reporting requirements applicable to covered equipment, including DX–DOASes. DOE's certification and compliance activities ensure accurate and comprehensive information about the energy and water use characteristics of covered products and covered equipment sold in the United States. Manufacturers of all covered products and covered equipment must submit a certification report before a basic model is distributed in commerce, annually thereafter, and if the basic model is redesigned in such a manner to increase the consumption or decrease the efficiency of the basic model such that the certified rating is no longer supported by the test data. Additionally, manufacturers must report when production of a basic model has ceased and is no longer offered for sale as part of the next annual certification report following such cessation. DOE requires the manufacturer of any covered product or covered equipment to establish, maintain, and retain the records of certification reports, of the underlying test data for all certification testing, and of any other testing conducted to satisfy the requirements of part 429, part 430, and/or part 431. Certification reports provide DOE and consumers with comprehensive, up-to date efficiency information and support effective enforcement.

Certification data will be required for DX–DOASes; however, DOE is not adopting certification or reporting requirements for DX–DOASes in this final rule. Instead, DOE may consider proposals to establish certification requirements and reporting for DX–DOASes under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

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

Pursuant to the National Environmental Policy Act of 1969 (''NEPA''), DOE has analyzed this action rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal 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 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 equipment that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (*See* 42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' 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. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 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 E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 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, this final rule meets the relevant standards of E.O. 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 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 ''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 them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

This rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector. In this document, DOE is establishing energy conservation standards at an equivalent stringency level as the existing industry standards in ASHRAE 90.1–2019. The determination of the adopted energy conservation standards is based on a crosswalk of the ASHRAE 90.1–2019 minimum efficiency levels to updated efficiency metrics, and thus DOE does not expect that units which are minimally compliant with ASHRAE 90.1–2019 would require redesign. As a result, the analytical requirements of UMRA 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 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

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the 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 Federal agencies to review most disseminations of information to the public under information quality 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%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final 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

E.O. 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 OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates 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 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.

DOE has concluded that this regulatory action, which sets forth energy conservation standards for DX–DOASes, is not a significant energy action because the standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this final rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and prepared a report describing that peer review.[16] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. DOE has determined that the peer-reviewed analytical process continues to reflect current practice, and the Department followed that process for developing energy conservation standards in the case of the present rulemaking.

[16] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed October 4, 2022).

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final 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 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on October 19, 2022, by Francisco Alejandro Moreno, 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 October 20, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE is amending parts 429 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. Amend § 429.43 by adding paragraph (a)(3)(i)(B) and redesignating table 2 as table 3.

The addition reads as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) * * *

(3) * * *

(i) * * *

(A) * * *

(B) When certifying, the following provisions apply.

(*1*) For ratings based on tested samples, the represented value of moisture removal capacity shall be between 95 and 100 percent of the mean of the moisture removal capacities measured for the units in the sample selected, as described in paragraph (a)(1)(ii) of this section, rounded to the nearest lb/hr multiple specified in table 2 to paragraph (a)(3)(i)(B) of this section.

(*2*) For ratings based on an AEDM, the represented value of moisture removal capacity shall be the moisture removal capacity output simulated by the AEDM, as described in paragraph (a)(2) of this section, rounded to the nearest lb/hr multiple specified in table 2 to paragraph (a)(3)(i)(B) of this section.

TABLE 2 PARAGRAPH (a)(3)(i)(B)—ROUNDING REQUIREMENTS FOR RATED MOISTURE REMOVAL CAPACITY

Moisture removal capacity (MRC), lb/hr	Rounding multiples, lb/hr
0 < MRC ≤ 30	0.2
30 < MRC ≤ 60	0.5
60 < MRC ≤ 180	1
180 < MRC	2

* * * * *

■ 3. Amend § 429.134 by adding paragraphs (s)(2) and (3) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(s) * * *

(2) If the manufacturer certified testing in accordance with Option 1 using default VERS exhaust air transfer ratio (EATR) values or Option 2 using default VERS effectiveness and EATR values, DOE may determine the integrated seasonal moisture removal efficiency 2 (ISMRE2) and/or the integrated seasonal coefficient of performance 2 (ISCOP2) using the default values or by conducting testing to determine VERS performance

according to the DOE test procedure in appendix B to subpart F of part 431 of this chapter (with the minimum purge angle and zero pressure differential between supply and return air).

(3) If the manufacturer certified testing in accordance with Option 1 using VERS exhaust air transfer ratio (EATR) values or Option 2 using VERS effectiveness and EATR values determined using an analysis tool certified in accordance with the DOE test procedure in appendix B to subpart F of part 431 of this chapter, DOE may conduct its own testing to determine VERS performance in accordance with the DOE test procedure in appendix B to subpart F of part 431 of this chapter.

(i) DOE would use the values of VERS performance certified to DOE (*i.e.* EATR, sensible effectiveness, and latent effectiveness) as the basis for determining the ISMRE2 and/or ISCOP2 of the basic model only if, for Option 1, the certified EATR is found to be no more than one percentage point less than the mean of the measured values (*i.e.* the difference between the measured EATR and the certified EATR is no more than 0.01), or for Option 2, all certified values of sensible effectiveness are found to be no greater than 105 percent of the mean of the measured values (*i.e.* the certified effectiveness divided by the measured effectiveness is no greater than 1.05), all certified values of latent effectiveness are found to be no greater than 107 percent of the mean of the measured values, and the certified EATR is found to be no more than one percentage point less than the mean of the measured values.

(ii) If any of the conditions in paragraph (s)(2)(i) of this section do not hold true, then the mean of the measured values will be used as the basis for determining the ISMRE2 and/or ISCOP2 of the basic model.

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 5. Amend § 431.97 by adding paragraph (g) and table 14 to § 431.97 to read as follows:

§ 431.97 Energy efficiency standards and their compliance dates.

* * * * *

(g) Each direct expansion-dedicated outdoor air system manufactured on or after the compliance date listed in table 14 to this section must meet the applicable minimum energy efficiency standard level(s) set forth in this section.

TABLE 14 TO § 431.97—MINIMUM EFFICIENCY STANDARDS FOR DIRECT EXPANSION-DEDICATED OUTDOOR AIR SYSTEMS

Equipment type	Subcategory	Efficiency level	Compliance date: equipment manufactured starting on . . .
Direct expansion-dedicated outdoor air systems.	(AC)—Air-cooled without ventilation energy recovery systems.	ISMRE2 = 3.8	May 1, 2024.
	(AC w/VERS)—Air-cooled with ventilation energy recovery systems.	ISMRE2 = 5.0	May 1, 2024.
	(ASHP)—Air-source heat pumps without ventilation energy recovery systems.	ISMRE2 = 3.8 ISCOP2 = 2.05	May 1, 2024.
	(ASHP w/VERS)—Air-source heat pumps with ventilation energy recovery systems.	ISMRE2 = 5.0 ISCOP2 = 3.20	May 1, 2024.
	(WC)—Water-cooled without ventilation energy recovery systems.	ISMRE2 = 4.7	May 1, 2024.
	(WC w/VERS)—Water-cooled with ventilation energy recovery systems.	ISMRE2 = 5.1	May 1, 2024.
	(WSHP)—Water-source heat pumps without ventilation energy recovery systems.	ISMRE2 = 3.8 ISCOP2 = 2.13	May 1, 2024.
	(WSHP w/VERS)—Water-source heat pumps with ventilation energy recovery systems.	ISMRE2 = 4.6 ISCOP2 = 4.04	May 1, 2024.

[FR Doc. 2022–23185 Filed 10–31–22; 8:45 am]

BILLING CODE 6450–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1006

[Docket No. CFPB–2019–0022]

RIN 3170–AA41

Debt Collection Practices (Regulation F); Corrections

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation; correcting amendments.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) published ''Debt Collection Practices (Regulation F)'' on January 19, 2021, to revise Regulation F, which implements the Fair Debt Collection Practices Act. Omissions in that document resulted in certain paragraphs in the Official Interpretations (Commentary) not being incorporated into the Code of Federal Regulations (CFR). This document corrects the Official Interpretations to Regulation F by adding the missing paragraphs to the CFR.

DATES: The corrections are effective on November 1, 2022.

FOR FURTHER INFORMATION CONTACT: 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:

I. Background

The CFPB is issuing this document to correct two comments in the CFPB's Commentary to Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA).[1] In the final rule titled, ''Debt Collection Practices (Regulation F)'' (January 2021 Final Rule), published in the **Federal Register** on January 19, 2021 (86 FR 5766), the CFPB included paragraph 3 under heading *30(a)(1) In general* and paragraph 3 under heading *38*—

[1] 15 U.S.C. 1692 *et seq.*

Disputes and Requests for Original-Creditor Information in its commentary text for the rule, but omitted the related amendatory instruction to add those specific paragraphs to the Commentary. In addition, paragraph 2 under heading 38 was unintentionally omitted.[2] These omissions were a scrivener's error. The CFPB is issuing this correction to ensure that these paragraphs are incorporated into the Commentary published in the CFR and to correct several typographical errors in the comments themselves. To comply with Office of the Federal Register requirements for amending commentary, this document re-prints in their entirety both subsections of commentary in which the missing paragraphs should have appeared.

II. Regulatory Requirements

The CFPB finds that public comment on this correction is unnecessary because the CFPB is correcting inadvertent, technical errors, about which there is no basis for substantive disagreement. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. The CFPB has determined that these corrections do not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring Office of Management and Budget approval under the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1006

Administrative practice and procedure, Consumer protection, Credit, Debt collection, Intergovernmental relations.

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends Regulation F, 12 CFR part 1006, as set forth below:

PART 1006—DEBT COLLECTION PRACTICES (REGULATION F)

■ 1. The authority citation for part 1006 continues to read as follows:

Authority: 12 U.S.C. 5512, 5514(B), 5532; 15 U.S.C. 1692*L*(D), 1692O, 7004.

■ 2. In Supplement I to Part 1006—Official Interpretations:

■ a. Under *Section 1006.30—Other Prohibited Practices, 30(a) Required actions prior to furnishing information, 30(a)(1) In general* is revised.

■ b. Under *Section 1006.38—Disputes and Requests for Original-Creditor Information,* the introductory text before *38(a) Definitions* is revised.

The revisions read as follows:

Supplement I to Part 1006—Official Interpretations

* * * * *

Subpart B—Rules for FDCPA Debt Collectors

* * * * *

Section 1006.30—Other Prohibited Practices

30(a) Required actions prior to furnishing information

30(a)(1) In general

1. *About the debt.* Section 1006.30(a)(1) provides, in relevant part, that a debt collector must not furnish to a consumer reporting agency, as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), information about a debt before taking one of the actions described in § 1006.30(a)(1)(i) or (ii). Each of the actions includes conveying information ''about the debt'' to the consumer. The validation information required by § 1006.34(c), including such information if provided in a validation notice, is information ''about the debt.''

2. *Reasonable period of time.* Section 1006.30(a)(1)(ii) provides, in relevant part, that a debt collector who places a letter about a debt in the mail, or who sends an electronic message about a debt to the consumer, must wait a reasonable period of time to receive a notice of undeliverability before furnishing information about the debt to a consumer reporting agency. The reasonable period of time begins on the date that the debt collector places the letter in the mail or sends the electronic message. A period of 14 consecutive days after the date that the debt collector places a letter in the mail or sends an electronic message is a reasonable period of time.

3. *Notices of undeliverability.* Section 1006.30(a)(1)(ii) provides, in relevant part, that, if a debt collector who places a letter about a debt in the mail, or who sends an electronic message about a debt to the consumer, receives a notice of undeliverability during the reasonable period of time, the debt collector must not furnish information about the debt to a consumer reporting agency until the debt collector otherwise satisfies § 1006.30(a)(1). A debt collector who does not receive a notice of undeliverability during the reasonable period and who thereafter furnishes information about the debt to a consumer reporting agency does not violate § 1006.30(a)(1) even if the debt collector subsequently receives a notice of undeliverability. The following examples illustrate the rule:

i. Assume that, on May 1, a debt collector mails the consumer a validation notice as described in § 1006.34(a)(1)(i)(A). On May 10, the debt collector receives a notice of undeliverability and, without taking any additional action described in § 1006.30(a)(1), subsequently furnishes information about the debt to a consumer reporting agency. The debt collector has violated § 1006.30(a)(1).

ii. Assume that, on May 1, a debt collector mails the consumer a validation notice as described in § 1006.34(a)(1)(i)(A). On May 10, the debt collector receives a notice of undeliverability. On May 11, the debt collector mails the consumer another validation notice as described in § 1006.34(a)(1)(i)(A). From May 11 to May 24, the debt collector permits receipt of, monitors for, and does not receive, a notice of undeliverability and thereafter furnishes information about the debt to a consumer reporting agency. The debt collector has not violated § 1006.30(a)(1).

iii. Assume that, on May 1, a debt collector mails the consumer a validation notice as described in § 1006.34(a)(1)(i)(A). From May 1 to May 14, the debt collector permits receipt of, monitors for, and does not receive, a notice of undeliverability and thereafter furnishes information about the debt to a consumer reporting agency. After furnishing the information, the debt collector receives a notice of undeliverability. The debt collector has not violated § 1006.30(a)(1) and, without taking any further action, may furnish additional information about the debt to a consumer reporting agency.

* * * * *

Section 1006.38—Disputes and Requests for Original-Creditor Information

1. *In writing.* Section 1006.38 contains requirements related to a dispute or request for the name and address of the original creditor timely submitted in writing by the consumer. A consumer has disputed the debt or requested the name and address of the original creditor in writing for purposes of § 1006.38(c) or (d)(2) if the consumer, for example:

i. Mails the written dispute or request to the debt collector;

[2] Paragraph 2 under heading *38—Disputes and Requests for Original-Creditor Information* was included in the final rule titled, ''Debt Collection Practices (Regulation F),'' published in the **Federal Register** on November 30, 2020 (85 FR 76734). To comply with Office of Federal Register requirements for amending commentary, that paragraph also should have been included in the commentary text for the January 2021 Final Rule.

ii. Returns to the debt collector the consumer-response form that § 1006.34(c)(4) requires to appear on the validation notice and indicates on the form the dispute or request;

iii. Provides the dispute or request to the debt collector using a medium of electronic communication through which the debt collector accepts electronic communications from consumers, such as an email address or a website portal; or

iv. Delivers the written dispute or request in person or by courier to the debt collector.

2. *Interpretation of the E–SIGN Act.* Comment 38–1.iii constitutes the Bureau's interpretation of section 101 of the E–SIGN Act as applied to section 809(b) of the FDCPA. Under this interpretation, section 101(a) of the E–SIGN Act enables a consumer to satisfy through an electronic request the requirement in section 809(b) of the FDCPA that the consumer's notification of the debt collector be ''in writing.'' Further, because the consumer may only use a medium of electronic communication through which a debt collector accepts electronic communications from consumers, section 101(b) of the E–SIGN Act is not contravened.

3. *Deceased consumers.* If the debt collector knows or should know that the consumer is deceased, and if the consumer has not previously disputed the debt or requested the name and address of the original creditor, a person who is authorized to act on behalf of the deceased consumer's estate operates as the consumer for purposes of § 1006.38. In such circumstances, to comply with § 1006.38(c) or (d)(2), respectively, a debt collector must respond to a request for the name and address of the original creditor or to a dispute timely submitted in writing by a person who is authorized to act on behalf of the deceased consumer's estate.

* * * * *

Dani Zylberberg,

Counsel and Federal Register Liaison, Consumer Financial Protection Bureau.

[FR Doc. 2022–23559 Filed 10–31–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0980; Project Identifier MCAI–2022–00448–P; Amendment 39–22212; AD 2022–21–13]

RIN 2120–AA64

Airworthiness Directives; Hoffmann GmbH & Co. KG Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–23–17 for all Hoffmann GmbH & Co. KG (Hoffmann) model HO–V 72 propellers. AD 2021–23–17 required amending the existing aircraft flight manual (AFM) by inserting abnormal propeller vibration instructions, visual inspection and non-destructive test (NDT) inspection of the propeller hub and, depending on the results of the inspections, replacement of the propeller hub with a part eligible for installation. Since the FAA issued AD 2021–23–17, further investigation by the manufacturer revealed that cracks found on propeller hubs likely resulted from propeller blade retention nuts that were not tightened using published service information during blade installation. This AD is prompted by reports of cracks at different positions on two affected propeller hubs. This AD retains the required actions of AD 2021–23–17. This AD also requires a maintenance records review and, depending on the results of the maintenance records review, tightening of each propeller blade retention nut to specific torque values. Depending on the results of the maintenance records review, this AD requires physically inspecting the propeller blade for shake. If any axial play is detected during the performance of the inspection, this AD requires the removal of the propeller from service and the performance of an NDT inspection of the propeller hub, and depending on the NDT inspection results, replacement of the propeller hub with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 6, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 6, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 10, 2022 (86 FR 68905, December 6, 2021).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0980; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Hoffmann service information identified in this final rule, contact Hoffmann GmbH & Co. KG, Küpferlingstrasse 9, 83022, Rosenheim, Germany; phone: +49 0 8031 1878 0; email: *info@hoffmann-prop.com;* website: *hoffmann-prop.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2022–0980.

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7761; email: *9-AVS-AIR-BACO-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–23–17, Amendment 39–21815 (86 FR 68905, December 6, 2021) (AD 2021–23–17). AD 2021–23–17 applied to all Hoffmann GmbH & Co. KG model HO–V 72 propellers. AD 2021–23–17 required amending the existing AFM by inserting abnormal propeller vibration instructions, visual inspection and NDT inspection of the propeller hub and, depending on the results of the inspections, replacement of the propeller hub with a part eligible for installation. The FAA issued AD 2021–23–17 to prevent failure of the propeller hub.

The NPRM published in the **Federal Register** on August 01, 2022 (87 FR 46903). The NPRM was prompted by EASA AD 2022–0061, dated April 4, 2022 (referred to after this as ''the MCAI''), issued by the European Union

Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. The MCAI states:

Cracks have been reported at different positions on two affected parts, both installed on Slingsby T67 ''Firefly'' aeroplanes. One crack was found during scheduled inspection, the other crack during an unscheduled inspection after abnormal vibrations occurred. Subsequent investigation determined that improper tightening of blade nuts has caused or contributed to those events.

This condition, if not detected and corrected, could lead to in-flight propeller detachment, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.

To address this potential unsafe condition, Hoffmann Propeller issued the SB, providing applicable instructions, and EASA issued Emergency AD 2020–0226–E (later revised [to EASA AD 2020–0226R1]) to require inspections of affected parts and, depending on findings, replacement. That AD also required, for certain aeroplanes, amendment of the applicable Aircraft Flight Manual (AFM).

Since that [EASA] AD was issued, further investigation revealed that not all propeller blade nuts were tightened in accordance with the Hoffman Propeller blade nut tightening procedure B2.23 which requires a certain over-torquing and loosening of the blade nut to limit a preload reduction due to material settlement. Prompted by this development, Hoffmann Propeller issued SB057 (incorporating blade nut tightening procedure B2.23) providing torquing instructions, and SB58 providing instructions for setting correct counterweight angles. Additionally, Hoffmann Propeller issued the torque tightening SB (referencing SB57 and SB58) providing inspections and corrective action instructions.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2020–0226R1, which is superseded, and requires additional blade checks, inspections, and re-tightening of the propeller blade nuts

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0980.

In the NPRM, the FAA proposed to retain all of the requirements of AD 2021–23–17. In the NPRM, the FAA also proposed to require a maintenance records review and, depending on the results of the maintenance records review, tightening of each propeller blade retention nut to specified torque values. Depending on the results of the maintenance records review, the NPRM also proposed to require physically inspecting the propeller blade for shake. If any axial play is detected during inspection, the NPRM proposed to require the removal of the propeller from service and the performance of an NDT inspection of the propeller hub, and depending on the NDT inspection results, replacement of the propeller hub with a part eligible for installation.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and the removal of the reference to Hoffmann Propeller Service Bulletin SB059 B, dated February 23, 2022, from paragraph (j)(2), this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service information:

- Hoffmann Propeller Service Bulletin SB057 C, dated February 22, 2022. This service bulletin (SB) specifies procedures for tightening the propeller blade retention nut.
- Hoffmann Propeller Service Bulletin SB059 B, dated February 23, 2022. This SB specifies procedures for tightening the propeller blade retention nut with the correct torque and inspecting the propeller blade for shake.
- Hoffmann Propeller GmbH & Co. KG Service Bulletin SB E53 Rev. D, dated February 18, 2021, which was previously approved by the Director of the Federal Register for incorporation by reference on January 10, 2022 (86 FR 68905, December 6, 2021). This SB describes procedures for visual and NDT inspections of the propeller hub for cracks.

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

Other Related Service Information

The FAA also reviewed the following service information:

- Hoffmann Propeller Service Bulletin SB058 A, dated February 2, 2022. This SB specifies the updated definition of the counterweight angle.

Costs of Compliance

The FAA estimates that this AD affects 35 propellers installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Amend AFM	1 work-hour × $85 per hour = $85	$0	$85	$2,975
Visually inspect propeller hub	1 work-hour × $85 per hour = $85	0	85	2,975
NDT inspect propeller hub	8 work-hours × $85 per hour = $680	0	680	23,800
Review maintenance records	0.5 work-hours × $85 per hour = $42.50	0	42.50	1,487.50

The FAA estimates the following costs to do any necessary actions that are required based on the results of the inspections. The agency has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace propeller hub	5 work-hours × $85 per hour = $425	$1,600	$2,025
Inspect propeller blade for shake	0.25 work-hours × $85 per hour = $21.25	0	21.25
Tighten propeller blade retention nuts	2 work-hours × $85 per hour = $170	0	170

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 has determined that 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:

■ a. Removing Airworthiness Directive 2021–23–17, Amendment 39–21815 (86 FR 68905, December 6, 2021); and

■ b. Adding the following new airworthiness directive:

2022–21–13 Hoffmann GmbH & Co. KG: Amendment 39–22212; Docket No. FAA–2022–0980; Project Identifier MCAI–2022–00448–P.

(a) Effective Date

This airworthiness directive (AD) is effective December 6, 2022.

(b) Affected ADs

This AD replaces AD 2021–23–17, Amendment 39–21815 (86 FR 68905, December 6, 2021) (AD 2021–23–17).

(c) Applicability

This AD applies to Hoffmann GmbH & Co. KG (Hoffmann) model HO–V 72 propellers.

(d) Subject

Joint Aircraft System Component (JASC) Code 6114, Propeller Hub Section.

(e) Unsafe Condition

This AD was prompted by reports of cracks at different positions on two affected propeller hubs. The FAA is issuing this AD to prevent failure of the propeller hub. The unsafe condition, if not addressed, could result in release of the propeller, damage to the airplane, and injury to persons on the ground.

(f) Compliance

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

(g) Required Actions

(1) Before the next flight after December 22, 2020 (the effective date of AD 2020–25–05, Amendment 39–21347 (85 FR 78702, December 7, 2020)), amend the emergency or abnormal procedures section of the existing aircraft flight manual by inserting this text: ''Abnormal propeller vibrations: As applicable, reduce engine RPM.''

(2) Before the next flight after January 10, 2022 (the effective date of AD 2021–23–17), and thereafter, before the next flight after any flight where abnormal propeller vibrations have been experienced, visually inspect propeller hub HO–V 72 ( ) ( )–( )–( ) for cracks using paragraph 2.1 of Hoffmann Propeller GmbH & Co. KG Service Bulletin SB E53, Rev. D, dated February 18, 2021 (Hoffmann Propeller SB E53 Rev. D).

(3) Within 20 flight hours (FHs) after January 10, 2022 (the effective date of AD 2021–23–17), perform a non-destructive test (NDT) inspection of propeller hub HO–V 72 ( ) ( )–( )–( ) using paragraph 2.3 of Hoffmann Propeller SB E53 Rev. D.

(4) During each overhaul of propeller hub HO–V 72 ( ) ( )–( )–( ) after January 10, 2022 (the effective date of AD 2021–23–17), perform an NDT inspection using paragraph 2.3 of Hoffmann Propeller SB E53 Rev. D.

(5) Within 30 days after the effective date of this AD, review the maintenance records to confirm the propeller blade retention nuts were tightened at the last in-shop maintenance visit to the torque values in paragraph 5 of Hoffmann Propeller Service Bulletin SB057 C, dated February 22, 2022 (Hoffmann Propeller SB057 C).

(6) If, during the records review required by paragraph (g)(5) of this AD, it is determined that the propeller blade retention nuts were not tightened to the torque values in paragraph 5 of Hoffmann Propeller SB057 C, or it cannot be confirmed if the propeller blade retention nuts were tightened to the torque values in paragraph 5 of Hoffmann Propeller SB057 C, perform the following actions:

(i) Within 90 FHs after the effective date of this AD, tighten each propeller blade retention nut to the torque values in paragraph 5 of Hoffmann Propeller SB057 C, using paragraphs 6 and 7 of Hoffmann Propeller Service Bulletin SB059 B, dated February 23, 2022.

(ii) Before the next flight after the effective date of this AD and, thereafter, before each flight until the propeller blade retention nut is tightened to the torque values in paragraph 5 of Hoffmann Propeller SB057 C, as required by paragraph (g)(6)(i) of this AD, confirm that there is no axial play in the blade retention system by inspecting the propeller blade for shake. If any axial play is detected, remove the propeller from service and perform an NDT inspection of the propeller hub using paragraph 2.3 of Hoffmann Propeller SB E53 Rev. D.

(7) If, during any inspection required by paragraph (g)(2), (3), (4) or (6)(ii) of this AD, any crack is detected, replace propeller hub HO–V 72 ( ) ( )–( )–( ) with a part eligible for installation.

(h) Definition

For the purpose of this AD, a ''part eligible for installation'' is a propeller hub HO–V 72 ( ) ( )–( )–( ) with zero hours time since new, or a propeller hub HO–V 72 ( ) ( )–( )–( ) that

has passed an NDT inspection using paragraph 2.3 of Hoffmann Propeller SB E53 Rev. D.

(i) Non-Required Actions

(1) Sending the propeller to Hoffmann for investigation, as contained in paragraph 2.1 of Hoffmann Propeller SB E53 Rev. D, is not required by this AD.

(2) Reporting propeller hubs with cracks to Hoffmann, as contained in paragraph 2.3 of Hoffmann Propeller SB E53 Rev. D, is not required by this AD.

(j) Credit for Previous Actions

(1) You may take credit for the initial visual inspection and NDT inspection of the propeller hub required by paragraphs (g)(2), (3), and (4) of this AD if you performed any of these actions before January 10, 2022 (the effective date of AD 2021 23–17) using Hoffmann Propeller GmbH & Co. KG SB E53, Rev. A, dated October 9, 2020; Rev. B, dated October 14, 2020; or Rev. C, dated December 9, 2020.

(2) You may take credit for the records review to confirm the propeller blade retention nuts were tightened to the torque values as required by paragraph (g)(5) of this AD, and the tightening of each propeller blade retention nut as required by paragraph (g)(6)(i) of this AD if you performed any of these actions before the effective date of this AD during the last in-shop maintenance visit using Hoffmann Propeller Service Bulletin SB057 B, dated February 8, 2022; or Hoffmann Propeller Service Bulletin SB059 A, dated February 11, 2022.

(k) Special Flight Permit

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a service facility to perform the NDT inspection. Special flight permits are prohibited to perform the visual inspection of the propeller hub.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (m)(1) of this AD.

(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.

(m) Additional Information

(1) For more information about this AD, contact Michael Schwetz, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7761; email: *9-AVS-AIR-BACO-COS@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2022–0061, dated April 4, 2022, for related information. This EASA AD may be found in the AD docket at regulatFAA–2022–0980.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on December 6, 2022.

(i) Hoffmann Propeller Service Bulletin SB057 C, dated February 22, 2022.

(ii) Hoffmann Propeller Service Bulletin SB059 B, dated February 23, 2022.

(4) The following service information was approved for IBR on January 10, 2022 (86 FR 68905, December 6, 2021).

(i) Hoffmann Propeller GmbH & Co. KG Service Bulletin SB E53 Rev. D, dated February 18, 2021.

(ii) Reserved.

(5) For Hoffmann service information identified in this AD, contact Hoffmann GmbH & Co. KG, Küpferlingstrasse 9, 83022, Rosenheim, Germany; phone: +49 0 8031 1878 0; email: *info@hoffmann-prop.com;* website: *hoffmann-prop.com.*

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

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

Issued on October 6, 2022.

Christina Underwood,

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

[FR Doc. 2022–23716 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0773; Airspace Docket No. 22–ACE–14]

RIN 2120–AA66

Amendment of Class E Airspace; Bloomfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Bloomfield, IA. This action is the result of an airspace review conducted as part of the decommissioning of the Bloomfield non-directional beacon (NDB).

DATES: Effective 0901 UTC, February 23, 2023. 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 JO 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: 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 amends the Class E airspace extending upward from 700 feet above the surface at Bloomfield Municipal Airport, Bloomfield, IA, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 49781; August 12, 2022) for Docket No. FAA–2022–0773 to amend the Class E airspace at Bloomfield, IA. 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 JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace

designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet at Bloomfield Municipal Airport, Bloomfield, IA, by removing the Bloomfield NDB and the associated extension from the airspace legal description.

This action is necessary due to an airspace review conducted as part of the decommissioning of the Bloomfield NDB.

FAA Order JO 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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ACE IA E5 Bloomfield, IA [Amended]

Bloomfield Municipal Airport, IA
(Lat. 40°43′56″ N, long. 92°25′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Bloomfield Municipal Airport.

Issued in Fort Worth, Texas, on October 24, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–23459 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0904; Airspace Docket No. 22–AGL–28]

RIN 2120–AA66

Amendment of Class E Airspace; Duluth, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Duluth, MN. This action supports new public instrument procedures. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, February 23, 2023. 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 JO 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: 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 amends the Class E airspace extending upward from 700 feet above the surface at Sky Harbor Airport, Duluth, MN, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 47149; August 2, 2022) for Docket No. FAA–2022–0904 to amend the Class E airspace at Duluth, MN. 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 JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71 amends the Class E airspace extending upward from 700 feet above the surface at Sky Harbor Airport, Duluth, MN, by updating the header of the airspace legal description from ''Duluth Sky Harbor Airport, MN'' to ''Duluth, MN'' to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and removes the exclusionary language from the airspace legal description as it is no longer required.

This action is due to an airspace review to support new public instrument procedures.

FAA Order JO 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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AGL MN E5 Duluth, MN [Amended]

Sky Harbor Airport, MN

(Lat. 46°43′20″ N, long. 92°02′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Sky Harbor Airport.

Issued in Fort Worth, Texas, on October 24, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–23458 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0245; Airspace Docket No. 21–AAL–8]

RIN 2120–AA66

Amendment to VOR Federal Airway V–436 and Jet Route J–125, and Establishment of United States Area Navigation Route T–399 in the Vicinity of Clear, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Alaskan VHF Omnidirectional Range (VOR) Federal airway V–436 and Jet route J–125, and establishes United States Area Navigation (RNAV) route T–399 in the vicinity of Clear, AK. These Air Traffic Service (ATS) route actions are necessary due to the amendment of restricted area R–2206 and the establishment of new restricted areas in the vicinity of Clear, AK.

DATES: Effective date 0901 UTC, December 29, 2022. 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 JO 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with

prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the ATS route structure in central Alaska to maintain the efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2021–0245 in the **Federal Register** (86 FR 17553; April 5, 2021), amending Alaskan VOR Federal airway V–436 and Jet route J–125, and establishing RNAV route T–399 in the vicinity of Clear, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Alaskan VOR Federal airways are published in paragraph 6010(b), Jet Routes are published in paragraph 2004, and United States Area Navigation Routes (T-routes) are published in paragraph 6011 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends 14 CFR part 71 by amending Alaskan VOR Federal airway V–436 and Jet route J–125, and establishing RNAV route T–399. The expansion of restricted airspace in the vicinity of Clear, AK, makes this action necessary. The ATS route actions are described below.

V–436: V–436 extends between the Anchorage, AK (ANC), VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the Deadhorse, AK (SCC), VOR/DME. This action removes the airway segment between the Talkeetna, AK (TKA), VOR/DME and the Nenana, AK (ENN), VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and replaces the removed airway segment with an airway segment that extends between the Talkeetna, AK (TKA), VOR/DME; the AILEE, AK, waypoint (WP); and the Fairbanks, AK (FAI), VORTAC. As amended, V–436 will extend between the Anchorage, AK, VOR/DME and the Fairbanks, AK, VORTAC.

J–125: J–125 extends between the Kodiak, AK (ODK), VOR/DME and the Nenana, AK (ENN), VORTAC. This action removes the route segment between the Anchorage, AK (ANC), VOR/DME and the Nenana, AK (ENN), VORTAC in order to avoid the amended and new restricted areas over Clear, AK. As amended, the route is changed and extends between the Kodiak, AK, VOR/DME and the Anchorage, AK, VOR/DME.

T–399: T–399 is a new RNAV route that extends between the Talkeetna, AK (TKA), VOR/DME and the Nenana, AK (ENN), VORTAC over the AILEE, AK; PAWWW, AK; and SEAHK, AK, WPs.

All navigational aid radials listed in the Alaskan VOR Federal airway description below are unchanged and stated in True degrees.

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

Environmental Review

The FAA has determined that this airspace action of amending Alaskan VOR Federal airway V–436 and Jet Route J–125, and establishing RNAV route T–399 in the vicinity of Clear, AK, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5k, which categorically excludes publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6010(b) Alaskan VOR Federal Airways.

* * * * *

V–436 [Amended]

From Anchorage, AK; INT Anchorage 335° and Talkeetna, AK, 195° radials; Talkeetna; Talkeetna 011° and Fairbanks, AK, 210° radials; to Fairbanks.

* * * * *

Paragraph 2004 Jet Routes.

* * * * *

J–125 [Amended]

From Kodiak, AK; to Anchorage, AK.

* * * * *

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–399 Talkeetna, AK (TKA) to Nenana, AK (ENN) [New]

Talkeetna, AK (TKA)	VOR/DME	(Lat. 62°17′54.16″ N, long. 150°06′18.90″ W)
AILEE, AK	WP	(Lat. 63°36′00.04″ N, long. 149°32′23.46″ W)
PAWWW, AK	WP	(Lat. 63°58′06.62″ N, long. 149°35′19.10″ W)
SEAHK, AK	WP	(Lat. 64°22′38.93″ N, long. 149°32′37.92″ W)
Nenana, AK (ENN)	VORTAC	(Lat. 64°35′24.04″ N, long. 149°04′22.34″ W)

* * * * *

Issued in Washington, DC, on October 21, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–23369 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0871; Airspace Docket No. 22–AGL–27]

RIN 2120–AA66

Amendment of Class E Airspace; Multiple Indiana Towns

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Indianapolis, IN; Kokomo, IN; Marion, IN; and Sheridan, IN. This action due to airspace reviews conducted as part of the decommissioning of the Kokomo very high frequency (VHF) omnidirectional range (VOR) as part of the VOR Minimal Operational Network (MON) Program. The names and geographic coordinates of various airports are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, February 23, 2023. 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 JO 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: 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 amends the Class E airspace extending upward from 700 feet above the surface at Indianapolis Executive Airport, Indianapolis, IN; Kokomo Municipal Airport, Kokomo, IN; Logansport/Cass County Airport, Logansport, IN, and Peru Municipal Airport, Peru, IN, both contained within the Kokomo, IN, airspace legal description; McKinney Field, Marion, IN; and Sheridan Airport, Sheridan, IN, to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 47146; August 2, 2022) for Docket No. FAA–2022–0871 to amend the Class E airspace at Indianapolis, IN; Kokomo, IN; Marion, IN; and Sheridan, IN. 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 JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to 14 CFR part 71:

Amends the Class E airspace extending upward from 700 feet above the surface at Indianapolis Executive Airport, Indianapolis, IN, by updating the header of the airspace legal description from ''Indianapolis Executive Airport, IN'' to ''Indianapolis, IN'' to comply with changes to FAA Order JO 7400.2N, Procedures for Handling Airspace Matters; removes the cities from the associated airport and heliports to comply with changes to FAA Order JO 7400.2N; updates the names of Clarion North Medical Center Heliport (previously Clarian North Medical Center Heliport), Carmel, IN, and Methodist Hospital of Indiana Inc. Heliport (previously Methodist Hospital of Indiana), Indianapolis, IN, to coincide with the FAA's aeronautical database; removes the point in space geographic coordinates listed in the airspace legal description as they are listed in the header of the airspace legal description and are redundant; and removes the exclusionary language from the airspace legal description as it is not required;

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile (decreased from a 7-mile) radius of Kokomo Municipal Airport, Kokomo, IN; amends the extension northeast of Kokomo Municipal Airport to within 3 (decreased from 4) miles each side of the 045° bearing from the Kokomo Municipal: RWY 23–LOC (previously airport) extending from the 6.7-mile (previously 7-mile) radius of the airport to 11.8 (increased from 10.7) miles northeast of the airport; amends the

extension southwest of Kokomo Municipal Airport to within 2 (decreased from 4) miles each side of the 225° bearing from the airport extending from the 6.7-mile (previously 7-mile) radius of the airport to 10.7 (decreased from 10.9) miles southwest of the airport; updates the geographic coordinates of Kokomo Municipal Airport to coincide with the FAA's aeronautical database; within a 6.5-mile (decreased from a 7.7-mile) radius of Logansport/Cass County Airport, Logansport, IN; within a 6.4-mile (increased from a 6.3-mile) radius of Peru Municipal Airport, Peru, IN; and removes the point in space geographic coordinates of the Regional Health System Heliport, Kokomo, IN, from the airspace legal description as they are listed in the header of the airspace legal description and are redundant;

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile (decreased from a 7-mile) radius of McKinney Field, Marion, IN; adds an extension within 6.9 miles southwest and 4 miles northeast of the Marion VOR/DME 323° radial extending from the 6.5-mile radius of the airport to 7 miles northwest of the Marion VOR/DME; and updates the name (previously Marion Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database;

And amends the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile (decreased from a 6.7-mile) radius of Sheridan Airport, Sheridan, IN; removes the exclusionary language as it is not required; and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is due to airspace reviews conducted as part of the decommissioning of the Kokomo VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

FAA Order JO 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 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 JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AGL IN E5 Indianapolis, IN [Amended]

Indianapolis Executive Airport, IN
(Lat. 40°01′50″ N, long. 86°15′05″ W)
Clarion North Medical Center Heliport, IN, Point In Space Coordinates
(Lat. 39°56′53″ N, long. 86°09′20″ W)
Methodist Hospital of Indiana Inc. Heliport, IN, Point In Space Coordinates
(Lat. 39°47′00″ N, long. 86°10′27″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Indianapolis Executive Airport; and within a 6-mile radius of the Clarion North Medical Center Heliport point in space coordinates; and within a 6-mile radius of the Methodist Hospital of Indiana Inc. Heliport point in space coordinates.

* * * * *

AGL IN E5 Kokomo, IN [Amended]

Kokomo Municipal Airport, IN
(Lat. 40°31′40″ N, long. 86°03′35″ W)
Kokomo Municipal: RWY 23–LOC
(Lat. 40°31′09″ N, long. 86°04′19″ W)
Grissom Air Reserve Base, IN
(Lat. 40°38′53″ N, long. 86°09′08″ W)
Grissom Air Reserve Base ILS Localizer Northeast
(Lat. 40°37′59″ N, long. 86°10′18″ W)
Grissom Air Reserve Base ILS Localizer Southwest
(Lat. 40°39′56″ N, long. 86°07′47″ W)
Logansport/Cass County Airport, IN
(Lat. 40°42′41″ N, long. 86°22′22″ W)
Peru Municipal Airport, IN
(Lat. 40°47′09″ N, long. 86°08′47″ W)
Regional Health System Heliport, IN, Point In Space Coordinates
(Lat. 40°26′47″ N, long. 86°08′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Kokomo Municipal Airport; and within 3 miles each side of the 045° bearing from the Kokomo Municipal: RWY 23–LOC extending from the 6.7-mile radius of the Kokomo Municipal Airport to 11.8 miles northeast of the airport; and within 2 miles each side of the 225° bearing from the Kokomo Municipal Airport extending from the 6.7-mile radius of the airport to 10.7 miles southwest of the airport; and within a 7-mile radius of Grissom Air Reserve Base; and within 3.8 miles each side of the Grissom Air Reserve Base ILS Localizer Northeast course extending from the 7-mile radius of Grissom Air Reserve Base to 14.5 miles northeast of Grissom Air Reserve Base; and within 2 miles each side of the Grissom Air Reserve Base ILS Localizer Southwest course extending from the 7-mile radius of Grissom Air Reserve Base to 14.5 miles southwest of Grissom Air Reserve Base; and within a 6.5-mile radius of Logansport/Cass County Airport; and within a 6.4-mile radius of Peru Municipal Airport; and within a 6-mile radius of the Regional Health System Heliport point in space coordinates.

* * * * *

AGL IN E5 Marion, IN [Amended]

McKinney Field, IN
(Lat. 40°29′24″ N, long. 85°40′47″ W)
Marion VOR/DME
(Lat. 40°29′36″ N, long. 85°40′45″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of McKinney Field; and within 6.9 miles southwest and 4 miles northeast of the Marion VOR/DME 323° radial extending from the 6.5-mile radius of the airport to 7 miles northwest of the Marion VOR/DME.

* * * * *

AGL IN E5 Sheridan, IN [Amended]

Sheridan Airport, IN

(Lat. 40°10′41″ N, long. 86°13′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sheridan Airport.

Issued in Fort Worth, Texas, on October 24, 2022.

Martin A. Skinner,

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

[FR Doc. 2022–23455 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0232; Airspace Docket No. 19–AAL–47]

RIN 2120–AA66

Establishment of United States Area Navigation (RNAV) T-Route T–378; Fort Yukon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes RNAV T-route, T–378, in the vicinity of Fort Yukon, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Effective date 0901 UTC, December 29, 2022. 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 JO 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground based navigation.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0232 in the **Federal Register** (87 FR 16678; March 24, 2022), establishing RNAV T-route, T–378, in the vicinity of Fort Yukon, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11G dated August 19, 2022 and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in FAA Order JO 7400.11.

Differences From the NPRM

The NPRM misidentified the BRION, AK, point as a waypoint (WP) instead of a Fix. This rule corrects the error.

In the first sentence, under ''The Proposal'' section, RNAV route T–377 was incorrectly cited instead of T–378. The correct route number is used in this rule.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends 14 CFR part 71 by establishing RNAV T-route, T–378, in the vicinity of Fort Yukon, AK in support of a large and comprehensive T-route modernization project in the state of Alaska.

The new route is described below.

T–378: T–378 extends from the BRION, AK, Fix, located southeast of the Bettles Airport, to the Fort Yukon, AK (FYU), VHF Omnidirectional Range and Tactical Air Navigational System (VORTAC).

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

Environmental Review

The FAA has determined that this airspace action of establishing RNAV route T–378 in the vicinity of Fort Yukon, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over

noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–378 BRION, AK to Fort Yukon, AK (FYU) [New]

BRION, AK	FIX	(Lat. 66°09′38.95″ N, long. 150°12′25.77″ W)
ZUSPA, AK	WP	(Lat. 66°18′20.43″ N, long. 147°51′04.14″ W)
DUTKE, AK	WP	(Lat. 66°25′02.96″ N, long. 146°57′36.10″ W)
Fort Yukon, AK (FYU)	VORTAC	(Lat. 66°34′27.31″ N, long. 145°16′35.97″ W)

* * * * *

Issued in Washington, DC, on October 26, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–23725 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1152; Airspace Docket No. 19–AAL–72]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–269; Yakutat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on October 24, 2022, that amends United States Area Navigation (RNAV) route T–269 in the vicinity of Yakutat, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. The final rule identified the KATAT, AK, route point as a waypoint (WP), in error. This action makes an editorial correction to the reference of the KATAT, AK, WP to change it to be reflected as a Fix and match the FAA's aeronautical database information.

DATES: Effective date 0901 UTC, December 29, 2022. 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 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (87 FR 64159; October 24, 2022), amending T–269 in support of a large and comprehensive T-route modernization project for the state of Alaska. Subsequent to publication, the FAA determined that the KATAT, AK, route point was inadvertently identified as a WP, in error. This rule corrects that error by changing the reference of the KATAT, AK, WP to the KATAT, AK, Fix. This is an editorial change only to match the FAA's aeronautical database information and does not alter the alignment of the affected T–269 route.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The RNAV T-route listed in this document will be published subsequently in FAA Order JO 7400.11.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, reference to the KATAT, AK, WP that is reflected in Docket No. FAA–2021–1152, as published in the **Federal Register** of October 24, 2022 (87 FR 64159), FR Doc. 2022–22496, is corrected as follows:

■ 1. On page 64160, correct the table for T–269 Annette Island, AK (ANN) to MKLUK, AK [Amended] to read:

T–269 Annette Island, AK (ANN) to MKLUK, AK [Amended]

Annette Island, AK (ANN)	VOR/DME	(Lat. 55°03′37.47″ N, long. 131°34′42.24″ W)
Biorka Island, AK (BKA)	VORTAC	(Lat. 56°51′33.87″ N, long. 135°33′04.72″ W)
Yakutat, AK (YAK)	VOR/DME	(Lat. 59°30′38.99″ N, long. 139°38′53.26″ W)
MALAS, AK	WP	(Lat. 59°39′58.52″ N, long. 140°34′57.61″ W)
OXIDS, AK	WP	(Lat. 59°41′51.68″ N, long. 141°03′17.73″ W)
FOGNU, AK	WP	(Lat. 59°53′31.88″ N, long. 141°49′02.83″ W)
HORGI, AK	WP	(Lat. 60°00′04.68″ N, long. 142°35′23.34″ W)
ZIXIM, AK	WP	(Lat. 60°03′48.75″ N, long. 143°13′27.77″ W)

JOVOM, AK	WP	(Lat. 60°07′40.55″ N, long. 143°42′56.99″ W)
OXUGE, AK	WP	(Lat. 60°06′15.81″ N, long. 144°13′28.54″ W)
KATAT, AK	FIX	(Lat. 60°15′29.17″ N, long. 144°42′18.77″ W)
Johnstone Point, AK (JOH)	VOR/DME	(Lat. 60°28′51.43″ N, long. 146°35′57.61″ W)
Anchorage, AK (TED)	VOR/DME	(Lat. 61°10′04.32″ N, long. 149°57′36.51″ W)
MKLUK, AK	WP	(Lat. 60°26′40.04″ N, long. 165°55′17.28″ W)

* * * * *

Issued in Washington, DC, on October 25, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–23536 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. FDA–2022–D–0563]

Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products: Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance entitled ''Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps): Small Entity Compliance Guide.'' The small entity compliance guide (SECG) is intended to help small entity establishments that manufacture HCT/Ps better understand the comprehensive regulatory framework for HCT/Ps set forth in the regulations and comply with certain HCT/P-related final rules. The SECG announced in this notice supersedes the SECG of the same title dated August 2007.

DATES: The announcement of the guidance is published in the **Federal Register** on November 1, 2022.

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

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0563 for ''Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps): Small Entity Compliance Guide.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

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

Submit written requests for single copies of the SECG to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Regulation of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps): Small Entity Compliance Guide.'' The SECG is intended to help small entity establishments that manufacture HCT/Ps better understand the comprehensive regulatory framework for HCT/Ps, set forth in part 1271 (21 CFR part 1271). The SECG announced in this notice supersedes the SECG of the same title dated August 2007.

The SECG reflects the amendments of part 1271 based on the following: (1) the final rule published in the **Federal Register** of June 22, 2016 (81 FR 40512), which amended certain regulations regarding donor eligibility, including the screening and testing of donors of particular HCT/Ps; and (2) the final rule published in the **Federal Register** of August 31, 2016 (81 FR 60170), which amended the regulations governing drug establishment registration and drug listing and included amendments to certain establishment registration and listing regulations for HCT/Ps.

In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to explain the actions that a small entity must take to comply with the final rules.

We are issuing the SECG as level 2 guidance consistent with our good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 207 have been approved under OMB control number 0910–0045; the collections of information in 21 CFR part 607 have been approved under OMB control number 0910–0052; the collections of information in 21 CFR part 807 have been approved under OMB control number 0910–0625; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information in part 1271 have been approved under OMB control number 0910–0543.

III. Electronic Access

Persons with access to the internet may obtain the SECG at *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: October 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23573 Filed 10–31–22; 8:45 am]

BILLING CODE 4164–01–P

Proposed Rules

Federal Register
Vol. 87, No. 210
Tuesday, November 1, 2022

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1206

[Doc. No. AMS–SC–21–0101]

Adjustments to Mango Board Representation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on changes to the representation of the National Mango Board (Board) under the Mango Promotion, Research and Information Order (Order). This action would allocate the seven foreign producer Board seats to the top five mango exporting countries, based on mango volume exported to the United States, with an additional seat allocated to the top exporting country, and one at-large seat. In addition, the proposal would require no more than one Board member be employed by or be affiliated with the same company. The Board administers the Order with oversight by Agricultural Marketing Service (AMS). This rule was recommended by the Board and is issued with the concurrence of AMS.

DATES: Comments must be received by January 3, 2023.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. All comments must be submitted through the Federal e-rulemaking portal at *https://www.regulations.gov* and reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: George Webster, Marketing Specialist, Mid Atlantic Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; Telephone: (202) 365–4172; or Email: *George.Webster@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under the Order (7 CFR part 1206). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Agricultural Marketing Service (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 proposed changes to the regulations will be shared during an upcoming quarterly call, and tribal leaders will be informed about the proposed revisions to the regulation 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 this change to the Order.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with United States Department of Agriculture (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposed rule invites comments on adjustments to the Board's representation under the Order. The Board administers the Order with oversight by AMS. The Order took effect in November 2004 (69 FR 59120), and assessment collection began in January 2005 for fresh mangos. The program is funded by assessments on first handlers and importers of fresh mangos, and it focuses on maintaining and expanding existing markets and uses for fresh mangos through its research, promotion, and information efforts. This proposed action would allocate the seven foreign producer Board seats as follows: one to each of the top five exporting countries, based on mango volume exported to the United States; one additional seat allocated to the top exporting country; and one at-large seat allocated to a foreign producer from any country

exporting mangos to the United States. This would help ensure that the countries that export the most mangos to the U.S. would be represented on the Board. Conforming changes would also be made to the nomination procedures to facilitate the reallocation of foreign producer Board seats.

Additionally, the proposal would require that no more than one member per company be represented on the Board at the same time. This change would give more companies an opportunity to serve on the Board. The proposed changes were recommended by the Board at its meeting on November 18, 2021. The Board was not unanimously in favor of this recommendation. The resulting vote from the motion was as follows; ten members voted in favor, three members were not in favor, two members abstained from voting, one member was absent, and two Board seats were vacant. At the Board's meeting on March 15, 2022, AMS presented two options regarding the transition period of the foreign producer Board seats: (1) Gradually make these changes as Board terms cycled out; or (2) Enact these changes immediately and potentially risk having to ask one or more Board members to step down from their position in order to meet the new representation requirements. However, if after the 2023 Board is selected, the foreign producer seats align with the representation requirements, no action would be needed. After much discussion, the Board recommended that these changes be enacted immediately. The resulting vote from the motion was 11 members in favor, four members not in favor, two members absent, and one Board seat was vacant.

Adjustment of Membership

Section 1206.30(a) of the Order currently specifies that the Board be composed of 18 members—eight importers, one first handler, two domestic producers, and seven foreign producers—appointed by the Secretary of Agriculture (Secretary). The importer seats are allocated based on the volume of mangos imported into U.S. Customs and Border Protection (Customs) Districts identified by name and code number defined in the Harmonized Tariff Schedule of the United States. There are four districts, with two seats allocated for District I; three seats allocated for District II; two seats allocated for District III; and one seat allocated for District IV.

The seven foreign producer seats are currently chosen by the Secretary from nominations provided by organizations of foreign mango producers and foreign mango producers who self-nominate. Both the mango industry and the Board have stated that the top countries exporting mango to the U.S. need representation on the Board to help oversee assessment allocation and be more involved in improving fruit quality, volume, demand, and consumption of mangos in the U.S.

Sections 1206.36(m) and 1206.77 of the Order allow for the Board to recommend changes to the Order as the Board considers appropriate. On November 18, 2021, and again on March 15, 2022, the Board reviewed data from the USDA, Foreign Agricultural Service (FAS), Global Agricultural Trade System (GATS).[1] After reviewing the data, discussion, and the Board wanting representation for each of the top five countries that export mangos to the U.S., the Board recommended the following: (1) five of the seven foreign producer seats shall be allocated to foreign producers from the top five exporting countries to the U.S.; (2) one additional foreign producer seat shall be allocated to the top exporting country; and (3) one seat shall be considered at-large, which means it may be allocated to a foreign producer from any country that exports mangos to the U.S. The data is summarized in Table 1 below:

TABLE 1—ANNUAL U.S. FRESH MANGO IMPORT QUANTITIES BY COUNTRY OF ORIGIN

[In 10,000 lb units]

	2019	2020	2021	Average	Percent
Mexico	71,733	75,623	74,466	73,941	62.9
Peru	11,855	16,297	16,013	14,722	12.5
Ecuador	9,775	11,696	11,968	11,147	9.5
Brazil	8,809	10,629	11,379	10,272	8.7
Guatemala	2,959	2,427	3,385	2,924	2.5
Haiti	1,839	2,562	2,671	2,357	2
Other (15 countries)	1,718	1,849	3,180	2,249	1.9
Total	108,689	121,083	123,062	117,611	

Source: U.S. Department of Agriculture Global Agricultural Trade System.

As shown in Table 1, over the past three years (2019–2021) 96.1 percent of the total fresh-whole mango imported into the United States was supplied by five countries: Mexico with 62.9%, Peru with 12.5%, Ecuador with 9.5%, Brazil with 8.7%, and Guatemala with 2.5%.

Furthermore, each of these countries is the main supplier of mango to U.S markets during specific times of the year. Therefore, the performance and success of each of the top five countries exporting mangos to the U.S. during their season affects the U.S. mango market, not just during their season but for subsequent mango suppliers as well.

The Board believes that it is important that each of the top five countries exporting mangos to the U.S. be represented on the Board. Further, because Mexico currently provides the majority of mangos exported to the United States, it is valuable to have multiple representatives providing insight on the situation of the mango industry in that country. Therefore, this proposal would allocate five of the seven foreign producer Board seats to each of the top five countries based on the three-year average mango volume exported to the United States, with an additional seat allocated to the top exporting country (currently Mexico). One at-large seat would continue to be allocated to a foreign producer from any country exporting mangos to the United States.

This proposed change would allow the Board's membership to better reflect the distribution of foreign mangos exported to the United States, while providing an opportunity for a more diverse pool of candidates. AMS oversees the mango program and

[1] *https://apps.fas.usda.gov/gats/default.aspx.*

participates in Board meetings. This proposed action is consistent with AMS's priorities and oversight of the Order.

The Board is currently conducting nominations for three foreign producer seats whose three-year term of office begins January 1, 2023. All three foreign producer members whose seats are expiring on December 31, 2022, are in their second consecutive term and are therefore not eligible for re-appointment. Starting on January 1, 2023, the Board will have foreign producer members from the following countries: Mexico (two), Peru (one), Guatemala (one), with three open seats.

Depending upon what countries the Secretary chooses for the three open seats for the 2023 Board, in order to align with the proposed foreign producer representation, one of these open seats would need to be from Ecuador and one seat would need to be from Brazil, with one at-large member from any country that exports mango to the U.S. Since the Secretary's selections are not known, and this realignment is not currently in place, the members chosen for the three open seats whose terms begin January 1, 2023, would have to be reviewed by the Board and USDA. Should this proposal be adopted, six of the seven Board foreign producer seats would need to represent all five top exporting countries, based on the 2019–2021 three-year average volume imported into the U.S. as determined from the USDA, FAS data. Currently, that would mean that the seven foreign producer seats would be distributed as follows: Mexico two seats, Peru one seat, Ecuador one seat, Brazil one seat, Guatemala one seat, and one at-large seat.

After AMS review of the current Board representation, if the foreign producer seats are aligned with the representation requirements, no action would be taken. If the representation requirements are not met, one or more Board members may need to step down from their role if established as proposed. The Board discussed two options: (1) to allow Board members to cycle off the Board as their terms expire; or (2) to enact the proposed representation provisions immediately and potentially risk asking members to step down. The Board voted during their March 15, 2022, meeting to move forward with option 2, to immediately enact the changes. AMS oversees the mango program and participates in all Board meetings, and the Secretary is responsible for the selection of all Board members. As such, all effort would be undertaken to avoid disruption of the Board as currently established should the changes that are herein proposed be adopted.

Once the Board is appointed and realigned to represent the top five countries exporting mangos to the United States, every three years thereafter, the Board will review the USDA, FAS, data and if warranted, recommend to the USDA changes to the top five exporting countries to the United States. These recommendations would need to be made before the nomination process begins the following year.

Nominations and Appointments

Section 1206.31 establishes the procedures for nominations to obtain Board nominees for appointment. The Board discussed at its November 18, 2021, meeting, and several other occasions, allowing individuals from the same or related companies to serve on the Board at the same time. Occurrences of this nature have increased over time, especially from companies who participate in the nomination process. The concerns are mainly from U.S. importers who believe that the same few companies continue to have additional representatives appointed to the Board while they are already represented on the Board.

This situation has occurred multiple times since the Board's inception. However, with an industry focus on increasing the diversity of the Board, the Board recommended limiting the number of Board members that may represent any one affiliated business interest, however organized. Therefore, this proposal would amend § 1206.31 of the Order to add paragraph (i), which provides that no more than one Board member shall be employed by or be affiliated with a single or multiple corporations, companies, or partnerships or any other legal entities with common ownership, foreign or domestic.

This change is intended to help increase the number of organizations represented on the Board, and expand the diversity of experience, expertise, and location of members on the Board. This proposed action is consistent with AMS's priorities and oversight of the Order.

Vacancies

Section 1206.33 establishes procedures for vacancies on the Board. It describes what to do if the Board member is no longer a member of the category for which they are appointed, if a member is not able to fulfill their position, and how to fill an unexpired term. With the Board's proposal to have no more than one member on the Board per company, this section will be updated. Section 1206.33(d) would be added to address the situation where, if a Board member becomes employed or affiliated with another Board member's company during their term, such position would automatically become vacant.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened. The Small Business Administration defines small agricultural service firms as those having annual receipts of no more than $30 million (13 CFR part 121). First handlers and importers would be considered agricultural service firms.

According to the most recent U.S. Agricultural Census, which was published in 2017, a limited number of mangos are produced in the U.S. and territories of California, Florida, Hawaii, Texas, and Puerto Rico. The majority of U.S. demand for mangos is met by imports. In 2017, the U.S. had a total of 3,328 acres of mangos, up 322 acres (11 percent) from 2012. The Agricultural Census does not breakdown the allocation of acreage by state. According to USDA Foreign Agricultural Service data obtained from the Global Agricultural Trade System (GATS), five countries account for 96.1 percent of fresh mango imports. These countries and their respective share of the imports (from January 2019 to December 2021) include Mexico (62.9%); Peru (12.5%); Ecuador (9.5%); Brazil (8.7%); and Guatemala (2.5%).

The following are not subject to the assessment: mango producers, first handlers and importers who market or import less than 500,000 pounds of mangos, and mangos exported out of the United States.

According to Customs data, in 2021 there were 295 importers and 2 first handlers. Of these entities, 95 were subject to assessments under the Order and had 2021 import quantities of 500,000 pounds or more. There were 3 entities with import valuations exceeding $30 million dollars. Therefore, the majority of assessed importers and first handlers (92 out of 95) may be considered small businesses.

The proposed rule seeks to increase the pool of nominees from countries that export mangos to the United States. The Board wants to receive

representation from all growing regions that export mangos into the United States. The proposed rule provides an opportunity to increase diversity and would not place undue economic burden on small business importers and first handlers as they are eligible to serve on the Board. Domestic and foreign producers that are classified as small business entities are also not burdened since they are not subject to assessment under the Order, still such individuals are eligible to serve on the Board along with importers and first handlers.

This rule does not impose additional recordkeeping requirements on first handlers, importers, or producers of mangos. There are no Federal rules that duplicate, overlap, or conflict with this rule. In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been previously approved under OMB control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

Regarding alternatives, the Board discussed in detail the option to keep the foreign producer Board member seat allocation as-is. The Board reviewed information provided from the staff that showed, since the Board's formation, all foreign producer appointments have been from the same five countries (Mexico, Guatemala, Peru, Ecuador, and Brazil), and that in 2022 the Board will have seven foreign producers representing only three countries. The Board believes that foreign producer representation should be from each of the top five countries exporting mangos to the United States, and to have an at-large seat available to a foreign producer from any country exporting mangos to the United States. As such, this change is being proposed to help realign the Board's membership to better reflect the distribution of foreign grown mangos exported to the U.S. AMS oversees the mango program and participates in Board meetings. This proposed action is consistent with AMS's priorities and oversight of the Order.

The Board also considered allowing more than one member per company to sit on the Board at the same time. Throughout the history of the National Mango Board, there have been multiple instances where Board members from the same company served on the Board at the same time. However, the Board members agreed that the industry has grown and evolved and, therefore, it is important to increase the industry's participation on the Board and increase the diversity of individuals serving on the Board. This proposed action would revise the Order to provide that no more than one member shall be employed by or be affiliated with the same company. This change was proposed to help increase the opportunity for more company representatives to serve on the Board and to expand the diversity of experience, expertise, and location of members. AMS encourages efforts to increase the diversity of representation on the Board.

Regarding outreach efforts, the Board discussed this action during Board meetings in 2020, and in meetings during March and November of 2021, and the Board meeting in March 2022. This proposed action was also presented during the Foreign Mango Organization meeting in February 2022. Attendees from this meeting included representatives from the following countries: Mexico, Ecuador, Peru, Guatemala, Brazil, Colombia, and the Dominican Republic. All of the Board's meetings are open to the public and interested persons are invited to participate and express their views.

We have performed this initial RFA analysis regarding the impact of the proposed action on small entities and we invite comments concerning the potential effects of this action. AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities or citizen access to Government information and services, and for other purposes.

AMS has determined that this proposed rule is consistent with and would effectuate the purpose of the 1996 Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1206

Administrative practice and procedure, Advertising, Agricultural research, Consumer information, Mango, Marketing agreements, Reporting and recording requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 1206 as follows:

PART 1206—MANGO RESEARCH, PROMOTION, AND INFORMATION

■ 1. The authority citation for part 1206 continues to read as follows:

Authority: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 2. In § 1206.30, revise paragraph (c) and add paragraph (d) to read as follows:

§ 1206.30 Establishment and membership.

* * * * *

(c) *Foreign producers.* The seven Board seats for foreign producers of mangos shall be allocated based on a three-year average volume of mangos exported to the United States from a foreign country as follows:

(1) Five of the seven seats shall be allocated to foreign producers from the top five exporting countries to the United States;

(2) One additional seat shall be allocated to the top exporting country that exports the most mangos to the United States; and,

(3) The one remaining seat shall be considered at-large, which means it may be allocated to a foreign producer from any country that exports mangos to the United States.

(d) *Adjustment of membership.* The Board seats will be adjusted as follows:

(1) At least once every five years, the producer and importer seats shall be reviewed. The Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation, and the quantity of domestic production and imports. To ensure equitable representation, additional first handlers may be added to the Board to reflect increases in domestic production.

(2) Every three-years the foreign producer seats shall be reviewed. A three-year average volume of mangos exported from a foreign country to the United States will determine the top five mango exporting countries. The three-year average will be based on import volume data from the USDA, Foreign Agricultural Service, Global Agricultural Trade System for the three complete preceding years. If warranted,

the Board will recommend to the Department that foreign producer membership on the Board be altered to reflect the three-year average volume of mangos exported to the United States by the top five exporting countries.

■ 3. In § 1206.31, revise paragraph (g) and add paragraph (i) to read as follows:

§ 1206.31 Nominations and appointments.

* * * * *

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from organizations of foreign mango producers and from foreign mango producers. Organizations of foreign mango producers shall submit two nominees for each position, and foreign mango producers may submit their name or the names of other foreign mango producers directly to the Board. The nominees shall be representative of the major countries exporting mangos to the United States as specified in § 1206.30.

* * * * *

(i) No more than one member shall be employed by or be affiliated with a single or multiple corporations, companies, or partnerships or any other legal entities with common ownership, foreign or domestic.

■ 4. In § 1206.33, add paragraph (d) to read as follows:

§ 1206.33 Vacancies.

* * * * *

(d) In the event that a Board member becomes employed or affiliated with another Board member's corporation, company, partnership or other legal entity during the Board member's term, such position shall automatically become vacant.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–23661 Filed 10–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0029]

RIN 1904–AE64

Energy Conservation Program: Energy Conservation Standards for Consumer Furnace Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of availability of preliminary technical support document and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') announces the availability of the preliminary analysis it has conducted for purposes of evaluating the needed for amended energy conservation standards for consumer furnace fans, which is set forth in the Department's preliminary technical support document (''TSD'') for this rulemaking. DOE will hold a public meeting via webinar to discuss and receive comment on the preliminary analysis. The meeting will cover the analytical framework, models, and tools used to evaluate potential standards; the results of preliminary analyses performed by DOE; the potential energy conservation standard levels derived from these analyses (if DOE determines that proposed amendments are necessary); and other relevant issues. In addition, DOE encourages written comments on these subjects.

DATES:

Comments: Written comments and information will be accepted on or before, January 3, 2023.

Meeting: DOE will hold a webinar on Monday, December 5th, 2022, from 1:00 p.m. to 3:00 p.m. See section IV, ''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,* under docket number EERE–2021–BT–STD–0029. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–STD–0029, by any of the following methods:

(1) *Email: ConsumerFurnFan2021STD0029@ee.doe.gov.* Include the docket number EERE–2021–BT–STD–0029 in the subject line of the message.

(2) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

(3) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

To inform interested parties and to facilitate this rulemaking process, DOE has prepared an agenda, a preliminary TSD, and briefing materials, which are available on the DOE website at: *www.regulations.gov/docket/EERE-2021-BT-STD-0029.*

Docket: The docket for this activity, which includes **Federal Register** notices, comments, public meeting transcripts, 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-2021-BT-STD-0029.* The docket web page contains instructions on how to access all documents, including public comments in the docket. See section IV.D of this document for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Schneider, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6265. Email: *matthew.schneider@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
A. Authority

B. Rulemaking Process
C. Deviation From Appendix A
II. Background
A. Current Standards
B. Current Process
III. Summary of the Analyses Performed by DOE
A. Market and Technology Assessment
B. Screening Analysis
C. Engineering Analysis
D. Markups Analysis
E. Energy Use Analysis
F. Life-Cycle Cost and Payback Period Analyses
G. National Impact Analysis
IV. Public Participation
A. Participation in the Webinar
B. Procedure for Submitting Prepared General Statements for Distribution
C. Conduct of the Webinar
D. Submission of Comments
V. Approval of the Office of the Secretary

I. Introduction

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. These products include consumer furnace fans, the subject of this document. (42 U.S.C. 6295(f)(4)(D))

EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (''NOPR'') including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) Not later than three years after issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B))

Under EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

DOE is publishing this notice of availability of the preliminary analysis to facilitate the collection data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including consumer furnace fans. As noted, EPCA requires that any new or amended energy conservation standard prescribed by the Secretary of Energy (''Secretary'') be designed to achieve the maximum improvement in energy efficiency (or water efficiency for certain products specified by EPCA) that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[3] For example, the United States has now rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing greenhouse gas (''GHG'') emissions in order to limit the rise in mean global temperature.[4] As such, energy savings that reduce GHG emission have taken on greater importance. Additionally, for some covered products and equipment, most of their energy consumption occurs during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and full-fuel cycle (''FFC'') effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a more complete picture of the impacts of energy conservation standards.

Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors DOE has initially determined the energy savings for the candidate standard levels evaluated in this preliminary analysis rulemaking are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

[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), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

[4] See Executive Order 14008, 86 FR 7619 (Feb. 1, 2021) (''Tackling the Climate Crisis at Home and Abroad'').

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy Use Analysis.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis.
2. Lifetime operating cost savings compared to increased cost for the product	• Shipments Analysis. • Markups for Product Price Analysis. • Energy Use Analysis. • Life-Cycle Cost and Payback Period Analysis.
3. Total projected energy savings	• Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
5. Impact of any lessening of competition	• Manufacturer Impact Analysis.
6. Need for national energy and water conservation	• Shipments Analysis. • National Impact Analysis.
7. Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits.[5] • Regulatory Impact Analysis.

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if 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. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) However, because the electrical energy consumption of consumer furnace fans in standby mode and off mode is already accounted for in the DOE rulemakings for residential furnaces, and residential central air conditioners and heat pumps, DOE did not include standby mode and off mode energy use in the test procedure for consumer furnace fans. 79 FR 500, 501.

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE intends to use to evaluate standards for the product at issue and the results of preliminary analyses DOE performed for the product.

DOE is examining whether to amend the current standards pursuant to its obligations under EPCA. This notification announces the availability

[5] On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. In the absence of further intervening court orders, DOE will revert to its approach prior to the injunction and present monetized benefits where appropriate and permissible by law.

of the preliminary TSD, which details the preliminary analyses and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a public meeting to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), ''Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment,'' DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. *See* 86 FR 70892 (Dec. 13, 2021). Section 6(a)(2) of appendix A states that if the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking.

DOE is opting to deviate from this step by publishing a preliminary analysis without a framework document. A framework document is intended to introduce and summarize the various analyses DOE conducts during the rulemaking process and requests initial feedback from interested parties. As discussed in section II.B, on November 23, 2021, DOE published an early assessment request for information (''RFI'') to determine whether any new or amended standards may be warranted for consumer furnaces fans. 86 FR 66465 (''November 2021 Early Assessment Review RFI''). DOE requested comment in the November 2021 Early Assessment Review RFI on a variety of issues to aid in the development of its technical and economic analyses and included a 30-day comment period. In the November 2021 Early Assessment Review RFI, DOE sought data and information as to whether any new or amended rule would be cost-effective, economically justified, technologically feasible, or would result in a significant savings of energy. *Id.* DOE sought such data and information to assist in its consideration of whether (and if so, how) to amend the standards for consumer furnace fans. *Id.* Further, DOE provided an overview of the analysis it would use to evaluate new or amended energy conservation standards, including references to and requests for comment on the analyses conducted as part of the most recent energy conservation standards rulemakings. *Id.* As DOE is intending to rely on substantively the same analytical methods as in the most recent rulemaking, publication of a framework document would be largely redundant with the published November 2021 Early Assessment Review RFI. As such, DOE is not publishing a framework document.

Additionally, section 6(d)(2) of appendix A provides that the length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days. For this preliminary analysis, DOE has opted to provide a 60-day comment period. As stated, the November 2021 Early Assessment Review RFI included a 30-day comment period. Additionally, for this preliminary analysis, DOE has relied on many of the same analytical assumptions and approaches as used in the previous consumer furnace fans rulemaking. Therefore, for this preliminary analysis, DOE has determined that a 60-day comment period in conjunction with the prior 30-day comment period provides sufficient time for interested parties to review the preliminary analysis and provide input.

II. Background

A. Current Standards

In a final rule published on July 3, 2014 (''July 2014 Final Rule''), DOE prescribed the current energy conservation standards for consumer furnace fans manufactured on and after July 3, 2019. 79 FR 38130. These standards are set forth in DOE's regulations at 10 CFR 430.32(y) and are repeated in Table II.1.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR CONSUMER FURNACE FANS

Furnace fan product class	Fan energy rating (''FER'') (watts/1000 cubic feet per minute (''cfm''))
Non-Weatherized, Non-Condensing Gas (''NWG–NC'')	FER = 0.044 * Q_{max} + 182.
Non-Weatherized, Condensing Gas (''NWG–C'')	FER = 0.044 * Q_{max} + 195.
Weatherized, Non-Condensing Gas (''WG–NC'')	FER = 0.044 * Q_{max} + 199.
Non-Weatherized, Non-Condensing Oil Furnace Fan (''NWO–NC'')	FER = 0.071 * Q_{max} + 382.
Non-Weatherized Electric Furnace/Modular Blower Fan (''NWEF/NWMB'')	FER = 0.044 * Q_{max} + 165.
Mobile Home Non-Weatherized, Non-Condensing Gas Furnace Fan (''MH–NWG–NC'')	FER = 0.071 * Q_{max} + 222.
Mobile Home Non-Weatherized, Condensing Gas Furnace Fan (''MH–NWG–C'')	FER = 0.071 * Q_{max} + 240.
Mobile Home Electric Furnace/Modular Blower Fan (''MH–EF/MB'')	FER = 0.044 * Q_{max} + 101.
Mobile Home Non-Weatherized Oil Furnace Fan (''MH–NWO'')	Reserved.
Mobile Home Weatherized Gas Furnace Fan (''MH–WG'')	Reserved.

Q_{max} is the airflow, in cfm, at the maximum airflow-control setting measured using the final DOE test procedure at 10 CFR part 430, subpart B, appendix AA.

B. Current Process

On November 23, 2021, DOE published the November 2021 Early Assessment Review RFI to initiate a review to determine whether any new or amended standards would satisfy the relevant requirements of EPCA for a new or amended energy conservation standard for consumer furnace fans. 86 FR 66465. Specifically, through the published notice and request for information, DOE sought data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more stringent standard: (1) would not result in a significant savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of foregoing. *Id.*

Comments received to date as part of the current process have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

III. Summary of the Analyses Performed by DOE

For the products covered in this preliminary analysis, DOE conducted in-depth technical analyses in the following areas: (1) engineering; (2) markups to determine product price; (3) energy use; (4) life-cycle cost (''LCC'') and payback period (''PBP''); and (5) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=54.*

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses or are preliminary analyses that will be expanded if DOE determines that a NOPR is warranted to propose new or amended energy conservation standards. These analyses include: (1) the market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and the national impact analysis (''NIA''). In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR should one be issued.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including general characteristics of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment include: (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends, and (6) technologies or design options that could improve the energy efficiency of the product.

See chapter 3 of the preliminary TSD for further discussion of the market and technology assessment.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have a significant adverse impact on the utility of the product for significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-pathway proprietary technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

If DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis.

See chapter 4 of the preliminary TSD for further discussion of the screening analysis.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of consumer furnace fans. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the manufacturer production cost (''MPC'') for the baseline as well as higher efficiency levels. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

In this preliminary analysis, DOE estimated the MPC associated with each efficiency level to characterize the cost-efficiency relationship of improving consumer furnace fan performance. The MPC estimates are not for the entire heating, ventilation, and air-conditioning (''HVAC'') product. Because consumer furnace fans are a component of the HVAC product in which they are integrated, the MPC estimates include costs only for the components of the HVAC product that impact fan efficiency rating (''FER'').

For each product class, DOE analyzed a representative consumer furnace fan, characterized by the associated furnace heating capacity and maximum airflow capacity. DOE estimated costs based on either high-volume or low-volume manufacturing, as appropriate, for each product class to account for the increased purchasing power (and thus lower costs) of high-volume manufacturers as compared to low-volume manufacturers.

DOE converts the MPC to the manufacturer selling price (''MSP'') by applying a manufacturer markup. The MSP is the price the manufacturer charges its first customer, when selling into the product distribution channels. The manufacturer markup accounts for manufacturer non-production costs and profit margin. DOE developed the manufacturer markup by examining publicly available financial information for manufacturers of the covered product.

See chapter 5 of the preliminary TSD for additional detail on the engineering analysis. See chapter 12 of the preliminary TSD for additional detail on the manufacturer markup.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis.

At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

DOE developed baseline and incremental markups for each actor in the distribution chain for consumer furnace fans. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[6]

Chapter 6 of the preliminary TSD provides details on DOE's development of markups for consumer furnace fans.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of consumer furnace fans at different efficiencies in representative U.S. single-family homes, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased consumer furnace fans efficiency. The energy use analysis estimates the range of energy use of consumer furnace fans in the field (*i.e.,* as they are actually used by consumers). In addition, the energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new energy conservation standards.

Chapter 7 of the preliminary TSD addresses the energy use analysis.

F. Life-Cycle Cost and Payback Period Analyses

The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

G. National Impact Analysis

The NIA estimates the national energy savings (''NES'') and the net present value (''NPV'') of total consumer costs and savings expected to result from new or amended standards at specific efficiency levels (referred to as candidate standard levels).[7] DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of consumer furnace fans sold from 2030 through 2059.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards (''no-new-standards case'') with standards case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels for that class. For each efficiency level, DOE considers how a given standard would likely affect the market shares of product with efficiencies greater than the standard.

For the NIA, DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each efficiency level. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs. Critical inputs to this analysis include shipments projections, estimated product lifetimes, product installed costs and operating costs, product annual energy consumption, the base case efficiency projection, and discount rates

DOE estimates a combined total of 1.397 quadrillion Btu (''quads'') of potential full-fuel-cycle (FFC) energy savings at the max- tech efficiency levels for consumer furnace fans. Combined potential FFC energy savings at Efficiency Level 1 for all product classes are estimated to be 1.381 quads. (For several products classes, Efficiency Level 1 in this preliminary analysis is also the max-tech level.) Chapter 10 of the preliminary TSD addresses the NIA.

IV. Public Participation

DOE invites public engagement in this process through participation in the webinar and submission of written comments, data, and information. After the webinar and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Following such consideration, the Department will publish either a determination that the energy conservation standards for consumer furnace fans need not be amended or a NOPR proposing to amend those standards. The NOPR, should one be issued, would include proposed energy conservation standards for the products covered by this rulemaking, and members of the public would be given an opportunity to submit written and oral comments on the proposed standards.

A. Participation in the Webinar

The time and date of the webinar meeting 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=54.* Participants are responsible for ensuring their systems are compatible with the webinar software.

[6] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

[7] The NIA accounts for impacts in the 50 states and U.S. territories.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, 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 to *ApplianceStandardsQuestions@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.

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 a general overview of the topics addressed in this rulemaking, 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. 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 before or after the webinar, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information 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 itself 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. Otherwise, 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, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail 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 in 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. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''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, that are written in English, and that are 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. Pursuant 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).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of the availability of the preliminary technical support document and request for comment.

Signing Authority

This document of the Department of Energy was signed on October 25, 2022, by Francisco Alejandro Moreno, 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 October 26, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–23626 Filed 10–31–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1314; Project Identifier AD–2021–00811–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2018–03–13, which applies to certain General Electric Company (GE) CT7–5A2, CT7–5A3, CT7–7A, CT7–7A1, CT7–9B, CT7–9B1, CT7–9B2, CT7–9C, and CT7–9C3 model turboprop engines. AD 2018–03–13 requires initial and repetitive visual inspections and fluorescent penetrant inspections (FPIs) of the main propeller shaft. Since the FAA issued AD 2018–03–13, the manufacturer detected two additional cracks on a main propeller shaft during its ongoing investigation and subsequently published service information that introduced reduced inspection thresholds for initial and repetitive visual inspections, FPIs, and added initial and repetitive ultrasonic inspections (USIs) of the main propeller shaft. Additionally, the manufacturer revised the airworthiness limitations section (ALS) of the maintenance manual (MM) to incorporate initial and repetitive USIs to inspect for cracks on the main propeller shaft. This proposed AD would require initial and repetitive visual inspections, FPIs, and USIs of the main propeller shaft. Depending on the results of these inspections, this proposed AD would require replacement of the main propeller shaft. As an optional terminating action to these inspections, this proposed AD would require revising the ALS of the existing MM and the operator's existing approved maintenance program or inspection program, as applicable, to incorporate the tasks and reduced inspection thresholds for the main propeller shaft. 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 December 16, 2022.

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 *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.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1314; 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.

Material Incorporated by Reference:

- For GE service information identified in this NPRM, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *ge.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *Sungmo.D.Cho@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–2022–1314; Project Identifier AD–2021–00811–E'' 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

regulations.gov, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

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 Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2018–03–13, Amendment 39–19186 (83 FR 6125, February 13, 2018) (AD 2018–03–13), for certain GE CT7–5A2, CT7–5A3, CT7–7A, CT7–7A1, CT7–9B, CT7–9B1, CT7–9B2, CT7–9C, and CT7–9C3 model turboprop engines with main propeller shaft, part number 77581–11, installed. AD 2018–03–13 was prompted by an in-flight failure of a main propeller shaft on a GE CT7–9B model turboprop engine, resulting in the loss of the propeller. The manufacturer determined the failure of the main propeller shaft was caused by cracks initiating from undiscovered corrosion in the dowel pin holes on the flange of the main propeller shaft. AD 2018–03–13 requires visually inspecting the main propeller shaft for wear, corrosion, and cracking and performing FPI for cracks. The agency issued AD 2018–03–13 to prevent failure of the main propeller shaft. The unsafe condition, if not addressed, could result in in-flight loss of the propeller, loss of engine thrust control, and damage to the airplane.

Actions Since AD 2018–03–13 Was Issued

Since the FAA issued AD 2018–03–13, the manufacturer detected two additional cracks on a main propeller shaft during its ongoing investigation and subsequently published service information that introduced reduced inspection thresholds for initial and repetitive visual inspections, FPIs, and added initial and repetitive USIs of the main propeller shaft. Additionally, the manufacturer revised the ALS of the MM to incorporate initial and repetitive USIs to inspect for cracks on the main propeller shaft.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed GE Service Bulletin (SB) CT7–TP 72–0541 R01, dated November 18, 2021 (GE SB CT7–TP 72–0541). This service information specifies procedures for performing initial and repetitive visual inspections, FPIs, and USIs of the main propeller shaft.

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

Proposed AD Requirements in This NPRM

This proposed AD would retain none of the requirements of AD 2018–03–13. This proposed AD would require initial and repetitive visual inspections, FPIs, and USIs of the main propeller shaft. Depending on the results of these inspections, this proposed AD would require replacement of the main propeller shaft. As an optional terminating action to these inspections, this proposed AD would require revising the ALS of the existing MM and the operator's existing approved maintenance program or inspection program, as applicable, to incorporate incorporating the tasks and reduced inspection thresholds for the main propeller shaft. An owner/operator (pilot) holding at least at least a private pilot certificate may revise the ALS of the existing MM, and the owner/operator must enter compliance with the applicable paragraphs of the AD into the aircraft records in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 14 CFR 121.380, or 14 CFR 135.439. This is an exception to the FAA's standard maintenance regulations.

Differences Between This Proposed AD and the Service Information

GE SB CT7–TP 72–0541 uses the term ''UTI,'' while this proposed AD uses the term ''USI.''

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 176 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Visually inspect, FPI, and USI the main propeller shaft.	2 work-hours × $85 per hour = $170	$0	$170	$29,920

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the main propeller shaft	8 work-hours × $85 per hour = $680	$48,360	$49,040
Revise the ALS of the MM	1 work-hour × $85 per hour = $85	0	85

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 that the 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:

■ a. Removing Airworthiness Directive 2018–03–13, Amendment 39–19186 (83 FR 6125, February 13, 2018); and

■ b. Adding the following new airworthiness directive:

General Electric Company: Docket No. FAA–2022–1314; Project Identifier AD–2021–00811–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by December 16, 2022.

(b) Affected ADs

This AD replaces AD 2018–03–13, Amendment 39–19186 (83 FR 6125, February 13, 2018).

(c) Applicability

This AD applies to General Electric Company (GE) CT7–5A2, CT7–5A3, CT7–7A, CT7–7A1, CT7–9B, CT7–9B1, CT7–9B2, CT7–9C, and CT7–9C3 model turboprop engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7210, Turbine Engine Reduction Gear.

(e) Unsafe Condition

This AD was prompted by an in-flight failure of a main propeller shaft on a GE CT7–9B model turboprop engine, resulting in the loss of the propeller. The FAA is issuing this AD to prevent failure of the main propeller shaft. The unsafe condition, if not addressed, could result in in-flight loss of the propeller, loss of engine thrust control, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For affected CT7–5A2, CT7–5A3, CT7–7A, and CT7–7A1 model turboprop engines, using the compliance times specified in Figure 1 to paragraph (g)(1) of this AD, perform initial and repetitive visual inspections, fluorescent penetrant inspections (FPIs), and ultrasonic inspections (USIs) of the main propeller shaft.

BILLING CODE 4910–13–P

Figure 1 to Paragraph (g)(1) – Compliance Times for CT7-5A2, CT7-5A3, CT7-7A, and CT7-7A1 Model Turboprop Engines

Inspection type	Initial inspection of the main propeller shaft	Repeat inspection interval of main propeller shaft
Cleaning and visual inspection	During first propeller removal after the effective date of this AD	During every propeller removal
FPI	Before exceeding 20,000 cycles since new (CSN) or within 2,100 flight hours (FHs) after the effective date of this AD, whichever occurs later	During every propeller removal or within 2,100 FHs from performance of the previous FPI, whichever occurs later
USI	Before exceeding 20,000 CSN or within 1,600 FHs after the effective date of this AD, whichever occurs later	Before exceeding 5,000 FHs from performance of the previous USI

(2) For affected CT7–9B, CT7–B1, CT7–9B2, CT7–9C, and CT7–9C3 model turboprop engines, using the compliance times specified in Figure 2 to paragraph (g)(2) of this AD, perform initial and repetitive visual inspections, FPIs, and USIs of the main propeller shaft.

BILLING CODE 4910–13–P

Figure 2 to Paragraph (g)(2) – Compliance Times CT7-9B, CT7-9B1, CT7-9B2, CT7-9C, and CT7-9C3 Model Turboprop Engines

Inspection type	Initial inspection of the main propeller shaft	Repeat inspection interval of main propeller shaft
Cleaning and visual inspection	During the first propeller removal after the effective date of this AD	During every propeller removal
FPI	Before exceeding 20,000 CSN or within 2,400 FHs after the effective date of this AD, whichever occurs later	During every propeller removal or within 2,400 FHs from performance of the previous FPI, whichever occurs later
USI	Before exceeding 20,000 CSN or within 1,600 FHs after the effective date of this AD, whichever occurs later	Before exceeding 4,800 FHs from performance of the previous USI

BILLING CODE 4910–13–C

(3) Perform the visual inspections, FPIs, and USIs required by paragraphs (g)(1) and (2) of this AD as follows:

(i) Prior to performance of the inspections, clean the main propeller shaft flange using the Accomplishment Instructions, paragraph 3.B., of GE Service Bulletin (SB) CT7–TP 72–0541 R01, dated November 18, 2021 (GE SB CT7–TP 72–0541).

(ii) Visually inspect the main propeller shaft for wear, corrosion, and cracking using the Accomplishment Instructions, paragraph 3.C.(1), of GE SB CT7–TP 72–0541.

(iii) Spot-FPI the area on the main propeller shaft flange face using the Accomplishment Instructions, paragraph 3.C.(2)(a), of GE SB CT7–TP 72–0541.

(iv) USI the two dowel pin holes of the main propeller shaft using the Accomplishment Instructions, paragraph 3.C.(3)(a), of GE SB CT7–TP 72–0541.

(4) If a crack or rejectable indication is found during the initial and repetitive visual inspections, FPIs, or USIs required by paragraphs (g)(1) through (3) of this AD, before further flight, remove the main propeller shaft from service and replace it with a part eligible for installation.

(5) For all affected engines, if the main propeller shaft CSN is unknown, use the propeller gearbox (PGB) CSN. If the PGB CSN is unknown, assume the inspection threshold is exceeded.

(h) Optional Terminating Action

Accomplishing the actions in paragraphs (h)(1) through (4) of this AD, as applicable by engine model, constitutes terminating action for the inspections required by paragraphs (g)(1) through (3) of this AD.

(1) For affected CT7–5A2, CT7–5A3, CT7–7A, and CT7–7A1 model turboprop engines, revise the airworthiness limitations section (ALS) of the existing maintenance manual (MM) and the operator's existing approved maintenance program or inspection program, as applicable, by incorporating the information in Figure 3 to paragraph (h)(1) of this AD.

BILLING CODE 4910–13–P

Figure 3 to Paragraph (h)(1) – CT7-5/-7 Inspection Threshold and Interval

Inspection / Maintenance	Initial Inspection Threshold (cycles since new (CSN))	Repetitive Inspection Interval	Inspection / Maintenance Requirements	Reference
***** FOR CT7-5**				
Visual inspection of the main propeller shaft	--	At every propeller removal	VI	72-10-00, INSPECTION – PROPELLER GEARBOX INSPECTION paragraph 5.A.
Fluorescent penetrant inspection (FPI) of the main propeller shaft	20000 CSN (*)	At every propeller removal or 2100 FH, whichever is greater	FPI	72-10-00. Special Procedure 005
Ultrasonic inspection (UTI) of the main propeller shaft	20000 CSN (*)	5000 FH	UTI	72-10-00. Special Procedure 005
***** FOR CT7-7**				
Visual inspection of the main propeller shaft	--	At every propeller removal	VI	72-10-00, INSPECTION – PROPELLER GEARBOX INSPECTION paragraph 5.A.
Fluorescent penetrant inspection (FPI) of the main propeller shaft	20000 CSN (*)	At every propeller removal or 2400 FH, whichever is greater	FPI	72-10-00. Special Procedure 005
Ultrasonic inspection (UTI) of the main propeller shaft	20000 CSN (*)	4800 FH	UTI	72-10-00. Special Procedure 005

NOTE: (*) If the main propeller shaft accumulated time/cycle is unknown, inspection must be done based on the propeller gearbox (PGB) accumulated time/cycle. If the PGB accumulated time/cycle is unknown, threshold must be assumed exceeded.

(2) For affected CT7–9B, CT7–9B1, CT7–9B2, CT7–9C, and CT7–9C3 model turboprop engines, revise the ALS of the existing MM and the operator's existing approved maintenance program or inspection program, as applicable, by incorporating the information in Figure 4 to paragraph (h)(2) of this AD.

Figure 4 to Paragraph (h)(2) – CT7-9 Inspection Threshold and Interval

Inspection / Maintenance	Initial Inspection Threshold (cycles since new (CSN))	Repetitive Inspection Interval	Inspection / Maintenance Requirements	Reference
***** FOR CT7-9B**				
Visual inspection of the main propeller shaft	--	At every propeller removal	VI	72-10-00, INSPECTION – PROPELLER GEARBOX INSPECTION paragraph 5.A.
Fluorescent penetrant inspection (FPI) of the main propeller shaft	20000 CSN (*)	At every propeller removal or 2100 FH, whichever is greater	FPI	72-10-00. Special Procedure 005
Ultrasonic inspection (UTI) of the main propeller shaft	20000 CSN (*)	5000 FH	UTI	72-10-00. Special Procedure 005
***** FOR CT7-9C/9C3**				
Visual inspection of the main propeller shaft	--	At every propeller removal	VI	72-10-00, INSPECTION – PROPELLER GEARBOX INSPECTION paragraph 5.A.
Fluorescent penetrant inspection (FPI) of the main propeller shaft	20000 CSN (*)	At every propeller removal or 2400 FH, whichever is greater	FPI	72-10-00. Special Procedure 005
Ultrasonic inspection (UTI) of the main propeller shaft	20000 CSN (*)	4800 FH	UTI	72-10-00. Special Procedure 005

NOTE: (*) If the main propeller shaft accumulated time/cycle is unknown, inspection must be done based on the propeller gearbox (PGB) accumulated time/cycle. If the PGB accumulated time/cycle is unknown, threshold must be assumed exceeded.

BILLING CODE 4910–13–C

(3) Thereafter, except as provided in paragraph (k) of this AD, no alternative inspection times or intervals may be approved for this main propeller shaft.

(4) The optional terminating actions in paragraphs (h)(1) and (2) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 14 CFR 121.380, or 14 CFR 135.439.

(i) Definition

For the purpose of this AD, a ''part eligible for installation'' is a main propeller shaft that has been inspected in accordance with paragraphs (g)(1) or (2) and (3) of this AD, and a crack or rejectable indication was not found.

(j) Credit for Previous Actions

You may take credit for the initial visual inspection, FPI, and USI required by paragraphs (g)(1) through (3) of this AD if you performed these initial inspections before the effective date of this AD in accordance with GE SB CT7–TP 72–0541 R00, dated September 9, 2021.

(k) Alternative Methods of Compliance (AMOCs)

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

identified in paragraph (l) of this AD and email it to: *ANE-AD-AMOC@faa.gov.*

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

(l) Related Information

For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) GE Service Bulletin CT7–TP 72–0541 R01, dated November 18, 2021.

(ii) [Reserved]

(3) For GE service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *ge.com.*

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

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

Issued on October 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–23385 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

[2900–AR58]

Loan Guaranty: Revisions to VA-Guaranteed or Insured Interest Rate Reduction Refinancing Loans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its rules on VA-backed interest rate reduction refinancing loans (IRRRLs). The Economic Growth, Regulatory Relief, and Consumer Protection Act and the Protecting Affordable Mortgages for Veterans Act of 2019 outlined the circumstances in which VA may guarantee or insure refinance loans, by setting forth net tangible benefit, recoupment, and seasoning standards. The proposed rule would update VA's existing IRRRL regulation to current statutory requirements.

DATES: Comments must be received on or before January 3, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Terry Rouch, Assistant Director, Loan Policy and Valuation, and Stephanie Li, Chief, Regulations, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8862 (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The proposed rulemaking described by this notice would update VA's existing IRRRL regulation at 38 CFR 36.4307 to reflect current statutory requirements set forth by section 309 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296, and section 2 of the Protecting Affordable Mortgages for Veterans Act of 2019, Public Law 116–33, 133 Stat. 1038 (collectively, the ''Acts''). The subject provisions of the Acts are codified at 38 U.S.C. 3709. Section 3709 sets forth statutory criteria for determining whether VA can guarantee or insure a refinance loan. Additional statutory authorities underpinning VA's proposed rulemaking include 38 U.S.C. 3710, 3703, and 501. IRRRLs are specifically authorized under subsections (a)(8), (a)(11), and (e) of 38 U.S.C. 3710.

I. Background

(Note: VA does not use the term IRRRL in the proposed rule text. For ease of reading, however, this preamble substitutes the term ''IRRRL'' for the proposed rule text's ''refinancing loan''. The terms are interchangeable in this context.)

A. Section 3709 Background Discussion

1. IRRRLs Described

The purpose of an IRRRL is to improve a veteran's financial position by reducing the interest rate on the veteran's existing VA-backed loan. An IRRRL typically results in a reduction in the dollar amount the veteran owes toward monthly housing loan payments. See 38 CFR 36.4307(a)(3). An IRRRL may be used alternatively to reduce the veteran's required number of monthly loan payments, to convert an adjustable-rate mortgage (ARM) to a loan with a fixed interest rate, or to make energy efficient improvements to the home. Id. A veteran cannot use an IRRRL to obtain cash for the equity the veteran may have in the property securing the loan, because that would be a cash-out refinance. See 38 CFR 36.4306.

2. Section 3709's Effect on IRRRLs

VA-backed refinancing loans were historically divided into two categories. See Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans, 83 FR 64459 (Dec. 17, 2018). The two categories were cash-outs offered under 38 U.S.C. 3710(a)(5) or 3710(a)(9) and IRRRLs. Id.

As VA noted in its cash-out refinance interim final rule (IFR) notice, Congress structured 38 U.S.C. 3709 such that VA-backed refinance loans have since been effectively grouped into three categories: (i) IRRRLs, (ii) cash-outs in which the amount of the principal for the refinancing loan is equal to or less than the payoff amount on the loan being refinanced (Type I Cash-Outs), and (iii) cash-outs in which the amount of the principal for the refinancing loan is larger than the payoff amount of the loan being refinanced (Type II Cash-Outs). 83 FR at 64459. Subsections (a) through (c) of section 3709 apply to IRRRLs. Id. at 64460. Each of these three subsections creates a pass/fail standard applicable to IRRRLs. If one or more of the requirements is not met, VA cannot guarantee the IRRRL. See id. at 64462.

B. Rulemaking Purpose

VA is proposing to revise 38 CFR 36.4307 to reflect current statutory requirements, including net tangible benefit, recoupment, and seasoning standards, consistent with 38 U.S.C. 3709. Also, because section 3709 has caused confusion among program participants, VA is proposing clarifications to diminish the risk of lender noncompliance. In helping lenders understand compliance expectations, VA's regulation would safeguard veterans, ease lender concerns, reduce potential instability in the secondary loan market, and insulate taxpayers from unnecessary financial risk. Ultimately, VA's regulation would help ensure that IRRRLs continue to be used for their intended purpose, that is, improving veterans' financial positions.

Additionally, VA proposes certain technical changes (described below) for ease of reading and proposes using a redesigned VA Form 26–8923, *IRRRL Worksheet,* which is the worksheet that lenders complete when making IRRRLs, to collect certain lender certifications. The proposed redesigned *IRRRL Worksheet* is described in more detail later in this notice.

C. Qualified Mortgage Standards and the Proposed Rule

On May 9, 2014, VA published an IFR notice to describe which VA-guaranteed loans were to be considered as ''qualified mortgages'' (QM), thereby subject to either safe harbor protection or the presumption that the veteran is able to repay a loan, in accordance with the Ability to Repay provisions that existed at the time. See Loan Guaranty: Ability-to-Repay Standards and Qualified Mortgage Definition Under the Truth-in-Lending Act, 79 FR 26620 (May 9, 2014). The QM IFR did not change VA's regulations or policies with respect to how lenders are to originate mortgages, except to the extent lenders seek to make qualified mortgages. Id. at 26625. On October 9, 2018, VA published an agency determination regarding the status of the QM IFR, explaining that, due to enactment of section 309 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115–174), VA would need to revise its QM criteria in a future rulemaking, wherein VA would take into account the spirit of the comments submitted in response to the QM IFR. See Loan Guaranty: Ability-to-Repay Standards and Qualified Mortgage Definition Under the Truth-in-Lending Act, 83 FR 50506 (Oct. 9, 2018). The agency determination also stated that until VA conducted a new rulemaking relating to QMs and IRRRLs, the QM IFR would remain in effect, except for any provision of the IFR that conflicted with or was superseded by Public Law 115–174. Id. As with the agency's previous determination, VA is not proposing in this notice to make express changes to the QM standards. Accordingly, all provisions of the QM IFR that do not conflict with or have not been superseded by later-in-time provisions of law continue to remain in effect.

II. Analysis of the Proposed Rule

A. Recoupment (38 CFR 36.4307(a)(8))

In 38 U.S.C. 3709(a), Congress set forth a maximum recoupment period of 36 months for certain charges associated with an IRRRL. VA proposes to add a new paragraph (a)(8) in § 36.4307 which would clarify the statutory recoupment standard. Consistent with section 3709(a), proposed paragraph (a)(8)(i) would state that the lender of the IRRRL must provide the Secretary with a certification that all fees, closing costs, and expenses (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) that would be incurred by the veteran as a result of the refinance are scheduled to be recouped on or before the date that is 36 months after the note date of the IRRRL. VA proposes to collect lenders' certifications via the redesigned VA Form 26–8923, *IRRRL Worksheet,* discussed in more detail below.

To help veterans and lenders understand how the recoupment period is calculated, VA proposes to describe a formula in proposed paragraph (a)(8)(ii). The formula would require lenders first to total the dollar amounts of all fees, closing costs, and expenses, whether included in the loan or paid at or outside of closing. The lender would then subtract from that total the dollar amounts of lender credits, if any. The resulting figure would be used as the formula's numerator (the numerator). The denominator of the formula would be the dollar amount by which the veteran's monthly payment for principal and interest would be reduced as a result of the IRRRL (the denominator). In a final calculation, lenders would divide the numerator by the denominator to determine the number of months it would take for the veteran to recoup the subject IRRRL costs:

$$\frac{\text{(fees + closing costs + expenses) – lender credits}}{\text{reduction in monthly payment of principal and interest}} = \text{months to recoup costs}$$

1. Recoupment Numerator

VA proposes to clarify in paragraph (a)(8)(iii) that the numerator to be used in the formula described above is the dollar amount equating to the sum of all fees, closing costs, and expenses that would be incurred by the veteran as a result of the refinance. VA also proposes that, except as provided in paragraph (a)(8)(iii), such sum includes any charge that is incurred by the veteran as a result of the refinance, including taxes that are not described in paragraph (a)(8)(iii)(C). VA proposes to specify in paragraph (a)(8)(iii) that lender credits may be subtracted from other amounts in the numerator.

Proposed paragraph (a)(8)(iii) would also contain a list of items that are excluded from the numerator: (A) the loan fee as prescribed by 38 U.S.C. 3729; (B) prepaid interest and amounts held in escrow (for example, amounts for hazard insurance); and (C) taxes and assessments on the property, even when paid outside of their normal schedule, that are not incurred solely due to the refinance transaction (for example, property taxes and special assessments).

a. Understanding the ''Fees, Closing Costs, and Expenses'' To Be Recouped Within 36 Months

There has been confusion among stakeholders as to the fees, closing costs, and expenses that must be recouped under section 3709(a). Subsection (a) establishes a standard but uses unclear terms and phrasing across its three paragraphs. The lack of clarity has led to uncertainty and various interpretations among program participants. To dispel the confusion, VA proposes regulatory clarification.

VA interprets subsections (a)(1) and (a)(2) to refer to the same group of charges. Specifically, subsection (a)(1)'s phrase, ''fees, closing costs, and any expenses (other than taxes, amounts held in escrow, and fees paid under this chapter) that would be incurred by the borrower in the refinancing of the loan'' is the antecedent to subsection (a)(2)'s phrase, ''all of the fees and incurred costs'' in 38 U.S.C. 3709(a)(2). This means that the fees, closing costs, and any expenses (except those expressly excluded) in paragraph (a)(1) comprise all charges—not a select collection of charges—resulting from the IRRRL and must, under paragraph (2), ''be recouped on or before the date that is 36 months after'' the IRRRL is made. 38 U.S.C. 3709(a).

VA bases this interpretation on rules of grammar and usage that suggest Congress's use of the definite article ''the'' in subsection (a)(2)'s clause, ''all of the fees'', establishes a grammatical connection to, and dependence on, subsection (a)(1)'s reference to ''fees''. The connection and dependence are furthered by subsection (a)(2)'s reference to ''incurred costs'', which operates as a truncated reference back to subsection (a)(1)'s list of charges ''incurred by the borrower.'' In short, subsection (a)(2) should not be taken on its own. It is part of a whole and should be read in that context.

An alternative reading of section 3709(a)(1) and (a)(2) would be that these clauses should be interpreted differently because Congress phrased the clauses differently. Under such a reading, lenders would certify to VA as to one set of fees, closing costs, and expenses as described in subsection (a)(1). The only charges to be included in the recoupment period of 36 months, however, would be subsection (a)(2)'s ''all of the fees and incurred costs'', where ''incurred costs'' is a distinctly new and undefined term. In other words, the different phrasing in subsection (a)(2) would create a second and distinct recoupment standard alongside the one prescribed in subsection (a)(1).

VA believes that requiring two separate recoupment standards as outcomes of a single statutory sentence would inject unnecessary complexity into the statutory scheme. It is VA's position that the text of section 3709(a)'s anti-predatory lending scheme instead creates a harmonious, albeit not always textually clear, recoupment standard for stakeholders. See Public Law 115–174 § 309, ''Protecting Veterans from Predatory Lending'' (May 24, 2018); *Gustafson* v. *Alloyd Co.,* 513 U.S. 561, 569 (1995) (holding that courts must interpret statutes ''as a symmetrical and coherent regulatory scheme''); *FTC* v. *Mandel Brothers, Inc.,* 359 U.S. 385, 389 (1959) (directing courts to ''fit, if possible, all parts [of a statute] into an harmonious whole'').

In viewing ''incurred costs'' as a reference to a previously used term rather than the introduction of a new one, VA's interpretation would eliminate the need for program participants to go beyond the statutory language and hypothesize and debate Congress's intent. At the same time, VA's rationale for interpreting the text would align with and further the Congressional aim of enacting section 3709 and the IRRRL benefit. For example, it would save veterans and lenders from bearing the burden of deciphering separate recoupment outcomes, one for certifying to VA under paragraph (1) and another for determining under paragraph (2) whether the loan could be guaranteed. Additionally, VA's approach would result in a more transparent and easier-to-administer oversight requirement. It would also reduce the risk of errors and loopholes to which an alternate reading is more vulnerable. Finally, it would avoid unnecessary complexity, reducing the likelihood of veterans suffering confusing and convoluted outcomes. Each of these factors would help prevent predatory lending and ensure that a veteran has the opportunity to understand whether an IRRRL is in the veteran's financial interest.

For similar reasons, VA interprets subsection (a) to refer to charges the veteran actually paid and that were incurred as a result of the refinance transaction. The veteran could pay such charges before closing, at closing, or by including such charges in the loan amount.

b. Charges Not Included in the Recoupment Numerator

Generally, no charge can be made against, or paid by, a veteran unless compliant with 38 CFR 36.4313. To assist lenders in understanding what types of borrower-incurred charges would be added in the recoupment numerator, VA proposes in section 36.4307(a)(8)(iii) to expressly list those amounts that are not to be included. In other words, any charge not enumerated in VA's proposed list would need to be included in the numerator.

The first charge VA proposes to exclude is the loan fee (more commonly referred to as the ''funding fee'') paid pursuant to 38 U.S.C. 3729. This exclusion is explicitly required under section 3709(a)(1). See 38 U.S.C. 3709(a)(1) parenthetical's exclusion of ''taxes, amounts held in escrow, and fees paid under [38 U.S.C. chapter 37]''. Section 3709(a)(1) also provides that ''amounts held in escrow'' are to be excluded from the recoupment calculation, which is why VA proposes to exclude them from the recoupment numerator. Id.

Although section 3709(a)(1) does not expressly exclude prepaid interest, VA is proposing to exclude it from the recoupment calculation. VA believes this exclusion is necessary because the per diem interest, which is often referred to as ''prepaid interest'', is not a fee, closing cost, or expense incurred in the refinance transaction. Rather, prepaid interest is incurred outside the refinance transaction, as the same per diem interest would accrue on the loan being refinanced regardless of the refinance. Put another way, a veteran's prepayment of interest at the time of loan closing is a matter of scheduling, not a new charge incurred in the refinancing. To view it otherwise would unduly restrict veterans from taking advantage of their home loan benefits, as lenders would refuse to accept a novel treatment of prepaid interest that requires lenders to absorb the costs. VA notes, too, that VA's proposal would ensure that a veteran who closes the IRRRL earlier in a month (and therefore must prepay more in interest) is not put at a disadvantage when compared to a veteran who closes toward the end of a month. Therefore, VA proposes to exclude prepaid interest from the numerator.

Finally, the above-referenced parenthetical in section 3709(a)(1) states that ''taxes'' are to be excluded from calculation of items to be recouped. VA interprets the term ''taxes'' to be limited to ad valorem property taxes and analogous assessments. VA bases this understanding on the real estate finance industry's common usage of the term ''taxes''; for instance, when calculating PITI (Principal, Interest, Taxes, and Insurance). This understanding is also consistent with Congress's instruction that the amounts to be recouped are those ''incurred by the borrower in the refinancing.'' 38 U.S.C. 3709(a)(1). Much like prepaid interest, certain taxes and assessments might normally be paid by the veteran on a schedule (for example, monthly payments to an escrow account), but because of the refinance transaction, must be paid by the veteran ahead of their normal schedule. Payment of these amounts is a matter of timing, not a new charge attributable to the refinancing transaction itself. Conversely, other items charged during a refinance that may be referred to as ''taxes'', such as

intangible taxes, tax stamps, and recording taxes, are transaction costs incurred as a result of the refinance. Such charges are not normally mentioned in the industry as ''taxes'' like those described by PITI but are instead viewed as closing costs or expenses incurred solely due to the refinance transaction. This is why VA is not proposing to exclude these types of charges from the recoupment calculation. Thus, the result would be that only those taxes that are charged because of the refinance should be included in the recoupment numerator. This furthers the goal that the recoupment standard will generally demonstrate whether the true cost of the refinance can be recouped within the prescribed 36-month period.

In sum, by listing the charges to be excluded from the recoupment numerator, VA is not proposing to provide an exhaustive list of all charges that must be recouped within the prescribed period, but instead proposes exclusions that are consistent with section 3709(a). Where appropriate, VA has provided examples to promote a better understanding of such charges. To the extent the scope of these exclusions may require additional clarity, VA invites comments for consideration.

c. Lender Credits

For purposes of the recoupment numerator, VA proposes that lender credits may be subtracted from other amounts in the numerator. Lenders offer lender credits for several reasons, most commonly to provide the veteran with the option to reduce up-front costs in exchange for paying a higher interest rate on the loan. But section 3709 is silent on how to treat lender credits in relation to the recoupment standard.

Allowing lenders to subtract the amount of such credits from the recoupment numerator is consistent with VA's position that the numerator should measure the transaction costs incurred as a result of the refinance transaction. Prohibiting lender credits as offsets would not only skew the true transaction costs incurred by the veteran but also run counter to the industry norm. See, for example, 12 CFR 1026.38(h)(3), which recognizes lender credits as a type of offset to closing costs. It would also put veterans at a disadvantage when compared to other borrowers and would, in VA's view, unfairly decrease veterans' opportunities to refinance.

While lender credits usually coincide with the veteran paying a higher interest rate, Congress provided in subsection (a) two safeguards against lenders using their credits to circumvent the recoupment standard. First, Congress established the safeguard that the recoupment must be ''calculated through lower regular monthly payments (other than taxes, amounts held in escrow, and fees paid under this chapter) as a result of the refinanced loan.'' 38 U.S.C. 3709(a)(3). This means that, even though the lender credit would be subtracted under VA's proposed rule from the numerator's charges, the recoupment formula's denominator (described in more detail below) would look to the regular monthly payments to account for the potential loss of savings attributable to the slightly increased interest rate.

Second, Congress has established separate interest rate limitations that prevent predatory interest rate increases. For instance, 38 U.S.C. 3709(b) sets parameters around interest rates, values, and discount points. As mentioned above, VA proposes regulations to implement this statutory interest rate safeguard for IRRRLs, as explained later in this notice. Another interest rate limitation on IRRRLs is provided in 38 U.S.C. 3710(e)(1)(A). Permitting lender credits to be included in the recoupment calculation would not override such requirements. VA notes, too, that lender credits would not affect the loan seasoning provisions outlined in section 3709(c). In sum, VA's proposal to account for lender credits in the recoupment calculation would reflect the fees, closing costs, and expenses a veteran would incur as a result of the refinance—both at the time of refinance and over the repayment term—while preserving for the veteran the option to lower their up-front closing costs via lender credits.

2. Recoupment Denominator

With respect to the denominator of the recoupment calculation formula, VA proposes to state in paragraph (a)(8)(iv) that the denominator is the dollar amount by which the veteran's monthly payment for principal and interest is reduced as a result of the refinance. The proposed paragraph would prescribe that the reduction is calculated by subtracting the veteran's monthly payment for principal and interest under the IRRRL from the veteran's monthly payment for principal and interest under the loan being refinanced. VA would also clarify that when calculating monthly payments for principal and interest, the lender must use the full payment, without omitting any amounts to be repaid monthly by the veteran and attributable to, for example, financed fees, financed funding fees prescribed by 38 U.S.C. 3729, financed closing costs, and financed expenses.

In proposing this standard, VA is clarifying that the phrase ''lower regular monthly payments (other than taxes, amounts held in escrow, and fees paid under this chapter)'' in 38 U.S.C. 3709(a)(3) means the difference between the veteran's monthly payment for principal and interest under the IRRRL and the veteran's monthly payment for principal and interest under the loan being refinanced. This clarification focusing on principal and interest would produce a direct comparison of what the veteran is truly required to pay as between the two loans, regardless of externalities that may vary case-to-case, making the cost of the refinancing transaction more transparent to veterans. Therefore, VA interprets section 3709(a)(3) as requiring a comparison between that which the veteran pays for principal and interest under the loan being refinanced and that which the veteran would pay for principal and interest under the IRRRL.

By limiting the recoupment denominator to comparisons of the veteran's monthly payments for principal and interest, the proposal would satisfy section 3709's requirement to exclude taxes, amounts held in escrow, and fees paid under chapter 37. 38 U.S.C. 3709(a)(3). VA would clarify, however, that due to industry confusion regarding fees paid under chapter 37, the chapter 37 fees to be excluded from calculation under subsection (a)(3) are limited to fees that are charged monthly.

VA appreciates there could be other interpretations. For example, VA sees some merit in the suggestion that subsection (a)'s parentheticals are categorical exclusions, excluding VA's funding fee from every aspect of the recoupment calculation. The rationale would be that the parentheticals in both paragraphs (1) and (3) of section 3709(a) are phrased identically and provide that ''fees paid under [chapter 37]'' should not be included in the recoupment. The funding fee is required under 38 U.S.C. 3729, which makes it a fee paid under chapter 37 and therefore, necessarily excluded. Additionally, that interpretation would, in one way, seem consistent with VA's approach to providing a harmonious, singular recoupment standard. Since VA is proposing to interpret paragraph (1) to exclude wholly the funding fee, VA could also propose to interpret paragraph (3) the same way.

VA agrees to some extent but disagrees with the outcome. Although VA would agree that VA must exclude from both the numerator and the

denominator fees paid under chapter 37, VA does not believe the exclusion of fees paid under chapter 37 extends to every attenuated impact. If VA were to apply section 3709 in this manner, VA would have to exclude from the calculation any increase to the principal and interest of a monthly payment if such an increase was related in some way to a fee paid under chapter 37. To do so could pose a significant concern for veterans and would not be the most logical interpretation of the text.

In cases where veterans finance the funding fee by including it in one or both subject loans, veterans could not, as the statute could be read to require, simply rely on the difference between their pre-IRRRL monthly payments and IRRRL monthly payments to know whether the IRRRL would be in their financial interest. Instead, they would have to rely on the lender to correctly calculate an artificial month-to-month payment for both the loan being refinanced and the IRRRL to determine whether there are any savings. The denominator would be artificial because both payments—the payment used for principal and interest under the loan being refinanced and such payment used for the IRRRL—would not correspond to a real payment. Instead, lenders would need to reverse-engineer a monthly payment for each loan by subtracting out the funding fee and re-amortizing the artificial principal balance, to contrive a non-existent payment solely for the purposes of recoupment.

Such artificiality is unnecessary under the text of the statute. VA does not believe that subsection (a)(3) requires lenders to construct non-existent payments, especially as measurements of the veteran's month-to-month savings as part of an anti-predatory scheme. Moreover, VA does not believe that the text requires veterans to rely on artificial payment amounts, rather than the actual amount the veteran will need to pay each month for principal and interest, to determine how the IRRRL affects the veteran from a financial perspective.

VA instead interprets the text of each parenthetical—both subsection (a)(1) and (a)(3)—as explained above, on its face and as elements of a harmonious whole, one that treats subsections (a)(1) and (a)(3) consistently but addresses different elements. Both paragraphs (1) and (3) exclude fees paid under chapter 37. But paragraph (3) further delimits its application, making it applicable to ''regular monthly payments'', meaning any fees paid under chapter 37 monthly.

When a veteran closes a refinance transaction and pays a funding fee under section 3729, the charge is made at the closing table as a one-time collection. Either the veteran pays the fee in cash and the lender remits it to the Secretary, or the lender advances the fee on behalf of the veteran, remits the fee to the Secretary, and adds the advance to the principal loan amount. Regardless of the choice, the fee is collected and remitted to the Secretary, not to the lender. Otherwise, there could not be a guaranteed loan. See 38 U.S.C. 3729 (''No such loan may be guaranteed, insured, made, or assumed until the fee payable under this section has been remitted to the Secretary.'').

But the funding fee required under section 3729 is not a fee on top of a regular monthly payment. VA's funding fee is not like private mortgage insurance, for instance, which in other programs is a separate and distinct charge that must be added to the monthly payment of principal and interest and paid monthly over the course of the loan repayment period. If Congress or VA were to introduce such a monthly fee under chapter 37, one that a veteran and lender would need to add to the veteran's regular monthly payments, VA would be required to exclude it from the recoupment calculation. Indeed, VA is proposing that such fees paid under chapter 37 must be excluded from the recoupment numerator and denominator.

Nevertheless, to say that subsection (a)(3)'s parenthetical exclusion would apply to every attenuated impact arising from fees paid under chapter 37 would go too far. When taken to its logical end, it could, in addition to necessitating the reverse engineering of artificial payments described above, largely undermine the recoupment standard. For instance, VA has in 38 CFR 36.4307 and 36.4313 outlined charges that may be made against and paid by a veteran in conjunction with an IRRRL. If a veteran were to finance all the veteran's closing costs of an IRRRL, VA would include those costs in the recoupment calculation. If, however, VA were to interpret subsection (a)(3)'s parenthetical exclusion to apply to every attenuated impact arising from charges paid under chapter 37, all VA-approved charges could be construed as having been ''paid under'' chapter 37 for the purposes of section 3709(a)(3) because chapter 37 is the primary source of statutory authority for the VA-guaranteed loan program. In other words, if the fee is paid under the express or tacit authority of the organic, enabling legislation, such fee would be paid under the auspices of chapter 37 and could fit within a narrow construction of subsection (a)(3). Any fee, closing cost, or expense that was financed would have to be backed out of the monthly payment and excluded from the recoupment calculation. This would require an artificial payment even further from the reality of the veteran's experience; and because all charges would be excluded, would undermine the purpose of section 3709(a).

VA's focus on the ''calculation'' of ''lower regular monthly payments . . . as a result of the refinanced loan'', shows a natural progression in the context of subsection (a) as a whole, consistent with VA's proposed recoupment formula. First, subsection (a)(1), requires a complete tallying of transaction costs for a tailored anti-predatory scheme. Second, subsection (a)(2) establishes the target for the recoupment period (36 months). Third, subsection (a)(3) establishes that the critical link between the two is the easiest, most straightforward way one might be able to compare the veteran's before-and-after financial situation, that is, the actual difference between the veteran's ''regular monthly payments . . . as a result of the refinanced loan''. See 38 U.S.C. 3709(a)(3). In sum, VA's proposed interpretation is to exclude the items named by the parenthetical, that is, ''taxes, amounts held in escrow, and fees paid under this chapter'', provided the veteran is making payments for such items that are separate and apart from the veteran's payments toward principal and interest. Id.

VA also notes that an interpretation requiring veterans, lenders, servicers, and other stakeholders to understand and execute an artificial month-to-month savings would make it more difficult for VA to administer a compliance program. VA believes, based on its oversight expertise, that the straightforward and transparent recoupment standard outlined in this proposed rule notice would further VA's ability to protect veterans from predatory lending practices. Using the actual and true monthly principal and interest amounts for the denominator would be less confusing for veterans, lenders, and consumer advocates. The ability for stakeholders to rely on the monthly principal and interest amounts that are shown on standard loan documents would enable all parties, especially veterans, to understand the costs and calculate the recoupment period of the refinancing loan. Similarly, it is important for lenders to have confidence in their ability to calculate recoupment correctly, because passing recoupment is a prerequisite of VA's guaranty. See 38 U.S.C. 3709(a)

(refinance loan ''may not be guaranteed'' unless recoupment standard is met). In VA's experience, the more difficult it is to understand how to ensure a good outcome, the more likely it is that lenders would be prone to shy away from the loan product. Ultimately, such a confusing paradigm would produce negative results for veterans, despite Congress having provided statutory language that could avoid such results. VA therefore proposes a recoupment standard that avoids contrived and artificial calculations and provides for a simple and direct comparison of the veteran's actual payments for principal and interest.

3. Additional Recoupment Matters

In proposed paragraph (a)(8)(v), VA would clarify that if the dollar amount of the veteran's monthly payment for principal and interest under the IRRRL is equal to or greater than the dollar amount of the veteran's monthly payment for principal and interest under the loan being refinanced, meaning there is no reduction in the monthly payment for principal and interest as a result of the IRRRL, the lender must not charge any fees, closing costs, or expenses, except for those enumerated by paragraphs (a)(8)(iii)(A), (a)(8)(iii)(B), and (a)(8)(iii)(C). Proposed paragraph (a)(8)(v) addresses those instances where the veteran chooses to realize the savings of an IRRRL by shortening the repayment term (for example, the veteran moves from 30-year repayment term to 15-year repayment term), which may cause an increase in the monthly principal and interest payment. For such IRRRLs, veterans can realize significant savings by reducing the amount of interest paid and the number of months during which veterans must make loan payments, even though there is an increase or perhaps no change in the dollar amount of the monthly principal and interest payment as between the two subject loans.

Lenders offer such ''zero-cost'' refinance loans for several reasons. For example, lenders might offer such loans in recognition of a veteran's loyalty to the lender or to attract veterans as new customers. VA has not made a practice of prohibiting ''zero-cost'' IRRRLs because, as discussed above, veterans can often realize significant savings in such transactions. Given the prospect of significant savings for veterans, VA proposes to continue allowing the practice of ''zero-cost'' IRRRLs under this rulemaking.

While veterans can realize significant savings under ''zero-cost'' IRRRLs, in the context of fee recoupment under 38 U.S.C. 3709(a), the plain text states that ''all of the fees and incurred costs'' must be recouped ''through lower regular monthly payments.'' In other words, the plain text commands that without a reduction in the dollar amount owed for monthly payments, that is, a recoupment denominator greater than zero, the recoupment standard cannot be met unless the recoupment numerator is zero.

An alternative, albeit untenable, reading of subsection (a)(3) could be that ''lower regular monthly payments'' might refer to the fact that, in repayment term reduction scenarios discussed above, veterans would have a smaller, that is, ''lower,'' number of monthly payments to make as a result of the refinancing loan (for example, from 300 payments to 180 payments). VA believes such an interpretation is not feasible because it does not fit within the mathematical recoupment formula set forth by subsection (a). Without computing a fraction under the statutory scheme, VA would be unable to determine whether ''all of the fees and incurred costs'' would be recouped within ''36 months'', even in cases where the refinance loan reduced the number of monthly payments. 38 U.S.C. 3709(a). Additionally, such an interpretation would render subsection (a)(3)'s parenthetical, which excludes certain taxes, escrows, and fees from the recoupment denominator, superfluous and incompatible with the remaining statutory text because such exclusions are irrelevant to whether there has been a reduction in the number of monthly payments. See *Republic of Sudan* v. *Harrison,* 139 S. Ct. 1048, 1058 (2019) (holding that courts must be hesitant to adopt statutory interpretations that render ''superfluous another portion of that same law'' (internal quotations omitted)). In other words, if paragraph (a)(3)'s element of the recoupment formula could be satisfied by virtue of a reduced number of monthly payments, it is unclear why the parenthetical would be necessary to establish that the number of required payments for taxes, escrows, and fees should be ignored or excluded. It is universally understood that property taxes continue even after a housing loan is satisfied. Additionally, loan servicers would not maintain escrow accounts after the loan is satisfied. VA's proposed interpretation ascribes meaning to the entire statutory provision and fits with VA's mathematical approach to the recoupment fraction, as described in this notice.

B. Loan Seasoning (38 CFR 36.4307(a)(9))

VA proposes to add a new paragraph (a)(9) to clarify loan seasoning standards for IRRRLs. Loan seasoning refers to the age of the loan being refinanced. If the loan being refinanced is not properly seasoned on or before the note date of the refinancing loan, VA cannot guarantee the loan. See 38 U.S.C. 3709(c).

In proposed paragraph (a)(9)(i), VA would clarify that the refinancing loan must meet two primary statutory seasoning elements, as described below.

1. Seasoning Element One: Six Consecutive Monthly Payments

In proposed paragraph (a)(9)(i)(A), VA would describe the first statutory seasoning element that must be met, that is, that on or before the note date of the refinancing loan, the veteran must have made at least six consecutive monthly payments on the loan being refinanced. VA also proposes to clarify in this paragraph that a ''monthly payment'' for IRRRL seasoning purposes is the full monthly dollar amount owed under the note plus any additional monthly amounts agreed to between the veteran and the holder of the loan being refinanced, such as payments for taxes, hazard insurance, fees and charges related to late payments, and amounts owed as part of a repayment plan. Additionally, VA proposes to clarify that a ''monthly payment'' will count toward the requisite six consecutive monthly payments only if made in or before the same calendar month for which it is due. VA also proposes that a prepaid monthly payment will count toward the requisite six consecutive monthly payments, provided that the holder of the loan being refinanced applies such payment as satisfying the veteran's obligation of payment for a specific month, advances the due date of the veteran's next monthly payment, and does not apply the payment solely toward principal. VA would also explain that when multiple partial payments sum to the amount owed for one monthly payment, they will count as a single monthly payment toward the requisite six consecutive monthly payments, but only if all partial payments are made in or before the same calendar month for which full payment is due.

VA notes that 38 U.S.C. 3709(c) does not expressly state the requisite six consecutive monthly payments must immediately precede the refinancing loan. A missed payment after reaching the six-payment-threshold does not start a new seasoning period. To illustrate: a

veteran makes six consecutive monthly payments and meets the seasoning requirement. The veteran is later hospitalized and misses payments eight and nine. The veteran applies for an IRRRL, which would allow the veteran to catch up on payments, and the savings provided by a lower payment would help the veteran better afford other credit obligations, including those from the hospitalization. VA would view this veteran's loan as having met the seasoning period. To view it otherwise would prevent the use of an IRRRL as a de facto home retention option.

IRRRLs provide many veterans a viable path to home retention when faced with financial difficulties. This was especially evident during the early stages of the COVID–19 pandemic, where many veterans took advantage of historically low interest rates and obtained IRRRLs to reduce their monthly housing loan payments. Many such veterans had never missed a payment before the pandemic. VA believes that a requirement that the six consecutive monthly payments must immediately precede the making of an IRRRL would not prevent predatory loan practices but would create unnecessary barriers to home retention.

VA believes that, rather than barring such veterans from receiving an IRRRL, the text of section 3709(c) allows for the requisite six consecutive monthly payments to be made at any point during the repayment term of the loan being refinanced. Regardless of whether a loan is in default, if the loan was seasoned before the default, the loan can satisfy the first element of the seasoning standard. If there is a break in monthly payments before six consecutive payments are made, the count would reset to zero. Additionally, if a veteran continues to make monthly payments during a forbearance, such payments would count toward the requisite six consecutive monthly payments. However, if a veteran did not make a payment during the forbearance, the count would reset to zero.

Regarding what constitutes a ''monthly payment'', VA believes the proposed definition would account for the various ways in which a veteran may remit a monthly loan payment, while making it clear that a mere partial payment, alone, cannot count toward the requisite six consecutive monthly payments. Thus, VA's proposed definition would allow for cases where, for example, a veteran remits a partial payment to a lender (perhaps inadvertently) and then remits any outstanding amounts in or before the same calendar month for which the full payment is due. In the case of prepayment of certain amounts (for example, where a veteran arranges with the holder to make payments biweekly or on a quarterly or semi-annual basis), VA proposes such payments will count toward the requisite six consecutive monthly payments, provided that the payments actually correspond to and satisfy specific and particular monthly obligations, as described above.

Finally, considering the effects of the COVID–19 pandemic on veterans' ability to meet housing loan payments, VA seeks public feedback on the impact of VA's proposal to require that amounts owed as part of a repayment plan be included in the ''monthly payment'' definition for loan seasoning purposes. VA is interested in comments that could lead to alternative approaches.

2. Seasoning Element Two: 210 Days After the First Payment Due Date

In proposed paragraph (a)(9)(i)(B) VA would describe the second statutory seasoning element that must be met, which is that the note date of the IRRRL must be a date that is not less than 210 days after the first payment due date of the loan being refinanced, regardless of whether the loan being refinanced became delinquent. VA would also state that the first payment due date of the loan being refinanced is not included in the 210-day count. Additionally, the note date of the IRRRL would be included in the 210-day count. For example, if the first payment due date of the loan being refinanced is June 1, 2020, day 1 would be June 2, 2020, and day 210 would be December 28, 2020. The IRRRL note could be dated on or after December 28.

VA also proposes to include language in paragraph (a)(9)(i)(B) to clarify that the 210-day period includes days when the veteran's loan is delinquent. Where the consecutive payment requirement hinges on dates payments are made, the 210-day requirement hinges on the date the first payment is due. Therefore, any period in which the veteran is not making payments on the loan (a situation that could affect the consecutive monthly payment count) would not affect the 210-day count. In other words, VA would require lenders to calculate the 210-day period based upon the first payment due date of the loan being refinanced, regardless of delinquency, except in cases of loan modifications and assumptions as described below. This is because VA interprets the first element of the seasoning requirement to be specific to timeliness of payments and the 210-day requirement to be specific to the overall time that must elapse.

3. Seasoning Elements 1 and 2: Loan Modifications and Assumptions

Section 3709(b) does not mention loan modifications or loan assumptions in the context of loan seasoning. There is no explicit direction on how to determine whether the borrower has paid six consecutive monthly payments or satisfied the 210-day requirement.

To provide clarity, VA is proposing in paragraph (a)(9)(ii) that if the loan being refinanced has been modified, any payment made before the modification date does not count toward the requisite six consecutive monthly payments under paragraph (a)(9)(i)(A). Additionally, the note date of the IRRRL must be a date that is not less than 210 days after the first payment due date of the modified loan. In other words, when the IRRRL is preceded by a loan modification, a process that generally results in an adjustment of the monthly payment and a re-pooling of the loan on the secondary market, the veteran must make six consecutive monthly payments under the loan modification. Additionally, the 210-day count would reset upon the date of loan modification. The first payment due date of the modified loan would not be included in the 210-day count. The note date of the refinancing loan would be included in the 210-day count.

Similarly, VA proposes to clarify in paragraph (a)(9)(iii) that if the loan being refinanced was assumed pursuant to 38 U.S.C. 3714, any payment made before the assumption date would not count toward the requisite six consecutive monthly payments under paragraph (a)(9)(i)(A). VA would also state that the note date of the IRRRL must be a date that is not less than 210 days after the first payment due date of the assumed loan. VA would clarify that the first payment due date of the assumed loan is not included in the 210-day count. The note date of the IRRRL would be included in the 210-day count.

In proposing this clarification for loan modifications and assumptions, VA interprets 38 U.S.C. 3709(c) as resetting the loan seasoning count following a fundamental change in the contractual terms of the loan. In other words, if the loan was modified or assumed, the borrower would need to make six consecutive monthly payments after the loan modification or assumption to meet loan seasoning. Additionally, the note date of the IRRRL would need to be not less than 210 days after the first payment due date of the modified or assumed loan.

VA believes both proposed clarifications are grounded in the

statutory text of section 3709(c), even if the statute does not mention them explicitly. In the case of a loan modification, a veteran and loan holder agree to a fundamental contractual alteration of the loan, where the dollar amount owed for monthly payments and the number of monthly payments necessary to satisfy the loan change, effectively resetting the expectations among veteran, lender, and secondary markets (such as markets for Government National Mortgage Association pools). Through these fundamental alterations, the veteran is required to initiate repayment on a new ''first payment due date'' of the modified loan. 38 U.S.C. 3709(c)(2). In the case of an assumption, a new borrower is agreeing to be bound by the terms of an existing housing loan contract. Under the plain text of the statute, ''the borrower'' of the loan being refinanced must make ''at least six consecutive monthly payments on the loan being refinanced.'' 38 U.S.C. 3709(c)(1). (emphasis added). The previous borrower's payment history is not the new borrower's and, therefore, is not attributable to the new borrower. This means that the loan would not be properly seasoned until the subject borrower, that is, the new borrower under the assumption, has made the requisite six consecutive monthly payments.

C. Net Tangible Benefit (38 CFR 36.4307(a)(10) and (11))

VA proposes to add new paragraphs (a)(10) and (11) to clarify statutory net tangible benefit (NTB) requirements under 38 U.S.C. 3709(b). In the home loan financing industry, NTB generally refers to the advantage a borrower gains by refinancing. Congress specified in section 3709(b)(1) that, as a prerequisite of VA's guaranty, lenders must provide a veteran with an NTB test. 38 U.S.C. 3709(b)(1). Congress required the test but did not define its parameters. Thus, VA is proposing to provide the parameters, as described later in this notice.

Also, Congress provided more specific NTB criteria requiring minimum interest rate reductions for certain types of IRRRLs. As noted in VA's cash-out IFR notice, VA considered whether the NTB test described in subsection (b)(1) was introductory to the criteria set forth in subsections (b)(2) through (b)(4). See Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans, 83 FR 64459, 64460 (Dec. 17, 2018). VA concluded, however, that paragraphs (2) through (4) did not, in fact, comprise the totality of the NTB test, but instead imposed separate requirements in addition to the paragraph (1) requirement. Id. As discussed in the IFR notice, Congress, in setting these additional thresholds, addressed the risky aspects of moving from one type of interest rate to another and imposed differing parameters depending on the veteran's interest rate decision (that is, a fixed-rate or an adjustable rate). Id. at 64461.

1. Interest Rate Requirements

VA proposes to restate the specific interest rate requirements described in sections 3709(b)(2) through 3709(b)(4) in new paragraph (a)(10) of § 36.4307. VA also proposes to interpret section 3709(b)(2) through 3709(b)(4) according to the same rationale that VA described for cash-out refinances, that is, paragraph (4) discount point requirements apply only in the cases where paragraph (3) applies. See id. at 64460–64462 (explaining that subsection (b)'s structure, sequence, and coherent scheme supports such an interpretation).

In proposed paragraph (a)(10)(i), VA would state that for cases in which the loan being refinanced has a fixed interest rate and the IRRRL will also have a fixed interest rate, the interest rate on the IRRRL must not be less than 50 basis points less than the loan being refinanced. See 38 U.S.C. 3709(b)(2). In proposed paragraph (a)(10)(ii), VA would state that, in a case in which the loan being refinanced has a fixed interest rate and the IRRRL will have an adjustable rate (ARM), the interest rate on the IRRRL must not be less than 200 basis points less than the interest rate on the loan being refinanced. In addition, for fixed-to-ARM IRRRLs, discount points may be included in the IRRRL amount only if: (A) the lower interest rate is not produced solely from discount points; (B) the lower interest rate is produced solely from discount points, discount points equal to or less than one discount point are added to the loan amount, and the resulting loan balance (inclusive of all fees, closing costs, and expenses that have been financed) maintains a loan to value (LTV) ratio of 100 percent or less; or (C) the lower interest rate is produced solely from discount points, more than one discount point is added to the loan amount, and the resulting loan balance (inclusive of all fees, closing costs, and expenses that have been financed) maintains a loan to value ratio of 90 percent or less. VA also proposes to add a new paragraph (a)(10)(iii) to remind lenders that, under existing paragraph (a)(4)(i), no more than two discount points may be added to the loan amount.

In determining whether a loan must comply with one of the LTV ratios in proposed paragraph (a)(10)(ii), a lender must determine whether the lower interest of the IRRRL is produced solely from discount points. See 38 U.S.C. 3709(b)(4). The interest rate offered to a veteran is specific to each case and is based on several factors, including the type of loan and the overall mortgage market (for example, the interest rate environment). See *What are (discount) points and lender credits and how do they work?,* Consumer Financial Protection Bureau (Sept. 4, 2020), *https://www.consumerfinance.gov/ask-cfpb/what-are-discount-points-and-lender-credits-and-how-do-they-work-en-136.* Veterans can ''buy down'' the interest rate on a particular loan by purchasing discount points, which are expressed as a percentage of the loan amount (that is, one discount point equals one percent of the loan amount). Id. See also 38 U.S.C. 3703(c). In the context of sections 3709(b)(3) and 3709(b)(4), this would mean that the lender must determine whether the requisite 200 basis point (two percent) interest rate reduction was met solely by virtue of the veteran's purchase of discount points. If the lender concludes that the veteran would not be offered the requisite interest rate reduction absent the veteran's purchase of discount points, then certain additional requirements would apply under proposed paragraphs (a)(10)(ii)(B) and (a)(10)(ii)(C).

VA observes that information to support whether a lower interest rate is produced solely from discount points is not widely available. While one discount point typically lowers the rate by 25 basis points, lenders have their own pricing structure (often referred to as lender pricing or rate sheets). The rate a lender might offer without discount points is generally not publicly accessible, and the rate can change due to factors such as daily market conditions, borrower risk factors, and corporate strategy. If VA does not have access to, for example, the lender's rate sheet, it can be difficult for VA to determine whether a lender has complied with certain discount point requirements. To avoid this issue, VA proposes a new paragraph (a)(10)(iv) requiring, in cases where the lender determines that the lower interest rate is not produced solely from discount points, that lenders provide VA with evidence to support such determination. VA believes that this approach will help shield veterans from predatory lending practices, while saving lenders from the burden of providing evidence in cases

where the requisite interest rate reduction is produced solely from discount points.

The text of section 3709(b) implies some degree of risk of predatory lending inherent to veterans refinancing from a fixed interest rate to an adjustable interest rate, specifically when veterans finance the interest rate buy down by including discount points in the IRRRL. VA notes that § 36.4307(a)(4)(i) currently prohibits veterans from financing more than two discount points, meaning that veterans would still likely need to pay cash for some amount of discount points in the event of a 200-basis point reduction where the interest rate is achieved solely through discount points. Regardless, since appraisals of the home are not generally required for IRRRLs, veterans who refinance from a fixed rate to an adjustable rate, obtain a 200-basis point reduction solely through the purchase of discount points, and finance up to two discount points through the loan could be at risk of extending their liability beyond the value of their home.

VA's proposal to require lenders to provide evidence that the subject lower interest rates are not produced solely from discount points will help shed light on whether there is a true NTB to the veteran over the life of IRRRL. In cases where a veteran finances discount points on a fixed-to-ARM IRRRL, the lender would be required to show either that some portion of the veteran's lower interest rate was due, for example, to the lender's pricing structure (meaning discount points were not solely responsible for the lower rate) or that the financing of discount points would not exceed section 3709's cap on LTV ratios (90 or 100 percent, depending on the number of discount points financed).

Under this proposed regulatory standard, VA notes that lenders would only be required to provide VA with evidence that the subject interest rate reduction was not solely due to discount points in cases where the veteran finances discount points. Section 3709(b) does not impose an inquiry into whether the reduced interest rate is solely due to such points when a veteran pays for all discount points using cash (likely at closing). Therefore, VA would not require evidence from the lender in such cases. In proposed paragraph (a)(10)(iv), VA would state that, in cases where the lower interest rate is not produced solely from discount points, as described by paragraph (a)(10)(ii)(A), lenders must provide to the Secretary evidence that the lower interest rate is not produced solely from discount points.

VA notes that section 3709(b) does not specify how lenders are to determine the requisite LTV ratios for NTB purposes. In 2019, VA clarified that a new appraisal would be necessary to determine such LTV ratios, but that the appraisals need not be ordered through VA's appraisal request system and need not be performed by a VA fee panel appraiser. See VA Circular 26–19–22, *Clarification and Updates to Policy Guidance for VA Interest Rate Reduction Refinance Loans (IRRRLs)* (Aug. 8, 2019), *https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_19_22.pdf;* see also VA Circular 26–19–22, Change 1, *Clarification and Updates to Policy Guidance for VA Interest Rate Reduction Refinance Loans (IRRRLs)* (July 24, 2020), *https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_19_22_Change1.pdf.* VA also stated that lenders may only charge veterans a reasonable and customary amount for the appraisal. Id. Finally, VA listed acceptable types of appraisal reports to determine property value for purposes of calculating the LTV ratio, providing lenders with flexibility to use less expensive valuation methods than those used to determine the reasonable value of a property. Id.

In this notice, VA proposes a new paragraph (a)(10)(v) to require lenders to use a property valuation from an appraisal report, completed no earlier than 180 days before the note date, as the dollar amount for the value in the loan to value ratio described by paragraph (a)(10)(ii). VA would also require that the appraisal report must be completed by a licensed appraiser and the appraiser's license must be active at the time the appraisal report is completed. VA would also state that a veteran may only be charged for one such appraisal report and that a veteran may only be charged for such appraisal report as part of the flat charge not exceeding 1 percent of the amount of the loan, as described by § 36.4313(d)(2). Under this proposed standard, VA would continue to accept appraisal reports in the formats listed by VA Circular 26–19–22 and would provide notice to lenders of any updates to the list.

While VA proposes to require lenders to use a property valuation from an appraisal report as the dollar amount for the value in the LTV ratio, as mentioned above, lenders would not be required to use VA's appraisal request system to obtain the appraisal. Rather, VA proposes that lenders use their own appraisal management and assignment process to fulfill this requirement, unless directed by VA.

VA believes it would not be an effective use of government resources to require a VA fee panel appraisal in these LTV ratio determinations. VA fee panel appraisals are used to determine the reasonable value of a property, which helps protect VA from undue risk under the guaranty. Such appraisals also contribute toward determining VA's maximum guaranty amounts and can help VA understand whether certain minimum property and construction requirements are satisfied. See 38 U.S.C. 3710 and 3731; see also 38 CFR 36.4339 and 36.4351. Under 38 U.S.C. 3710(b)(8), an IRRRL's total loan amount is not subject to a maximum limit based upon the reasonable value of the property. See also 38 CFR 36.4339(a)(2). In other words, IRRRLs are not subject to the general requirement for VA-guaranteed loans that the loan not exceed 100 percent of the reasonable value of the property. Additionally, since IRRRLs can only refinance existing VA-guaranteed loans, VA presumes, absent evidence to the contrary, that the subject property still meets minimum property and construction requirements because such requirements applied at the time the loan being refinanced was closed. Without the need to evaluate the property for these specific concerns, VA believes it would not be prudent to apply a requirement of a VA fee panel appraiser in the NTB context, due to potential elevated costs and burdens.

While VA believes this proposed approach for determining valuation for this select set of fixed-to-ARM IRRRL scenarios is the most reasonable and appropriate method, VA is interested in feedback regarding the advantages, if any, of using an alternative appraisal method.

2. Net Tangible Benefit Test

In VA's cash-out refinance IFR, VA explained that section 3709(b)'s NTB test is a test that must be passed. See Revisions to VA-Guaranteed or Insured Cash-Out Home Refinance Loans, 83 FR 64459, 64462 (Dec. 17, 2018). VA further elaborated that Congress, through section 3709(b), ''imposed a requirement to establish the fitness of the loan, as opposed to a requirement only to disclose the characteristics of the loan for the veteran's understanding.'' Id. Under the same rationale, VA proposes to define the parameters of the NTB test for IRRRLs, which like the NTB test for cash-outs, would include requirements as to the loan's fitness and disclosure

requirements to help veterans understand the financial implications of the refinance transaction. VA proposes to set forth the NTB test requirements in a new paragraph (a)(11) of § 36.4307. More specifically, VA proposes to clarify in introductory text in paragraph (a)(11) that the refinancing loan must provide an NTB to the veteran. VA would also state that, for purposes of § 36.4307, NTB means that the refinancing loan is in the financial interest of the veteran, that the lender of the refinancing loan must provide the veteran with an NTB test, and that the NTB test must be satisfied.

In proposed paragraph (a)(11)(i), VA proposes to state that the IRRRL must meet the requirements prescribed by paragraphs (a)(8), (a)(9), and (a)(10). As described in this notice, such paragraphs set forth requirements for fee recoupment, loan seasoning, and interest rates, respectively. VA believes that an IRRRL that meets such requirements, given the safeguards imposed, will improve the veteran's financial position, meaning the loan will be in the veteran's financial interest.

In paragraph (a)(11)(ii), VA proposes to require lenders to provide veterans with an initial loan comparison disclosure and a final loan comparison disclosure of the following: the loan payoff amount of the IRRRL, with a comparison to the loan payoff amount of the loan being refinanced; the type of interest rate, whether a fixed-rate, traditional adjustable-rate, or hybrid adjustable-rate, with a comparison to the type of the loan being refinanced; the interest rate of the IRRRL, with a comparison to the current interest rate of the loan being refinanced; the term of the IRRRL, with a comparison to the term remaining on the loan being refinanced; and the dollar amount of the veteran's monthly payment for principal and interest under the IRRRL, with a comparison to the current dollar amount of the veteran's monthly payment for principal and interest under the loan being refinanced. Consistent with feedback received on VA's cash-out refinance IFR notice, VA proposes to require that lenders provide the subject information in a format prescribed by the Secretary, that is, via a new proposed form, *Interest Rate Reduction Refinancing Loan Comparison Disclosure.* More information about this form is provided in the Paperwork Reduction Act section below.

Under new paragraph (a)(11)(iii), VA proposes to require that lenders provide the veteran with the IRRRL disclosures on at least two separate occasions. First, VA proposes to require that the lender provide the veteran with an initial loan comparison disclosure on the date the lender provides the Loan Estimate, required under 12 CFR 1026.19(e), to the veteran. Paragraph (a)(11)(iii) would also state that if the lender is required to provide to the veteran a revised Loan Estimate under 12 CFR 1026.19(e) that includes any of the revisions described by proposed paragraph (a)(11)(iv), the lender must provide to the veteran, on the same date the revised Loan Estimate must be provided, an updated loan comparison disclosure. Under proposed paragraph (a)(11)(iv), the enumerated revisions would be: a revision to any loan attribute that must be compared under proposed paragraph (a)(11)(ii); a revision that affects the recoupment under paragraph (a)(8); and any other revision that is a numeric, non-clerical change.

VA also proposes a new paragraph (a)(11)(v), which would require the lender to provide the veteran with a final loan comparison disclosure (in a format specified by the Secretary) on the date the lender provides to the veteran the Closing Disclosure required under 12 CFR 1026.19(f). Additionally, the veteran would need to certify, following receipt of the final loan comparison disclosure, that the veteran received the initial and final loan comparison disclosures required by proposed paragraph (a).

Finally, VA proposes to clarify in paragraph (a)(11)(vi), that regardless of whether the lender must provide the veteran with a Loan Estimate under 12 CFR 1026.19(e) or a Closing Disclosure under 12 CFR 1026.19(f), the lender must provide the veteran with the initial and final loan comparison disclosures. Proposed paragraph (a)(11)(vi) would also state that where the lender is not required to provide the veteran with a Loan Estimate or a Closing Disclosure because the IRRRL is an exempt transaction under 12 CFR 1026.3, the lender must provide the veteran with the initial and final comparison disclosures on the dates the lender would have been required to provide the veteran with the Loan Estimate under 12 CFR 1026.19(e) and the Closing Disclosure under 12 CFR 1026.19(f), respectively, as if the IRRRL was not an exempt transaction.

Requiring lenders to provide veterans with a comparison of the fundamental loan details described above, on two separate occasions, would help enable such veterans to better understand the IRRRL transaction and, consequently, make a sound financial decision. Further, providing the disclosures on the same dates that lenders, in most cases, would need to provide Loan Estimates and Closing Disclosures under Consumer Financial Protection Bureau (CFPB) rules, would reduce the likelihood of lender confusion regarding disclosure dates and save lenders from having to meet deadlines that are out of sync with such CFPB rules. As VA described in the cash-out IFR, these disclosures would help veterans ''avoid costly mistakes that may strip their home equity or make it difficult to sell or refinance their home in the future.'' See 83 FR at 64463.

D. Conforming Amendments, Revisions for Consistency and Clarity, and Technical Corrections

1. Fees Associated With IRRRL Appraisals

As mentioned above, VA proposes appraisal provisions in furtherance of the LTV ratio determinations required by 38 U.S.C. 3709. VA believes it is necessary to clarify in this rulemaking how lenders can account for the costs of such IRRRL appraisal fees. Current VA policy states that lenders can include the cost of such appraisals as part of the flat charge authorized for VA-guaranteed loans. See 38 CFR 36.4313(d)(2) (''lender may charge . . . a flat charge not exceeding 1 percent of the amount of the loan . . . in lieu of all other charges relating to costs of origination not expressly specified''). Through this rulemaking, VA proposes to add a provision to 38 CFR 36.4313(d)(1)(i), and make necessary associated formatting revisions, to specify that any appraisal fee for a purpose specified in § 36.4307(a)(10) is not to be considered a fee that may be separately charged, but rather, should the lender choose to charge the fee to the veteran, is to be included in the one percent flat charge. For VA audit purposes, VA would expect that any appraisal report and invoice be included in the lender's loan file.

2. Other Revisions

VA proposes the following non-substantive changes to § 36.4307. First, VA proposes to correct a reference error in paragraph (a)(4)(ii). Current paragraph (a)(4)(ii) incorrectly references § 36.4339(a)(4) as the source relating to financed energy efficient improvements. The correct reference is § 36.4339(b). Additionally, for ease of reading, VA proposes to insert paragraph headings in current

§ 36.4307(a)(4), (a)(5), (a)(6) and (a)(7); the headings being: ''*Maximum Amount of Refinancing Loan.*'', ''*Cases of Delinquency.*'', ''*Guaranty Amount.*'', and ''*Loan Term.*'', respectively.

Lastly, VA proposes a technical correction to § 36.4313(e)(1)(i) to clarify that the 0.50 percent funding fee applies to all IRRRLs. Specifically, VA proposes to replace the ''and'' in paragraph (e)(1)(i) with an ''or''.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). To assess whether the proposed rule could be expected to have a ''significant economic impact'' on small entities, VA considers the annual costs and transfer payments of the rule for and from small entities compared to their annual revenue. As described in the impact analysis, this proposed rule and Public Law 115–174 (the 2018 Act) would affect lenders participating in VA's home loan program.

VA was able to estimate the size of 1,073 of 1,202 active lenders that originated IRRRLs within the past three fiscal years using a combination of sources. VA relied on the size standards from the Small Business Administration (SBA) [1] and used data from Data Axle and Factiva (two business data providers) along with data from the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA).[2] Of the 1,073 lenders with sufficient data for VA to estimate their size, 598 (55.73%) are considered small. The average annual revenue of these 598 small lenders is estimated at $23.65 million.[3]

VA compares this average annual revenue of the small lenders to the average annual costs that fall on the small lenders, as well as the annual transfer payments from small lenders to determine the economic significance of the 2018 Act and the proposed rule described by this notice on small entities. The costs of the proposed rule that fall on all lenders, including small lenders, would come from rule familiarization and those accounted for through PRA analysis (that is, information technology system alignment). The transfer payments of the 2018 Act from lenders, including small, would come from the reduction in annual payments from the interest rate reduction requirements and the reduction in refinance fees from the recoupment requirement. These reductions would represent transfer payments from lenders to veterans.

VA divides the one-time cost of rule familiarization and system alignments evenly across the 1,202 lenders. The costs of the one-time rule familiarization and system alignments in the first year of the rule are estimated at $1,235 for each lender, including the small lenders. The reduction in annual payments and the reduction in closing costs range from $78,463 to $94,868 per small lender, depending on the year in the analysis period.[4] As shown in Table 1, adding these impacts results in the average estimated burden from $79,678 to $94,868 per small lender in the first and final years of the analysis period, respectively.

TABLE 1—AVERAGE BURDEN ON SMALL LENDERS BY PROVISION

[2020 dollars]

	Provision	2023 (first year)	2032 (final year of analysis period)
2018 Act	Reduction in Annual Payments	$29,314	$35,443
	Reduction in Refinance Fees	49,149	59,425
Proposed Rule	Rule Familiarization	101.66	0
	PRA System Alignment	1,133.06	0

The estimated burden of the 2018 Act and rule as a proportion of small lender revenue ranges from 0.337 percent to 0.401 percent, as displayed in Table 2. The burden on small lenders stemming from the 2018 Act would be significantly greater than the burden associated with the rule.

[1] U.S. Small Business Administration. (2019). *SBA Table of Size Standards. https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

[2] VA uses data from Data Axle and Factiva to determine the industry (as identified by the primary NAICS code) for the active VA home loan lenders. For industries where size standards are determined by annual revenue, VA compares the revenue of each lender in these industries as reported in Data Axle and Factiva to the SBA annual revenue threshold for small businesses. For industries where size standards are determined by assets, VA compares the relevant SBA threshold for small businesses to asset data from the FDIC for lenders with primary NAICS codes 522110 (Commercial Banking) and 522120 (Savings Institutions), and asset data from the NCUA for lenders with a primary NAICS code of 522130 (Credit Unions).

[3] VA averages the sales volumes from Data Axle and Factiva for all lenders considered small, including those primarily considered commercial banks, savings institutions, and credit unions.

[4] VA scales the costs/transfers by first dividing the total average annual volume of IRRRLs guaranteed by small lenders in the past three full fiscal years (64,758) by the total average annual IRRRLs guaranteed in the same period by all lenders with enough information to classify their size (306,671). Multiplying that ratio (0.211) by the total costs and transfers that vary depending on lender size gives VA the total costs and transfers that fall on small lenders. Dividing the total costs and transfers that fall on small lenders by the total estimated number of small lenders (670, which is the percent of small lenders from the classified population (55.73%) multiplied by all IRRRL lenders (1,202)) provides the average annual cost and transfers for and from each small lender.

TABLE 2—ANNUAL COSTS/TRANSFERS AND REVENUE PER AFFECTED SMALL ENTITY

[000s of 2020 dollars]

Year	2023 (first year)	2032 (final year of analysis period)
Annual Burden of 2018 Act—A	$79	$95
Annual Burden of the Proposed Rule—B	$1	$0
Total Annual Burden—c = a + b	$80	$95
Average Annual Revenue for Small Entities—D	$23,647	$23,647
Burden of the 2018 Act as a Percentage of Annual Revenue—e = a/d	0.337	0.401
Burden of the Proposed Rule as a Percentage of Annual Revenue—f = b/d	0.005	0
Total Burden as a Percentage of Annual Revenue—g = c/d	0.342	0.401

VA considers a rule to have a ''significant economic impact'' when the impact associated with the rule for a small entity equals or exceeds 1 percent of annual revenue. Thus, while the rule is expected to affect a substantial number of small entities (55.73 percent of active small IRRRL lenders), the burden would not be economically significant. On this basis, the Secretary certifies that the adoption of this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

Unfunded Mandates

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

Paperwork Reduction Act

This proposed rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA 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. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing that collection of information or take such other action as is directed by OMB.

Comments on the revised collection of information contained in this rulemaking should be submitted through *www.regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AR58; Loan Guaranty: Revisions to VA-Guaranteed or Insured Interest Rate Reduction Refinancing Loans'' and should be sent within 60 days of publication of this rulemaking. The collections of information associated with this rulemaking can be viewed at: *www.reginfo.gov/public/do/PRAMain.*

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register** (FR). Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a new collection of information in—

- Evaluating whether the new collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the new collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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, for example, permitting electronic submission of responses.

The collection of information associated with this rulemaking contained in 38 CFR 36.4307 is described immediately following this paragraph, under its respective title.

Title: Interest Rate Reduction Refinancing Loans.

OMB Control No: 2900–0386.

CFR Provision: 38 CFR 36.4307.

- *Summary of collection of information:* This information collection currently includes VA Form 26–8923, *IRRRL Worksheet,* certification by lenders regarding recoupment, net tangible benefit, and loan seasoning, and a disclosure from lenders to veterans outlining recoupment and net tangible benefit. Through this proposed rulemaking, at proposed 38 CFR 36.4307(a)(11), VA would standardize the disclosure provided by lenders to veterans. Specifically, as proposed, lenders would be required to utilize a new standardized form, *Interest Rate Reduction Refinancing Loan Comparison Disclosure* (hereinafter, *Comparison Disclosure*), to notify veterans of certain loan information, including the total closing costs and recoupment period, at various stages during the loan process (initial, revised (as applicable), and final). As part of the proposed process, veterans would need to sign the final disclosure. Regarding the *IRRRL Worksheet,* VA is revising this form consistent with provisions of proposed 38 CFR 36.4307(a)(8)–(11) to collect information and certifications in one place. Generally, as explained below, VA already collects the subject information as part of the normal course of business. The proposed method of such collection should not increase stakeholders' burden for providing the information.
- *Description of need for information and proposed use of information:* VA would use the information on the *Comparison Disclosure* to ensure lender compliance with the comparison disclosure requirements, which would ensure that veterans can be fully apprised of the financial impact the

refinancing transaction has on their loan terms, as part of meeting the NTB test. The *Comparison Disclosure* would standardize the information veterans are receiving and would make it easier for veterans to compare lenders' fees and charges. The standardized disclosure would also assist stakeholders in understanding whether the lender disclosed information for each requisite item. The information associated with the *IRRRL Worksheet* would be used by VA to ensure that the IRRRL is made in the veteran's financial interest. The worksheet would provide evidence that the lender complied with recoupment, loan seasoning, and net tangible benefit requirements. The certification would further diminish the likelihood that veterans are subject to predatory loans.

• *Description of likely respondents:* The *Comparison Disclosure* and *IRRRL Worksheet* must be completed for each VA-guaranteed IRRRL. For each loan, lenders and veterans would review and complete the *Comparison Disclosure.* Lenders would complete the *IRRRL Worksheet.*

• *Estimated number of respondents:* VA anticipates the estimated number of annual respondents to be 173,193. This number reflects a three-year average of VA's projected volume of IRRRLs for fiscal years 2023 through 2025.

• *Estimated frequency of responses:* For the *Comparison Disclosure,* four times per loan for generating and disclosing the information to the veteran; one time per loan for the final disclosure signing by the veteran; and one time for the information technology system alignment. For the *IRRRL Worksheet,* typically a one-time collection per loan.

• *Estimated average burden per response:* For the *Comparison Disclosure,* 10 minutes for loan officers (total for average of four instances of generation and disclosure); 5 minutes for the veteran per loan for the final disclosure. For the *IRRRL Worksheet,* 15 minutes for loan officers. While VA proposes to update the disclosure for an IRRRL into the standardized *Comparison Disclosure* and revise the *IRRRL Worksheet,* VA has assessed no incremental burden associated with this rulemaking because: (A) standardization of the disclosures would make it easier for lenders to comply with overall procedures that predate this proposed rule, and (B) lenders can do so through technological means.

• *Estimated total annual reporting and recordkeeping burden:* VA anticipates no change in the total annual reporting and recordkeeping burden regarding this collection, which is currently estimated to be no burden hours. In that regard, VA's proposed revisions to this existing information collection, including standardization of the comparison disclosures, would merely standardize and adjust the documentation/information that lenders must provide to the veteran, the cost of which falls within customary and usual business practices.

• *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be $3,060,038.[5] While VA notes that this represents a decrease from previous estimates, this is based on the revised volume estimates not associated with the rulemaking and not a change in the burden to respondents to comply with this information collection. Therefore, VA estimates no incremental annual burden cost to respondents as a result of this proposed rulemaking.

• VA also estimates a one-time system alignment cost associated with this information collection of $1,361,943. To derive this estimate, VA generated a high/low estimate of the one-time technology costs associated with this information collection. The low estimate assumes that 80 percent of affected lending entities (that is, 962 of the 1,202 active VA lenders that make IRRRLs) would not be required to complete any technology alignments as the software companies who supply their loan origination software (LOS) systems would update their products in time to enable these lenders to comply with the regulatory requirements. The costs therefore represent the costs to the remaining 20 percent of lenders (that is, 240 lenders) that would need to complete a technology alignment to enable them to generate the comparison disclosure in their LOS consistent with this information collection's standardized form. The high estimate assumes that no LOS company product updates would be in place on time and all 1,202 lenders would be required to assume the costs of completing a technology alignment to enable generating their disclosures.

VA calculated the one-time technology costs utilizing the amount of time estimated to develop a custom comparison disclosure form (either through existing LOS software or via a third-party contract). VA assumed 40 hours of planning, development, testing, and deployment to add the standardized disclosure to a lender's existing LOS. The wage burden was calculated as a composite wage, with weighting based on information provided by various industry professionals. Mean hourly wages from the 2020 BLS Occupational Employment and Wages data were used to estimate a composite wage as 5% Compliance Officer (occupation code 13–1041) at $36.35/hour, 5% Lawyer (occupation code 23–1011) at $71.59/hour, and 90% Computer Occupations (occupation code 15–1200) at $46.46/hour, for a composite wage of $47.21.[6]

[5] To estimate the total information collection burden cost, VA uses the 2020 Bureau of Labor Statistics (BLS) mean hourly wage of $27.07 for ''All Occupations'' (veterans) and $36.99 for ''Loan Officers''. This information is available at *https://www.bls.gov/oes/2020/may/oes_nat.htm.* VA is using 2020 BLS mean hourly wages for consistency with the regulatory impact analysis, which uses 2020 dollars for the base year estimate.

[6] The 2020 Bureau of Labor Statistics (BLS) mean hourly wages are available at *https://www.bls.gov/oes/2020/may/oes_nat.htm.*

Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on September 14, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

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

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 36 as set forth below:

PART 36—LOAN GUARANTY

Subpart B— Guaranty or Insurance of Loans to Veterans With Electronic Reporting

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

■ 2. Amend § 36.4307 by:

■ a. In paragraph (a)(4)(ii), removing the cross-reference to ''§ 36.4339(a)(4)'' and adding, in its place, the cross-reference ''§ 36.4339(b)'';

■ b. In paragraphs (a)(4), (5), (6), and (7), adding paragraph headings;
■ c. Adding new paragraphs (a)(8), (9), (10), and (11); and
■ d. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

§ 36.4307 Interest rate reduction refinancing loan.

(a) * * *

* * * * *

(4) *Maximum amount of refinancing loan.* * * *

(5) *Cases of delinquency.* * * *

(6) *Guaranty amount.* * * *

(7) *Loan term.* * * *

(8) *Recoupment.* (i) The lender of the refinancing loan must provide the Secretary with a certification that all fees, closing costs, and expenses (other than taxes, amounts held in escrow, and fees paid under 38 U.S.C. chapter 37) that would be incurred by the veteran as a result of the refinance are scheduled to be recouped on or before the date that is 36 months after the note date of the refinancing loan.

(ii) The recoupment period is calculated by dividing the dollar amount equating to the sum of all fees, closing costs, and expenses, whether included in the loan or paid at or outside of closing, minus lender credits (the numerator), by the dollar amount by which the veteran's monthly payment for principal and interest is reduced as a result of the refinance (the denominator).

(iii) *Numerator.* The numerator described by paragraph (a)(8)(ii) of this section is the dollar amount equating to the sum of all fees, closing costs, and expenses that would be incurred by the veteran as a result of the refinance. Except as provided in this paragraph (a)(8)(iii), such sum includes any charge that is incurred by the veteran as a result of the refinance, including taxes that are not described in paragraph (a)(8)(iii)(C) of this section. Lender credits may be subtracted from other amounts in the numerator. The following items do not constitute fees, closing costs, or expenses for the purposes of this paragraph (a)(8)(iii) and are excluded from the numerator:

(A) The loan fee as prescribed by 38 U.S.C. 3729;

(B) Prepaid interest and amounts held in escrow (for example, amounts for hazard insurance); and

(C) Taxes and assessments on the property, even when paid outside of their normal schedule, that are not incurred solely due to the refinance transaction (for example, property taxes and special assessments).

(iv) *Denominator.* The denominator described by paragraph (a)(8)(ii) of this section is the dollar amount by which the veteran's monthly payment for principal and interest is reduced as a result of the refinance. The reduction is calculated by subtracting the veteran's monthly payment for principal and interest under the refinancing loan from the veteran's monthly payment for principal and interest under the loan being refinanced. When calculating monthly payments for principal and interest, the lender must use the full payment, without omitting any amounts to be repaid monthly by the veteran and attributable to, for example, financed fees, financed loan fees prescribed by 38 U.S.C. 3729, financed closing costs, and financed expenses.

(v) If the dollar amount of the veteran's monthly payment for principal and interest under the refinancing loan is equal to or greater than the dollar amount of the veteran's monthly payment for principal and interest under the loan being refinanced, meaning there is no reduction in the monthly payment for principal and interest as a result of the refinancing loan, the lender must not charge any fees, closing costs, or expenses, except for those enumerated by paragraphs (a)(8)(iii)(A), (B), and (C) of this section.

(9) *Loan seasoning.* (i) The refinancing loan must meet both of the following requirements:

(A) On or before the note date of the refinancing loan, the veteran must have made at least six consecutive monthly payments on the loan being refinanced. For the purposes of this paragraph (a)(9), ''monthly payment'' means the full monthly dollar amount owed under the note plus any additional monthly amounts agreed to between the veteran and the holder of the loan being refinanced, such as payments for taxes, hazard insurance, fees and charges related to late payments, and amounts owed as part of a repayment plan. A monthly payment will count toward the requisite six consecutive monthly payments only if made in or before the same calendar month for which it is due. A prepaid monthly payment will count toward the requisite six consecutive monthly payments, provided that the holder of the loan being refinanced applies such payment as satisfying the veteran's obligation of payment for a specific month, advances the due date of the veteran's next monthly payment, and does not apply the payment solely toward principal. When multiple partial payments sum to the amount owed for one monthly payment, they will count as a single monthly payment toward the requisite six consecutive monthly payments, but only if all partial payments are made in or before the same calendar month for which full payment is due.

(B) The note date of the refinancing loan must be a date that is not less than 210 days after the first payment due date of the loan being refinanced, regardless of whether the loan being refinanced became delinquent. The first payment due date of the loan being refinanced is not included in the 210-day count. The note date of the refinancing loan is included in the 210-day count.

(ii) *Loan modifications.* If the loan being refinanced has been modified, any payment made before the modification date does not count toward the requisite six consecutive monthly payments under paragraph (a)(9)(i)(A) of this section. The note date of the refinancing loan must be a date that is not less than 210 days after the first payment due date of the modified loan. The first payment due date of the modified loan is not included in the 210-day count. The note date of the refinancing loan is included in the 210-day count.

(iii) *Assumptions.* If the loan being refinanced was assumed pursuant to 38 U.S.C. 3714, any payment made before the assumption date does not count toward the requisite six consecutive monthly payments under paragraph (a)(9)(i)(A) of this section. The note date of the refinancing loan must be a date that is not less than 210 days after the first payment due date of the assumed loan. The first payment due date of the assumed loan is not included in the 210-day count. The note date of the refinancing loan is included in the 210-day count.

(10) *Interest rate.* (i) In a case in which the loan being refinanced has a fixed interest rate and the refinancing loan will also have a fixed interest rate, the interest rate on the refinancing loan must not be less than 50 basis points less than the interest rate on the loan being refinanced.

(ii) In a case in which the loan being refinanced has a fixed interest rate and the refinancing loan will have an adjustable rate, the interest rate on the refinancing loan must not be less than 200 basis points less than the interest rate on the loan being refinanced. In addition, discount points may be included in the loan amount only if—

(A) The lower interest rate is not produced solely from discount points;

(B) The lower interest rate is produced solely from discount points, discount points equal to or less than one discount point are added to the loan amount, and the resulting loan balance (inclusive of all fees, closing costs, and

expenses that have been financed) maintains a loan to value ratio of 100 percent or less; or

(C) The lower interest rate is produced solely from discount points, more than one discount point is added to the loan amount, and the resulting loan balance (inclusive of all fees, closing costs, and expenses that have been financed) maintains a loan to value ratio of 90 percent or less.

(iii) Pursuant to paragraph (a)(4)(i) of this section, no more than two discount points may be added to the loan amount.

(iv) In cases where the lower interest rate is not produced solely from discount points, as described by paragraph (a)(10)(ii)(A) of this section, lenders must provide to the Secretary evidence that the lower interest rate is not produced solely from discount points.

(v) Lenders must use a property valuation from an appraisal report, completed no earlier than 180 days before the note date, as the dollar amount for the value in the loan to value ratio described by paragraph (a)(10)(ii) of this section. The appraisal report must be completed by a licensed appraiser and the appraiser's license must be active at the time the appraisal report is completed. A veteran may only be charged for one such appraisal report. A veteran may only be charged for such appraisal report as part of the flat charge not exceeding 1 percent of the amount of the loan, as described by § 36.4313(d)(2). While a lender may use a VA-designated fee appraiser to complete the appraisal report, lenders should not request an appraisal through VA systems unless directed by the Secretary.

(11) *Net tangible benefit.* The refinancing loan must provide a net tangible benefit to the veteran. For the purposes of this section, net tangible benefit means that the refinancing loan is in the financial interest of the veteran. The lender of the refinancing loan must provide the veteran with a net tangible benefit test. The net tangible benefit test must be satisfied. The net tangible benefit test is defined as follows:

(i) The refinancing loan must meet the requirements prescribed by paragraphs (a)(8), (9), and (10) of this section.

(ii) The lender must provide the veteran with an initial loan comparison disclosure and a final loan comparison disclosure of the following:

(A) The loan payoff amount of the refinancing loan, with a comparison to the loan payoff amount of the loan being refinanced;

(B) The type of the refinancing loan, whether a fixed-rate loan, traditional adjustable-rate loan, or hybrid adjustable-rate loan, with a comparison to the type of the loan being refinanced;

(C) The interest rate of the refinancing loan, with a comparison to the current interest rate of the loan being refinanced;

(D) The term of the refinancing loan, with a comparison to the term remaining on the loan being refinanced; and

(E) The dollar amount of the veteran's monthly payment for principal and interest under the refinancing loan, with a comparison to the current dollar amount of the veteran's monthly payment for principal and interest under the loan being refinanced.

(iii) The lender must provide the veteran with an initial loan comparison disclosure (in a format specified by the Secretary) on the date the lender provides the Loan Estimate, required under 12 CFR 1026.19(e), to the veteran. If the lender is required to provide to the veteran a revised Loan Estimate under 12 CFR 1026.19(e) that includes any of the revisions described by paragraph (a)(11)(iv) of this section, the lender must provide to the veteran, on the same date the revised Loan Estimate must be provided, an updated loan comparison disclosure.

(iv) The revisions described by this paragraph (a)(11)(iv) are:

(A) A revision to any loan attribute that must be compared pursuant to paragraph (a)(11)(ii) of this section;

(B) A revision that affects the recoupment under paragraph (a)(8) of this section; and

(C) Any other revision that is a numeric, non-clerical change.

(v) The lender must provide the veteran with a final loan comparison disclosure (in a format specified by the Secretary) on the date the lender provides to the veteran the Closing Disclosure required under 12 CFR 1026.19(f). The veteran must certify, following receipt of the final loan comparison disclosure, that the veteran received the initial and final loan comparison disclosures required by this paragraph.

(vi) Regardless of whether the lender must provide the veteran with a Loan Estimate under 12 CFR 1026.19(e) or a Closing Disclosure under 12 CFR 1026.19(f), the lender must provide the veteran with the initial and final loan comparison disclosures. Where the lender is not required to provide the veteran with a Loan Estimate or a Closing Disclosure because the refinancing loan is an exempt transaction under 12 CFR 1026.3, the lender must provide the veteran with the initial and final loan comparison disclosures on the dates the lender would have been required to provide the veteran with the Loan Estimate under 12 CFR 1026.19(e) and the Closing Disclosure under 12 CFR 1026.19(f), respectively, as if the refinancing loan was not an exempt transaction.

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0601)

(Authority: 38 U.S.C. 3703, 3709, and 3710)

■ 3. Amend § 36.4313 by:

■ a. Revising paragraph (d)(1)(i); and

■ b. In paragraph (e)(1)(i), removing the word ''and'' and adding, in its place, the word ''or''.

The revisions read as follows:

§ 36.4313 Charges and fees.

* * * * *

(d) * * *

(1) * * *

(i) Fees of Department of Veterans Affairs appraiser and of compliance inspectors designated by the Department of Veterans Affairs except the following: (A) Appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender; and

(B) Appraisal fees incurred for the purpose specified by § 36.4307(a)(10)(v) of this subpart.

* * * * *

[FR Doc. 2022–23387 Filed 10–31–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2022–0169; FRL–9610–01–R2

Approval of Air Quality Implementation Plans; New York; Gasoline Dispensing Stage I, Stage II, and Transport Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The proposed SIP revision consists of amendments to regulations in New York's Codes, Rules and Regulations (NYCRR) applicable to gasoline dispensing sites and transport vehicles. The intended effect of today's

action is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain national ambient air quality standards for ozone and will reduce volatile organic compounds throughout the State.

DATES: Written comments must be received on or before December 2, 2022.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2022–0169 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ysabel Banon, Environmental Protection Agency, Air Programs Branch, Region 2, 290 Broadway, New York, New York 10007–1866, at (212) 637–3382, or by email at *banon.ysabel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Summary of New York's SIP Revision
III. The EPA's Evaluation of New York's SIP Revision
IV. The EPA's Proposed Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background

On March 3, 2021, the New York State Department of Environmental Conservation (NYSDEC) submitted a revision to its SIP. The submitted SIP revision included changes resulting from New York's repeal and replacement of Title 6 of New York Codes, Rules and Regulations (NYCRR), part 230, ''Gasoline Dispensing Sites and Transport Vehicles.'' These revisions to 6 NYCRR part 230 eliminate Stage II vapor recovery systems requirements and require the decommissioning of existing Stage II vapor recovery systems; strengthen Stage I vapor recovery requirements; and require that transport vehicles meet current federal United States Department of Transportation (DOT) requirements. On September 17, 2021, NYSDEC submitted a supplemental analysis, ''New York State Stage II Removal Analysis 2020,'' to demonstrate its justification of Stage II removal; this analysis is included in the docket for this action. Attendant revisions to 6 NYCRR section 200, ''General Provisions,'' section 200.9, Table 1, ''Referenced material'', related to 6 NYCRR part 230 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

Ozone Requirements

New York is classified as nonattainment for the 2008 and 2015 ozone national ambient air quality standards (NAAQS) for the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT area (also known as the New York Metropolitan Area, or NYMA).[1] New York is also a member state of the Ozone Transport Region (OTR), which means it must meet certain requirements for nonattainment areas regardless of its attainment status. The Clean Air Act (CAA) section 182(b)(2)(A) requires that for ozone nonattainment areas classified as moderate or above, states must revise their SIPs to include provisions to implement Reasonably Available Control Technology (RACT) for each category of volatile organic compound (VOC) sources covered by a Control Techniques Guidelines (CTG) document. The CAA section 184(b)(1)(B) extends the RACT obligation to all areas of states within the OTR. States subject to RACT requirements are required to adopt controls that are at least as stringent as those found within the CTG either via the adoption of regulations, or by issuance of single source orders or permits that outline what the source is required to do to meet RACT.

Stage I Vapor Recovery Systems

Stage I vapor recovery systems are systems that capture hydrocarbon vapors, such as VOCs, displaced from storage tanks at gasoline dispensing facilities (GDFs) during gasoline tank truck deliveries. When gasoline is delivered into an aboveground or underground storage tank, vapors that were taking up space in the storage tank are displaced by the gasoline entering the storage tank. The Stage I vapor recovery systems route these displaced vapors into the transport vehicle's (delivery truck's) tank. Some vapors are vented to the atmosphere when the storage tank exceeds a specified pressure threshold, however, the Stage I vapor recovery systems greatly reduce the displaced vapors being released into the atmosphere. Stage I vapor recovery systems have been in place since the 1970s, and the EPA guidance regarding use of Stage 1 systems to control VOC emissions from this source category (gasoline service stations) has been in place since 1975.[2]

In more recent years, the California Air Resources Board (CARB) has required Stage I vapor recovery systems capable of achieving vapor control efficiencies higher than those achieved by traditional Stage I systems. These newer systems are commonly referred to as Enhanced Vapor Recovery (EVR) systems. One of the essential components of these CARB Stage I EVR systems are improved pressure/vacuum vent valves (CARB EVR Pressure/Vacuum (P/V) vent valves). These valves are manufactured with better quality materials and construction than non-CARB EVR P/V vent valves and are thus expected to decrease emissions by reducing P/V vent valve failures that make Stage 1 vapor recovery systems less effective.

Stage II Vapor Recovery Systems and Onboard Refueling Vapor Recovery Systems

Stage II vapor recovery systems and onboard refueling vapor recovery (ORVR) systems are two types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. Stage II vapor recovery systems are installed at gasoline

[1] The New York portion of the NYMA is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, and Rockland. *See* 40 CFR 81.333.

[2] *See* U.S. EPA, ''Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations,'' (Nov. 1975, EPA Online Publication EPA–450/R–75–102), *available at https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=20013S56.txt;* U.S. EPA, ''Control Techniques Guidelines for the Oil and Natural Gas Industry'' (Nov. 2016 EPA Online Publication EPA–453/B–16–001), *available at https://www.epa.gov/sites/default/files/2016-10/documents/2016-ctg-oil-and-gas.pdf* (providing control techniques guidelines for control of VOC emissions from the gasoline service station source category); and U.S. EPA, ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trunks and Vapor Collection System,'' (Dec. 1978 EPA Online Publication EPA–450/2–78–051), *available at https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=2000M9RD.txt* (providing guidelines related to the control of VOC leaks from and test procedures for gasoline tank trunks and vapor collection systems at terminals, bulk plants and service stations).

dispensing facilities and capture the refueling fuel vapors at the gasoline pump. The Stage II system carries the captured vapors back to an underground storage tank at the GDF to prevent the vapors from escaping to the atmosphere. ORVR systems are carbon canisters installed directly on automobiles to capture the fuel vapors evacuated from the gasoline tank before they reach the nozzle. The fuel vapors captured in the carbon canisters are then combusted in the engine when the automobile is in operation.

Stage II vapor recovery systems and vehicle ORVR systems were initially both required by the 1990 Amendments to the CAA. Section 182(b)(3) of the CAA requires moderate and above ozone nonattainment areas to implement Stage II vapor recovery programs. CAA section 184(b)(2) also requires states in the OTR to implement Stage II or comparable measures. CAA section 202(a)(6) required EPA to promulgate regulations for ORVR for light-duty vehicles (passenger cars). EPA adopted these ORVR requirements on April 6,1994, at which point, in accordance with CAA section 202(a)(6), moderate ozone nonattainment areas were no longer subject to the CAA section 182(b)(3) Stage II vapor recovery program requirements. ORVR equipment has been phased in for new passenger vehicles beginning with model year 1998 and starting with model year 2001 for light-duty trucks and most heavy-duty gasoline powered vehicles. *See,* 59 FR 16262, April 6, 1994. ORVR equipment has been installed on nearly all new gasoline-powered light-duty vehicles, light-duty trucks, and heavy-duty vehicles since 2006. *See,* 77 FR 28772, May 16, 2012.

Historically, Stage II vapor recovery systems have provided VOC reductions in ozone nonattainment areas and certain attainment areas of the OTR. However, Congress recognized that ORVR systems and Stage II vapor recovery systems would eventually become largely redundant technologies, and CAA section 206(a)(6) provided authority to EPA to allow states to remove Stage II vapor recovery programs from their SIPs after EPA finds that ORVR is in ''widespread use.'' Effective May 16, 2012, EPA determined in a rulemaking that ORVR systems are in widespread use nationwide for control of gasoline emissions during refueling of vehicles at GDFs. *See,* 77 FR 28772, May 16, 2012. As of 2012, EPA estimated in a guidance document that by the end of 2020 more than 94 percent of gasoline refueling nationwide would occur with ORVR-equipped vehicles.[3] Thus, Stage II vapor recovery programs have become largely redundant control systems and Stage II vapor recovery systems achieve an ever-declining emissions benefit as more ORVR-equipped vehicles continue to enter the on-road motor vehicle fleet.[4]

The EPA's May 16, 2012, rulemaking also took two other relevant actions. First, the EPA also exercised its authority under CAA section 202(a)(6) to waive certain federal statutory requirements for Stage II vapor recovery systems at GDFs. As a result, new ozone nonattainment areas classified serious or above do not need to adopt Stage II vapor recovery programs. Second, the EPA stated that any state currently implementing Stage II vapor recovery programs may submit SIP revisions that would allow for the phase-out of Stage II vapor recovery systems.

II. Summary of New York's SIP Revision

The version of 6 NYCRR part 230 that is currently incorporated into the New York SIP was last revised in 1998. *See,* 63 FR 23665, April 30, 1998.

On March 3, 2021, NYSDEC submitted to the EPA a SIP revision to incorporate into the New York SIP changes to the New York regulations resulting from its repeal and replacement of 6 NYCRR part 230, ''Gasoline Dispensing Sites and Transport Vehicles.'' On September 17, 2021, NYSDEC submitted supplemental material including an analysis justifying its Stage II removal based on data for the year 2020.

In its rulemaking to revise part 230, NYSDEC explains that the changes being addressed in today's proposed action will reduce VOC emissions from GDFs and transport vehicles across the State. A gasoline dispensing site is a federally regulated GDF if it has gasoline storage tank(s) greater than 250 gallons.

Stage I

NYSDEC's SIP submittal includes New York regulations that adopt EPA's control measures for federal ''enhanced'' Stage I vapor recovery, submerged fill, dual-point vapor control systems, new performance test requirements and best management practices outlined in 40 CFR part 63, subpart CCCCCC (Subpart 6C). The updated part 230's incorporation of federal ''enhanced'' Stage I controls will provide better vapor capture efficiency during the loading of gasoline storage tanks than the existing SIP regulation currently requires. The SIP revision would also extend these same federal requirements to medium-sized GDFs with annual throughputs between 800,000 and 1,200,000 gallons to achieve further reductions in emissions from the New York portion of the NYMA.

New York's revised part 230 includes submerged filling requirements for all gasoline storage tanks at GDFs that have gasoline storage tanks with capacities greater than 60 gallons, to be consistent with the State Fire Code. New York explains that this will minimize the generation of gasoline vapors caused by splash loading. Submerged filling reduces vapor emissions by dispensing gasoline through a fill pipe that extends to within 6 inches of the bottom of the tank.

The updated part 230 submitted for SIP approval incorporates the federal requirements of Subpart 6C to equip new or reconstructed gasoline storage tanks with dual-point vapor control systems. Equipping storage tanks with both an entry port for a gasoline fill pipe and a separate exit port for a vapor connection is necessary to maintain a proper seal when the vapor recovery line is disconnected. As with the federal Stage I vapor recovery requirements, NYSDEC's submitted SIP revision would extend this requirement to medium-sized GDFs in the New York portion of the NYMA to achieve greater reductions in VOC emissions. The SIP revision would also require performance testing for vapor recovery systems in accordance with the federal performance test requirements once every three years, which NYSDEC explains will ensure more consistent vapor capture at GDFs and would extend the federal testing requirements to medium-sized GDFs in the New York portion of the NYMA. Other federal requirements included in the revised part 230 submitted as part of this SIP revision include best management practices to minimize the amount of VOC released from spills and uncovered gasoline storage containers. These measures will apply to all GDFs with annual throughputs of 120,000 gallons or greater.

NYSDEC's SIP revision does include some exemptions from Stage I requirements. Gasoline storage tanks

[3] *See* Appendix Table A–1 of EPA's Guidance Document, ''Guidance on Removing Stage II gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures'' (EPA–557/B–12–001; August 7, 2012).

[4] In areas where certain types of vacuum-assist Stage II vapor recovery systems are used, the differences in operational design characteristics between ORVR and some configurations of these Stage II vapor recovery systems actually result in lower overall control system efficiency than what could have been achieved individually by either ORVR or the Stage II vapor recovery system.

with a capacity of less than 550 gallons and which are used exclusively for farm tractors engaging in agricultural or snowplowing activity and automobile dismantling facilities would be exempt from the Stage I requirements, because it would not be cost effective to require these facilities to install vapor recovery systems. Auto dismantling facilities would also be exempt from the Stage I requirements because, since they are not handling gasoline delivered by cargo truck, there are no cargo trucks into which to return captured vapors. Instead, these facilities fill storage tanks with gasoline collected from drained and dismantled vehicles. There are approximately 800 of these auto dismantling facilities located throughout New York State which handle a small volume of gasoline per year.

NYSDEC's submitted SIP revision would require test companies to certify that Stage I vapor recovery system tests will be performed in accordance with federal regulation testing procedures and protocols. The SIP revision would also incorporate a revised version of 6 NYCRR § 230.7 that removes the information regarding registration schedules from the prior version because the schedules for compliance have already been completed. The SIP revision would expand on the federal requirements by requiring medium-sized GDFs located in the New York portion of the NYMA with annual throughput between 800,000 and 1,200,000 gallons to come into compliance with the applicable requirements that would otherwise apply to large GDFs within six months of the effective date of February 12, 2021, to achieve greater VOC emission reductions in the ozone nonattainment area.

Transport Vehicles

The proposed SIP revision would require leak testing and test markings that coincide with the Federal DOT testing and marking requirements at 49 CFR 180.415 & 180.407(h), making these testing and marking requirements consistent at the state and federal level. *See,* 6 NYCRR section 230.6 and Table 1 in 6 NYCRR section 200.9. Gasoline transport vehicle recordkeeping retention requirements would be raised from 2 years to 5 years (*see,* 6 NYCRR section 230.7), which aligns with the recordkeeping requirements in the federal Subpart 6C. Furthermore, no operator of a gasoline transport vehicle would be allowed to transfer gasoline into a gasoline storage tank with a Stage I vapor recovery system unless the transport vehicle operator ensures that prescribed gasoline transfer operator practices are met to prevent VOC emissions, such as the 6 NYCRR section 230.6(b)(2) requirement that operators ensure the tank truck vapor return equipment is compatible in size and forms a vapor tight connection with the vapor balance equipment on the gasoline storage tank.

Stage II

The proposed SIP revision would also require decommissioning and removal of all Stage II vapor recovery systems, due to the equipment's incompatibility with ORVR systems. GDFs required to remove Stage II vapor recovery systems must do so by 12 months after the effective date of the State rule. Within 30 days of the decommissioning of the Stage II vapor recovery system, the GDF must provide documentation to the NYSDEC of the procedures it used to demonstrate that the Stage II system has been decommissioned in accordance with part 230 and has passed the CARB Vapor Recovery Test Procedure TP–201.3—Determination of 2-inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities. *See,* 6 NYCRR 230.3(d)(1)(x).

SIP Demonstration

NYSDEC's March 3, 2021, SIP revision and the updated analysis submitted on September 17, 2021, include a narrative demonstration supporting the discontinuation of the Stage II vapor recovery program. This demonstration, discussed in greater detail below, consists of an analysis showing that the Stage II vapor recovery controls now provide only *de minimis* emission reductions due to the prevalence of ORVR-equipped vehicles in New York in 2020.

Withdrawal of Prior SIP Submittal

Additionally, NYSDEC is also requesting withdrawal of its prior January 31, 2011, submittal to the EPA requesting inclusion in the SIP of a collection of RACT variances given to GDFs for Stage II requirements under part 230, since these variances would no longer be needed once Stage II vapor recovery systems are not required. Given this withdrawal, the January 31, 2011, SIP submittal is no longer before the EPA.

III. EPA's Evaluation of New York's SIP Revision

The EPA reviewed NYSDEC's March 3, 2021, proposed SIP revision to update the 6 NYCRR part 230, ''Gasoline Dispensing Sites and Transport Vehicles,'' portion of the New York SIP to reflect NYSDEC's repeal and replacement of 6 NYCRR part 230 that was effective as of February 12, 2021, along with the analysis New York submitted on September 17, 2021, to demonstrate justification of Stage II removal for the year 2020, and the accompanying SIP narrative. EPA concludes that NYSDEC's proposed SIP revision is consistent with EPA's widespread use rule (77 FR 28772, May 16, 2012) and EPA's ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures'' (EPA–457/B–12–001; August 7, 2012) (referred to below as the ''EPA Guidance Document'').

In reviewing the proposed SIP revision, the EPA must ensure that: 1) In accordance with CAA section 110(*l*)'s non-interference requirement, NYSDEC has demonstrated that the proposed action would not interfere with attainment of the National Ambient Air Quality Standards (NAAQS) for ozone; 2) in accordance with CAA section 184(b)(2)'s ''comparable measures'' requirement, that the proposed action would achieve comparable or greater emission reductions than the gasoline vapor recovery requirements contained in CAA section 182(b)(3); and 3) that the proposed action satisfies the anti-backsliding requirements of CAA section 193. As discussed below, the EPA finds that NYSDEC has demonstrated widespread use of ORVR systems throughout the motor vehicle fleet and that implementation of the rule in the proposed SIP revision would comply with CAA sections 110(*l*), 184(b)(2), and 193.

CAA section 110(*l*) specifies that the EPA cannot approve a SIP revision if it would interfere with attainment of NAAQS or reasonable further progress towards attainment, or any other applicable requirement of the CAA; this is commonly referred to as ''anti-backsliding.'' New York's SIP revision submittal includes a CAA section 110(*l*) anti-backsliding demonstration (based on equations provided in the EPA Guidance Document) [5] that shows there would be zero potential loss of emission reductions from removing Stage II vapor recovery systems in 2020. If the value is zero or negative, this would indicate that removing Stage II systems would not increase refueling emissions. Thus, the SIP revision will not interfere with attainment of NAAQS, reasonable further progress towards attainment, or

[5] For further discussion of this equation, *see* The EPA Guidance Document at 13–14.

any other applicable requirement of the CAA.

Because New York is located in the northeast OTR, under CAA section 184(b)(2)'s ''comparable measures'' requirement, the State must show that its SIP revisions include control measures capable of achieving emission reductions comparable to those achievable through Stage II Systems under CAA section 182(b)(3). As stated in the EPA Guidance Document, ''the comparable measures requirement is satisfied if phasing out a Stage II control program in a particular area is estimated to have no, or a *de minimis,* incremental loss of area-wide emission control.'' NYSDEC conducted a statewide comparable measure analysis in accordance with the EPA Guidance Document that shows that phasing out the Stage II program would result in zero or *de minimis*[6] incremental loss of area wide emission control. The revision to the SIP thus satisfies the comparable measures requirement of CAA section 184(b)(2). As stated in the EPA Guidance Document, ''the comparable measures requirement is satisfied if phasing out a Stage II control program in a particular area is estimated to have no, or a *de minimis,* incremental loss of area-wide emission control.'' According to NYSDEC's analysis, the increment is –0.0215. The EPA Guidance Document explains that a zero or negative increment value indicates that removing Stage II, ''would not increase the refueling emissions inventory because the higher efficiency from ORVR and the incompatibility emissions offset the increment due to non-ORVR vehicles being refueled at Stage II GDFs.''[7] Thus, compliance with CAA section 184(b)(2) is demonstrated and the revision to the SIP satisfies the comparable measures requirement.

Similarly, CAA section 193, which applies to nonattainment areas for any air pollutant in states that adopted Stage II control programs into their SIP prior to November 15, 1990, prohibits modification of any control requirement unless the modification insures equivalent or greater emission reductions for that air pollutant. The State used the EPA Guidance Document's ''Delta Equation'' to show the removal of Stage II Systems will have no impact on area-wide emission reductions based on the difference between Stage II and ORVR efficiencies. The State demonstrated that for the year 2020, the ORVR program provides 41.9% greater emission reductions than the Stage II control program alone. In addition, NYSDEC's SIP revision submittal includes calculations illustrating that the overall emissions effect of removing the Stage II vapor recovery program would be zero tons in 2020. Thus, compliance with CAA section 193 is demonstrated because the SIP modification insures equivalent or greater emission reductions.

With respect to Stage I vapor recovery requirements, NYSDEC's proposed SIP revision adopts the control measures for federal ''enhanced'' Stage I vapor recovery, submerged fill, dual-point vapor control systems, new performance test requirements and best management practices outlined in Subpart 6C. The updated part 230 included in the proposed SIP revision incorporates federal ''enhanced'' Stage I controls, which will provide better vapor capture efficiency during the loading of gasoline storage tanks than the existing regulation currently requires. Thus, the proposed SIP revisions meet the requirements of CAA sections 110(*l*), 184(b)(2) and 193.

New York's January 31, 2011, submittal to EPA of RACT variances for SIP approval that listed gasoline dispensing facilities receiving variances from Stage II control requirements and provided associated economic feasibility analysis is being withdrawn because the portion of 6 NYCRR part 230 that regulated Stage II vapor recovery systems has been repealed. As stated above, given this withdrawal, the January 31, 2011, SIP submittal is no longer before EPA and will not be incorporated into the New York SIP.

IV. Proposed Action

The EPA proposes to approve NYSDEC's March 3, 2021, proposed revision to the New York SIP that would replace the version of Title 6 of the New York Codes, Rules and Regulations, Part 230, ''Gasoline Dispensing Sites and Transport Vehicles,'' currently included in the New York SIP with the version having a State effective date of February 12, 2021. The EPA is proposing to approve this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA guidance, and it will not interfere with attainment or maintenance of the ozone NAAQS. Attendant revisions to 6 NYCRR part 200, ''General Provisions,'' section 200.9, Table 1, ''Referenced material,'' related to 6 NYCRR part 230 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

The EPA is soliciting public comment on the issues discussed in this proposed rulemaking action. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to 6 NYCRR part 230, ''Gasoline Dispensing Sites and Transport Vehicles,'' as described in section III. of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the 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 proposed action:

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

[6] The EPA Guidance Document explains that the incremental emissions control that Stage II achieves beyond ORVR is de minimis if it is less than 10 percent of the area-wide emissions inventory associated with refueling highway motor vehicles. The EPA Guidance Document at 6.

[7] EPA Guidance Document at 14.

• 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 this action does not involve technical standards; 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 proposed rule revising the New York SIP to incorporate changes to 6 NYCRR part 230 and Table 1 in 6 NYCRR 200.9 is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2022–23019 Filed 10–31–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and Part 81

[EPA–R09–OAR–2022–0815; FRL–10250–01–R9]

Finding of Failure To Attain and Reclassification as Serious Nonattainment for the 2012 Annual Fine Particulate Standard: Plumas County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Plumas County nonattainment area failed to attain the 2012 annual fine particulate matter (''$PM_{2.5}$'') national ambient air quality standard (NAAQS or ''standard'') by the December 31, 2021 ''Moderate'' area attainment date. This proposed determination is based on ambient air quality monitoring data from 2019 through 2021. If the EPA finalizes this determination as proposed, then Clean Air Act (CAA or ''Act'') section 188(b)(2) requires that the nonattainment area be reclassified to Serious by operation of law. Within 18 months from the effective date of a reclassification to Serious, the State must submit a revision to its State Implementation Plan (SIP) that complies with the statutory and regulatory requirements for Serious $PM_{2.5}$ nonattainment areas.

DATES: Any comments must arrive by December 1, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2022–0815 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Michael Dorantes, Air Planning Office (AIR–2), EPA Region IX, (415) 972–3934, *dorantes.michael@epa.gov.*

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

Table of Contents

I. Background and Regulatory Context
A. The 2012 Annual $PM_{2.5}$ National Ambient Air Quality Standard
B. Clean Air Act Requirements for $PM_{2.5}$ Nonattainment Areas
C. Plumas County Designation for the 2012 $PM_{2.5}$ NAAQS and State Implementation Plan Requirements
II. Proposed Determination and Associated Rationale
A. Applicable Statutory and Regulatory Provisions
B. Monitoring Network Review, Quality Assurance, and Data Completeness
C. The EPA's Evaluation of Attainment
III. Reclassification as Serious Nonattainment and Serious Area SIP Requirements
A. Reclassification as Serious and Applicable Attainment Date
B. Clean Air Act Requirements for Serious Area Plans
IV. Summary of Our Proposed Action
V. Statutory and Executive Order Reviews

I. Background and Regulatory Context

A. The 2012 Annual $PM_{2.5}$ National Ambient Air Quality Standard

Under section 109 of the Clean Air Act, the EPA has established NAAQS for certain pervasive air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The EPA established these standards after considering substantial evidence from numerous health studies demonstrating that serious adverse health effects are associated with exposures to these criteria pollutants.[1]

Particulate matter includes particles with diameters that are generally 2.5 microns or smaller ($PM_{2.5}$), and particles with diameters that are generally 10 microns or smaller (PM_{10}). $PM_{2.5}$ can be emitted by sources 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 dioxide (SO_2), volatile organic compounds (VOC), and ammonia (NH_3).[2]

Epidemiological studies have shown statistically significant correlations between elevated $PM_{2.5}$ levels and detrimental effects to human health and

[1] For a given air pollutant ''primary'' NAAQS are those determined by the EPA as requisite to protect the public health, allowing an adequate margin of safety, and ''secondary'' standards are those determined by the EPA as requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. See CAA section 109(b).

[2] 80 FR 15340, 15342 (March 23, 2015).

the environment. The health effects associated with $PM_{2.5}$ exposure include changes in lung function resulting in the development of respiratory symptoms, aggravation of existing respiratory conditions, and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), and premature mortality. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[3] Elevated $PM_{2.5}$ levels also have adverse secondary effects such as visibility impairment and damage to vegetation and ecosystems.

On July 18, 1997, the EPA first established annual and 24-hour NAAQS for $PM_{2.5}$.[4] The annual primary and secondary standards were set to 15.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations. Then, on January 15th, 2013, in order to provide increased protection of public health, the EPA promulgated a more stringent annual $PM_{2.5}$ NAAQS, revising the primary standard to 12.0 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations, while retaining the secondary standard at 15.0 μg/m^3.[5]

B. Clean Air Act Requirements for $PM_{2.5}$ Nonattainment Areas

The CAA requires states to develop a SIP that provides generally for the attainment, maintenance, and enforcement of the NAAQS. In addition, the CAA requires states to make a specific type of SIP submittal, a nonattainment plan submittal, that imposes additional controls for purposes of attaining the $PM_{2.5}$ NAAQS, to achieve reductions of $PM_{2.5}$ and $PM_{2.5}$ precursor emissions.

The general CAA part D nonattainment area planning requirements are found in subpart 1 and the nonattainment area planning requirements specific to particulate matter are found in subpart 4. The subpart 1 statutory requirements for attainment plans include the following: the section 172(c)(1) requirements for reasonably available control measures (RACM)/reasonably available control technology (RACT) and attainment demonstrations; the section 172(c)(2) requirement to demonstrate reasonable further progress (RFP); the section 172(c)(3) requirement for emissions inventories; the section 172(c)(5) requirements for a nonattainment new source review (NNSR) permitting program; and 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: the section 189(a)(1)(A) NNSR permit program requirements; the section 189(a)(1)(B) requirements for attainment demonstrations; the section 189(a)(1)(C) requirements for RACM; the section 189(c) requirements for RFP and quantitative milestones; and the section 189(e) requirement for controls on sources of particulate matter precursors.

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 end of the sixth calendar year after designation. For the 2012 $PM_{2.5}$ annual NAAQS, this date is December 31, 2021. 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.[6]

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'' (''$PM_{2.5}$ Implementation Rule'').[7] The $PM_{2.5}$ Implementation Rule provides additional regulatory requirements and guidance applicable to attainment plan submittals for the $PM_{2.5}$ NAAQS, including the 2012 annual $PM_{2.5}$ NAAQS at issue in this action.

C. Plumas County Designation for the 2012 $PM_{2.5}$ NAAQS and State Implementation Plan Requirements

Following promulgation of new or revised NAAQS, the EPA is required under CAA section 107(d) to designate regions throughout the nation as attaining or not attaining these NAAQS. Those regions found not to be attaining the NAAQS are also given a classification that describes the degree of nonattainment. Under subpart 4 of part D of title I of the CAA, the EPA designates areas found to be violating the $PM_{2.5}$ NAAQS, and areas that contribute to such violations, as nonattainment and classifies them initially as Moderate nonattainment areas.

Effective January 15, 2015, the EPA designated a portion of Plumas County as a Moderate nonattainment area (''Portola nonattainment area'') for the 2012 $PM_{2.5}$ NAAQS based on ambient monitoring data that showed the area was above the 12.0 μg/m^3 primary standard for the 3-year 2011–2013 monitoring period.[8] For this 2011–2013 monitoring period, the annual $PM_{2.5}$ design value[9] for the Portola nonattainment area was 12.8 μg/m^3 from readings at the Portola $PM_{2.5}$ monitoring site.[10]

This Moderate nonattainment designation and classification required the state of California to submit an attainment plan for the Portola nonattainment area, in accordance with the requirements of CAA sections 172(c) and 189(a), (c), and (e), demonstrating attainment of the NAAQS as expeditiously as practical but no later than the end of the sixth calendar year following the designation, or December 31, 2021, which is the latest permissible attainment date under CAA section 188(c)(2).

Under state law, the local air district with the primary responsibility for developing a plan to attain the 2012 annual $PM_{2.5}$ NAAQS in this area is the Northern Sierra Air Quality Management District (NSAQMD or ''District''). The District worked with the California Air Resources Board (CARB) in preparing the plan. On February 28, 2017, California submitted the ''Portola Fine Particulate Matter ($PM_{2.5}$) Attainment Plan'' (''Portola $PM_{2.5}$ Plan'') to address the CAA's Moderate nonattainment area requirements for the 2012 annual $PM_{2.5}$ NAAQS. On March 25, 2019, the EPA fully approved the Portola $PM_{2.5}$ Plan, except for the contingency measure elements.[11] California later submitted a revision to Portola $PM_{2.5}$ Plan (''$PM_{2.5}$ Plan Revision''), which included a contingency measure adopted in an ordinance by the City of Portola.

On April 2, 2021, the EPA took final action to approve the $PM_{2.5}$ Plan

[3] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

[4] 62 FR 38652 (July 18, 1997). In October 2006, the EPA lowered the 24-hour NAAQS for $PM_{2.5}$ from 65 micrograms per cubic meter (μg/m^3) to 35 μg/m^3. 71 FR 61144 (October 17, 2006).

[5] 78 FR 3086 (January 15, 2013) and 40 CFR 50.18. Unless otherwise noted, all references to the $PM_{2.5}$ NAAQS in this document are to the 2012 annual NAAQS of 12.0 μg/m^3, codified at 40 CFR 50.18.

[6] 40 CFR 51.1006 and 51.1009.

[7] 81 FR 58010 (August 24, 2016).

[8] 80 FR 2206 (January 15, 2015).

[9] A design value is the 3-year average NAAQS metric that is compared to the NAAQS level to determine when a monitoring site meets or does not meet the NAAQS. The specific methodologies for calculating whether the annual $PM_{2.5}$ NAAQS is met at each eligible monitoring site in an area are found in 40 CFR part 50, Appendix N, section 4.1.

[10] From 2000 through early 2013, the Portola $PM_{2.5}$ monitoring site was located at 161 Nevada Street. In 2013, the site was relocated to 420 Gulling Street where it remains to date.

[11] 84 FR 11208 (March 25, 2019).

Revision.[12] We also found that the contingency measure element of the Portola $PM_{2.5}$ Plan, as revised and supplemented by the Proposed $PM_{2.5}$ Plan Revision, satisfied the requirements for contingency measures in CAA section 172(c)(9) and 40 CFR 51.1014 for purposes of the 2012 $PM_{2.5}$ NAAQS in the Portola nonattainment area.[13]

II. Proposed Determination and Associated Rationale

A. Applicable Statutory and Regulatory Provisions

Sections 179(c)(1) and 188(b)(2) of the CAA require the EPA to determine whether a $PM_{2.5}$ nonattainment area attained by the applicable attainment date, based on the area's air quality ''as of the attainment date.'' Generally, this determination of whether an area's air quality meets the $PM_{2.5}$ standard(s) is based upon the most recent three years of complete, certified data gathered at eligible monitoring sites in accordance with 40 CFR part 58.[14] The requirements of 40 CFR part 58 include quality assurance procedures for monitor operation and data handling, siting parameters for instruments or instrument probes, and minimum ambient air quality monitoring network requirements. State, local, or tribal agencies operating air monitoring sites, in accordance with 40 CFR part 58, must enter the ambient air quality data and associated quality assurance data from these sites into the EPA's Air Quality System (AQS) database.[15] These monitoring agencies certify annually that these data are accurate to the best of their knowledge, taking into consideration the quality assurance findings.[16] Accordingly, the EPA relies primarily on AQS data when determining the attainment status of an area. In determining whether data are suitable for regulatory determinations, the EPA uses a ''weight of evidence'' approach, considering the requirements of 40 CFR part 58, Appendix A ''in combination with other data quality information, reports, and similar documentation that demonstrate overall compliance with Part 58.'' [17]

The 2012 primary annual $PM_{2.5}$ standard is met when the three year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50 appendix N, is less than or equal to 12.0 $\mu g/m^3$ at each eligible monitoring site.[18] For the annual $PM_{2.5}$ standard, eligible monitoring sites are those monitoring stations that meet the criteria specified in 40 CFR 58.11 and 58.30, and thus are approved for comparison to the annual $PM_{2.5}$ NAAQS.[19] Three years of valid annual means are required to produce a valid annual $PM_{2.5}$ NAAQS design value.[20] Data completeness requirements for a given year are met when at least 75 percent of the scheduled sampling days for each quarter have valid data.[21]

B. Monitoring Network Review, Quality Assurance, and Data Completeness

CARB is the governmental agency with the primary authority and responsibility under the State's laws for collecting ambient air quality data for the Portola nonattainment area. The Portola monitoring site (AQS ID: 06–063–1010) is the only regulatory $PM_{2.5}$ monitoring site in the Portola nonattainment area and is operated by CARB. CARB submits annual monitoring network plans to the EPA documenting the status of CARB's air monitoring network, as required under 40 CFR 58.10.[22] The EPA reviews these annual network plans for compliance with specific requirements in 40 CFR part 58. With respect to the Portola nonattainment area, we have found that the annual network plans submitted by CARB meet these requirements under 40 CFR part 58, including minimum monitoring requirements.[23]

In accordance with 40 CFR 58.15, CARB certifies annually that the previous year's ambient concentration and quality assurance data are completely submitted to AQS and that the ambient concentration data are accurate, taking into consideration the quality assurance findings.[24] Along with the certification letters, CARB submits a summary of the precision and accuracy data for all ambient air quality data.[25]

The Design Value Report also includes a validity indicator that reflects whether the design value is valid (*i.e.,* calculated using data that meet the applicable completeness criteria). For the purposes of this proposal, we reviewed the data for the 2019–2021 period for completeness and determined that the $PM_{2.5}$ data collected by CARB met the 75 percent completeness criterion for all 12 quarters at the Portola monitoring site.

Finally, the EPA conducts regular technical systems audits (TSAs) where we review and inspect state and local ambient air monitoring programs to assess compliance with applicable regulations concerning the collection, analysis, validation, and reporting of ambient air quality data. For the purposes of this proposal, we reviewed the findings from the EPA's 2018 TSA of CARB's ambient air monitoring program.[26] None of the findings from the 2018 TSA were cause for invalidation of any data from the Portola $PM_{2.5}$ monitoring site.[27]

In summary, based on the relevant monitoring network plans, certifications, and 2018 TSA, we propose to find that the $PM_{2.5}$ data collected at the Portola monitoring site are suitable for determining whether the Portola nonattainment area attained the 2012 annual $PM_{2.5}$ NAAQS by the applicable attainment date.

C. The EPA's Evaluation of Attainment

Table 1 provides the 2021 $PM_{2.5}$ design value from the regulatory monitor within the Portola nonattainment area, expressed as a single design value representing the average of the annual mean values from the 2019–2021 period; the annual mean for each individual year is also listed. The $PM_{2.5}$ data show that the design value at the Portola monitoring site was 16.5 $\mu g/m^3$, which exceeds the 2012 annual $PM_{2.5}$ NAAQS of 12.0 $\mu g/m^3$. Consequently, the EPA proposes to determine based upon three years of complete, quality-assured and certified data from 2019 through 2021, that the Portola nonattainment area did not attain the 2012 annual $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2021.

[12] 86 FR 12263 (March 3, 2021).

[13] Id.

[14] 40 CFR part 50, Appendix N, section 3.0.

[15] 40 CFR 58.16. AQS is the EPA's national repository of ambient air quality data.

[16] 40 CFR 58.15(a).

[17] 40 CFR part 58, Appendix A, section 1.2.3.

[18] 40 CFR 50.18(b); 40 CFR part 50, Appendix N, section 4.1(a).

[19] 40 CFR part 50, Appendix N, section 1.0(c).

[20] 40 CFR part 50, Appendix N, section 4.1(b).

[21] Id.

[22] We have included copies of CARB's annual monitoring network plans for 2019–2021 in our docket.

[23] We have included our reviews of CARB's annual monitoring network plans and the correspondence transmitting these reviews in our docket.

[24] We have included CARB's annual data certifications for 2019, 2020, and 2021 in our docket.

[25] See 40 CFR 58.15(c).

[26] EPA Region 9, Technical Systems Audit of the Ambient Air Monitoring Program: California Air Resources Board, September–December 2018 (Final Report dated January 2020).

[27] Id.

TABLE 1—2019–2021 ANNUAL $PM_{2.5}$ DESIGN VALUE FOR THE PORTOLA NONATTAINMENT AREA

Monitoring site	AQS site ID #	Annual weighted mean (μg/m³)			2019–2021 annual design value (μg/m³)
		2019	2020	2021	
Portola	06–063–1010	12.2	20.9	16.5	16.5

Source: EPA AQS Design Value Report, AMP480, dated August 10, 2022. (User ID: JCARLSTAD, Report Request ID: 2039270).

III. Reclassification as Serious Nonattainment and Serious Area SIP Requirements

A. Reclassification as Serious and Applicable Attainment Date

In accordance with section 188(b)(1) of the Act, the EPA is proposing to reclassify the Portola nonattainment area from Moderate to Serious for the 2012 annual $PM_{2.5}$ standard, based on the determination that the area did not attain the standard by the applicable attainment date.

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 Plumas County as nonattainment for the 2012 $PM_{2.5}$ NAAQS effective January 15, 2015. Therefore, upon reclassification to Serious, the latest permissible attainment date under section 188(c)(2) of the Act for the purposes of the 2012 $PM_{2.5}$ NAAQS in the Portola nonattainment 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.

B. Clean Air Act Requirements for Serious Area Plans

Upon reclassification of the Portola nonattainment area to Serious for the 2012 $PM_{2.5}$ NAAQS, California will be required to submit an additional SIP revision 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 and 40 CFR part 51, subpart Z. Pursaunt to CAA section 189(b)(2), this SIP revision will be due 18 months from the effective date of the final reclassification to Serious.

The Serious area SIP elements that California will be required to submit are as follows:

1. Provisions to assure that the best available control measures, including the best available control technology 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'' [28] thresholds from 100 tpy to 70 tpy (CAA section 189(b)(3)) and to satisfy the subpart 4 requirements for major stationary sources of $PM_{2.5}$ precursors (CAA section 189(e)).

IV. Summary of Our Proposed Action

In accordance with section 188(b)(2) of the CAA, the EPA is proposing to determine that the Portola Moderate nonattainment area did not attain the 2012 annual $PM_{2.5}$ NAAQS by its applicable attainment date of December 31, 2021. Our proposed determination that the Portola nonattainment area failed to attain the $PM_{2.5}$ NAAQS is based on complete, quality-assured, and certified $PM_{2.5}$ monitoring data for the 2019–2021 period.

If we finalize our action as proposed, the Portola nonattainment area will be reclassified as a Serious $PM_{2.5}$ nonattainment area by operation of law pursuant to CAA section 188(b)(2) and will be subject to all applicable Serious area requirements, as outlined in section III.B. Under CAA sections 188(c)(2), the Serious area attainment date for the Portola nonattainment area will be as expeditiously as practicable but no later than December 31, 2025, ten years after the area's designation to nonattainment.

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal until December 1, 2022 and will consider comments before taking final action.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be

[28] 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)).

found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed action, if finalized, would require the state to adopt and submit SIP revisions to satisfy CAA requirements and would not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more, as described in UMRA (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This action proposes to determine that the Portola nonattainment area failed to attain the NAAQS by the applicable attainment date. If finalized, this determination would trigger existing statutory timeframes for the state to submit a SIP revision. Such a determination in and of itself does not impose any federal intergovernmental mandate.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. As there are no federally recognized tribes within the Portola nonattainment area,[29] the proposed finding of failure to attain the 2012 annual $PM_{2.5}$ NAAQS does not apply to tribal areas, and the proposed rule would not impose a burden on Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Portola nonattainment area. Thus, this proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

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. This proposed action is not subject to Executive Order 13045 because the effect of this proposed action, if finalized, would be to trigger additional 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 (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. There is no information in the record indicating that this action would be inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

[29] Map of Federally-Recognized Tribes in EPA's Pacific Southwest (Region 9) is available at *https://www.epa.gov/tribal-pacific-sw/map-federally-recognized-tribes-epas-pacific-southwest-region-9.*

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: October 19, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2022–23344 Filed 10–31–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422, 423, 438, and 498

[CMS–4185–RCN2]

RIN 0938–AT59

Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021; Extension of Timeline To Finalize a Rulemaking

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Extension of timeline for publication of final rule.

SUMMARY: The Social Security Act (the Act) requires us to publish a Medicare final rule no later than 3 years after the publication date of the proposed rule. This document announces an additional 3 month extension of the timeline for publication of a Medicare final rule in

accordance with the Act, which allows us to extend the timeline for publication of the ''Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021'' final rule under exceptional circumstances.

DATES: As of October 28, 2022, the timeline for publication of a rule to finalize the November 1, 2018 proposed rule (83 FR 54982) is extended until February 1, 2023.

FOR FURTHER INFORMATION CONTACT: Joseph Strazzire, (410) 786–2775.

SUPPLEMENTARY INFORMATION: On November 1, 2018 (83 FR 54982), we published a proposed rule, ''Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021,'' that would revise the Medicare Advantage (MA) Risk Adjustment Data Validation (RADV) regulations to improve program efficiency and payment accuracy. The proposed rule discussed the Secretary's authority to: (1) extrapolate in the recovery of RADV overpayments, starting with payment year 2011 contract-level audits; and (2) not apply a fee-for-service (FFS) adjuster to the RADV overpayment determinations.

Section 1871(a)(3)(A) of the Act requires the Secretary to establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation. In accordance with section 1871(a)(3)(B) of the Act, the timeline may vary among different regulations based on differences in the complexity of the regulation, the number and scope of comments received, and other relevant factors, but may not be longer than 3 years except under exceptional circumstances. In addition, in accordance with section 1871(a)(3)(B) of the Act, the Secretary may extend the initial targeted publication date of the final regulation if the Secretary, no later than the regulation's previously established proposed publication date, publishes a notice with the new target date for publication, and such notice includes a brief explanation of the justification for the variation.

On October 21, 2021 (86 FR 58245), we published a notice of a 1-year extension of the timeline for publication of a rule to finalize the November 1, 2018, proposed rule (83 FR 54982) until November 1, 2022. However, we are unable to meet this November 1, 2022, timeline for publication of the previously referenced RADV-audit related provisions because of ongoing exceptional circumstances. As described in the October 21, 2021 notice of extension of the timeline, we provided several extensions of the comment period and we received extensive public comments on the proposed rule and subsequent FFS Adjuster study and related data. We continue to have ongoing delays resulting from the agency's focus on the COVID–19 public health emergency, and we have determined that additional time continues to be needed to address the complex policy and operational issues that were raised.

This document extends the timeline for publication of the final rule for an additional 3 months, until February 1, 2023.

Elizabeth J. Gramling,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2022–23563 Filed 10–28–22; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No.: 221020–0225]

RIN 0648–BL50

Fisheries of the Exclusive Economic Zone off Alaska; Revisions to the Economic Data Reports Requirements; Amendment 52 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

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

ACTION: Proposed rule; requests for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 52 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands (Crab FMP) and a regulatory amendment to revise regulations on Economic Data Reports (EDR) requirements for groundfish and crab fisheries off Alaska. If approved, this proposed rule would remove third party data verification audits and blind formatting requirements from the Bering Sea and Aleutian Islands (BSAI) crab fisheries EDR, the Bering Sea American Fisheries Act (AFA) pollock fishery, Chinook Salmon EDR, and the BSAI Amendment 80 fisheries EDR. This action would also eliminate the EDR requirements for the Gulf of Alaska (GOA) trawl fisheries. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Crab FMP, the Fishery Management Plans for Groundfish of the Gulf of Alaska Management Area (GOA FMP), the Groundfish of the BSAI Management Area (BSAI FMP), and other applicable laws.

DATES: Submit comments on or before December 1, 2022.

ADDRESSES: You may send comments, identified by Docket ID NOAA–NMFS–2022–0083 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0083 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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), 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).

Electronic copies of the Regulatory Impact Review (referred to as the ''Analysis'') and the Categorical Exclusion prepared for this emergency rule may be obtained from *https://www.regulations.gov* identified by Docket ID NOAA–NMFS–2022–0083 or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

Written comments regarding the burden-hour estimates or other aspects

of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address and to *www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by selecting ''Currently under 30-day Review—Open for Public'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Jennifer Watson, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) off Alaska under the BSAI FMP and the GOA FMP. NMFS manages the king and Tanner crab fisheries in the United States EEZ of the BSAI under the Crab FMP. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the BSAI FMP, the GOA FMP, and the Crab FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

A notice of availability for Amendment 52 to the Crab FMP was published in the **Federal Register** at (87 FR 60638), on October 6, 2022. Comment on Amendment 52 is invited through December 5, 2022. All relevant written comments received by the end of the comment period, whether specifically directed to the FMP amendment, this proposed rule, or both, will be considered in the approval/disapproval decision for Amendment 52 and addressed in the response to comments in the final rule.

Background

Four EDR data collection programs are in place for crab and groundfish fisheries off Alaska. These programs impose mandatory annual data reporting requirements for regulated entities participating in the BSAI Crab Rationalization (CR) fisheries, the AFA pollock fishery, the BSAI Amendment 80 fisheries, and the GOA trawl fisheries. The purpose of EDRs are to gather data and information to improve the analyses developed by the Council on the social and economic effects of the catch share or rationalization programs, to understand the economic performance of participants in these programs, and to help estimate impacts of future issues, problems, or proposed revisions to the programs covered by the EDRs.

CR Program EDR

The Crab EDR was implemented concurrently with the CR Program under Amendments 18 and 19 of the BSAI Crab FMP (70 FR 10174; March 2, 2005). The rule requiring the Crab EDR submission was codified in 50 CFR 680.6, which retroactively required participants to submit EDR forms for 1998, 2001, and 2004 calendar year operations by June 1, 2005, and to submit an annual Crab EDR form for calendar year 2005, and thereafter by May 1 of the following year. Amendment 42 (78 FR 36122; June 17, 2013) revised annual Crab EDR reporting requirements in order to eliminate redundant reporting requirements, standardize reporting across participants, and reduce costs associated with data collection. The amended rule extended the annual submission deadline to July 31.

The reporting requirements for the Crab EDR apply to owners and leaseholders of catcher vessels (CVs) and catcher/processors (CPs) with landings of BSAI CR crab, including Community Development Quota (CDQ) allocated crab, and owners and leaseholders of Registered Crab Receivers (RCRs) who purchase and/or process landed BSAI CR crab during a calendar year. For all groups, the annual submission requirement is imposed on CR crab program participants who harvest, purchase, or process CR crab.

The Crab EDR consists of reporting forms developed for three respective sectors: the Crab CV EDR, Crab processor EDR, and the Crab CP EDR. The CV and processor forms collect distinct sets of data elements, with the CP form combining of all data elements collected in the CV form and applicable elements from the processor form. A complete list of the data elements for each of the forms is in Section 3.2 of the Analysis (see **ADDRESSES**).

Amendment 80 EDR

The Amendment 80 EDR was implemented on January 20, 2008 (72 FR 52668; September 14, 2007) as part of the Amendment 80 management program and codified in regulation at 50 CFR 679.94. Amendment 80 allocated several BSAI non-pollock trawl groundfish species among trawl fishery sectors, and facilitated the formation of harvesting cooperatives in the non-AFA trawl CP sector. The initial Amendment 80 EDR submissions were due June 1, 2009, reporting data for the 2008 calendar year. The Amendment 80 EDR reporting requirements applied to all Amendment 80 Quota Share (QS) permit holders. Permit holders who actively operated an Amendment 80 vessel were required to complete the entire EDR form, while QS permit holders who did not operate a vessel were required to complete portions of the form pertaining to QS permit sale or lease costs and revenues.

When the GOA Trawl EDR program was implemented for both CV and CP participants, it amended the Amendment 80 EDR at 50 CFR 679.94 to include the CPs participating in GOA trawl fisheries. It also changed the name of the form from the Amendment 80 EDR to the Annual Trawl CP EDR. Additional reporting elements specific to GOA Trawl CPs were added to the form. The rule also extended the requirement to complete all portions of the EDR form to owners and leaseholders of any vessel named on a License Limitation Program (LLP) groundfish license authorizing a CP using trawl gear to harvest and process LLP groundfish species in the GOA. The association between the GOA Trawl (CV and shoreside processor) EDR and Annual Trawl CP EDRs has resulted in confusion. For the sake of clarity, in this proposed rule, the EDR currently specified under 50 CFR 679.94 is referenced as the Amendment 80 EDR (rather than the Annual Trawl CP EDR), and the EDR under 50 CFR 679.110 (a)(1) and (2) is referenced as the GOA Trawl EDR; any relevant distinctions or overlaps are described as needed.

The Amendment 80 EDR form has been submitted annually by Amendment 80 QS holders since 2008. A complete list of the data elements for each of the forms is in Section 3.2 of the Analysis (see **ADDRESSES**).

GOA Trawl EDR

The GOA Trawl EDR was implemented on January 1, 2015 (79 FR 71313; December 2, 2014) and codified in regulation at 50 CFR 679.110. The initial GOA Trawl EDR submissions were due June 1, 2016, for reporting 2015 calendar year data. The GOA Trawl EDR was implemented to collect relevant baseline information that could be used to assess the impacts of a future catch share program on affected harvesters, processors, and communities in the GOA. However, Council action on a catch share program that addressed issues with GOA bycatch management was suspended in December 2016, and no catch share program exists for GOA harvesters, processors, and communities.

The intended submitters for the GOA Trawl EDR includes owners and leaseholders of CVs and CPs active in the Central and Western GOA groundfish trawl fishery and operators of shoreside processing facilities that receive groundfish catch from the GOA. The EDR consists of two distinct EDR forms, the GOA Trawl CV EDR and GOA Shoreside Processor EDR. An additional EDR form overlaps with the

Amendment 80 EDR, as described above.

The GOA Trawl CV EDR form is required for all trawl CVs that harvested groundfish in the GOA during the previous year. The GOA Shoreside Processor EDR form is required for all shore-based processors that receive and process groundfish from GOA trawl fisheries. The Annual Trawl CP EDR form is required for all vessel owners and leaseholders that catch and process groundfish in the GOA trawl fisheries. A complete list of the data elements for each of the forms is in Section 3.2 of the Analysis (see **ADDRESSES**).

Amendment 91 Chinook Salmon EDR

The Amendment 91 EDR and additional record keeping and reporting requirements associated with monitoring of Chinook salmon bycatch avoidance measures for the AFA pollock fishery were implemented concurrently on March 5, 2012 (77 FR 5389; February 3, 2012). The implementation of the Amendment 91 EDR occurred approximately 17 months after Amendment 91 (75 FR 53026) went into effect. The initial submission of EDR forms required under 50 CFR 679.65 were due on June 1, 2013 reporting data for the 2012 calendar year. The Amendment 91 EDR was implemented to provide additional data to assess the effectiveness of the Chinook salmon bycatch management measures in the Bering Sea (BS) pollock fishery.

The Amendment 91 EDR reporting requirement applies to owners and leaseholders of AFA CVs, CPs, and motherships active in the BS pollock fishery and to entities eligible to receive Chinook salmon Prohibited Species Catch (PSC) allocation, including AFA in-shore sector harvest cooperative representatives, sector-based Incentive Plan Agreement representatives, and CDQ group representatives. In addition, vessel captains who actively participate in the AFA pollock fishery are intended to complete one of the three Amendment 91 EDR forms, but this form is submitted by the owner or leaseholders of the vessel.

The Amendment 91 EDR program consists of three separate forms: the Compensated Transfer Report (CTR), the Vessel Fuel Survey, and the Vessel Master Survey. The CTR collects transaction data on all compensated transfers of Chinook PSC by participants in the AFA fishery. The CTR is to be completed by all entities participating as lessor or lessee in compensated transfers of Chinook PSC. However, no such transactions have ever been reported. The Vessel Fuel Survey form is required for all AFA vessels that harvested BSAI pollock during the previous year and collects information about the vessel's average fuel consumption, the total amount in gallons of fuel loaded onto the vessel, and total annual fuel cost. The Vessel Master Survey form is used to determine the fishing and bycatch conditions observed during the BSAI pollock fishery and factors that motivated Chinook salmon bycatch avoidance. A complete list of the data elements for each of the forms is in Section 3.2 of the Analysis (see **ADDRESSES**).

History of the Action

Public testimony from one stakeholder at the February 2018 Council meeting noted that the EDR programs had been in effect for some time and that industry was spending considerable time and money to complete the reports, in some cases reimbursing NMFS for the administrative costs of the EDR programs through catch share cost recovery programs. The testifier suggested that the Council review the EDR requirements to determine whether and how the data was being used, whether it was being collected efficiently, and whether the data collection programs were meeting the Council's needs.

In April 2018, the Council reviewed a discussion paper prepared by NMFS that provided information related to NMFS's request that the Council review all its regulations to identify any that were outdated, unnecessary, ineffective, or could be further streamlined. This discussion paper referenced the Council's February 2018 discussion regarding the EDR requirements being a possible area warranting future Council review. In addition, at the April 2018 meeting, the Council also heard public testimony raising the question of whether the EDR requirements for the GOA trawl CVs and shoreside processors had met the Council's purpose and need to collect baseline information to assess the impacts of a potential future catch share program in those fisheries.

Later in the April 2018 meeting, in response to this public comment and further discussion among Council members, the Council requested that NMFS prepare a discussion paper describing the EDR requirements for all programs, explaining how the data are used, and estimating the costs of complying with the EDR requirements. The Council's motion stated that the Council could then use the information in the discussion paper to determine if revisions to EDR requirements were needed and, if so, the priority and process for proposed revisions.

NMFS presented this discussion paper to the Council in April 2019. The EDR discussion paper included a set of shorter-term practical recommendations aimed at reducing costs and burdens, as well as improving data utility by streamlining data access. These recommendations included eliminating routine third-party data verification audits and limiting the audits to instances of gross noncompliance, reviewing duplication of reporting requirements in EDR programs, and improving data utility while maintaining confidential data protections by reconsidering the blind formatting and the rule-of-5 aggregation standard. Blind formatting and the rule-of-5 aggregation standard are explained in detail further down in this proposed rule. In addition to the shorter-term practical recommendations, the discussion paper also set forth longer term recommendations that included developing a systematic approach to identifying and prioritizing the Council's needs for economic and social science information. Therein, these recommendations specifically noted the need to identify relevant analytical and performance metrics, minimum requirements for accuracy and precision of information outputs, and a framework for balancing trade-offs between all relevant dimensions of information quality and system costs. A full description of the specific longer-term recommendations of the April 2019 NMFS discussion paper can be found in Section 1.3 the Analysis (see **ADDRESSES**).

Also at the April 2019 meeting, the Council recommended a comprehensive review of the current EDR programs. The comprehensive review was undertaken by the Council's Social Sciences Planning Team (SSPT). The SSPT provided a report to the Council about its progress on this issue at the February 2020 meeting. Following review of the SSPT report, the Council further instructed the SSPT to engage in a series of outreach meetings to seek input from EDR stakeholders in evaluating the EDR program overall, as well as each individual EDR program. Virtual outreach meetings were held in 2020, and the final SSPT outreach reports were presented to the Council in April 2021.

After receiving the SSPT reports, the Council took action in a motion on April 16, 2021. That motion did not change the purpose and need, but created a new alternative, with four non-mutually exclusive options to remove each EDR. The motion also

added a new option to change the frequency of EDR information collections from annually to options of two years, three years, and five years, respectively.

The Council took final action on February 8, 2022. The Council chose to eliminate the use of data verification audits, because automated procedures for validating EDR submission have reduced the need for audits. Eliminating data verification audits would remove a potential compliance burden for those required to submit EDRs. The Council also chose to revise the data aggregation and blind formatting requirements in the Crab EDR in order to improve the usability of collected data and to make the Crab EDR's confidentiality policy consistent with other Council and NMFS data reporting methods. The Council chose to remove the GOA Trawl EDR requirements altogether. The original purpose of this EDR was to collect baseline data to prepare for development of a GOA trawl catch share program and the Council has subsequently chosen not to continue with development of a catch share program for the GOA trawl fishery at this time. Accordingly, this EDR is no longer aligned with its intended purpose. Eliminating the GOA Trawl EDR would remove the reporting burden for industry and agency management costs. Finally, the Council reiterated its April 2021 request for several non-regulatory changes to the EDR reporting forms to decrease respondent burden. These changes were identified in stakeholder workshops and the March 2021 SSPT report, and include changes to the EDR forms to eliminate data fields that are not used in analyses and to pre-fill data fields that do not change frequently. To that end, NMFS economists are implementing these changes and will report progress to the Council in October 2022.

Need for Action

Data submitted in the current Crab EDRs provide valuable information for program evaluation and analysis of proposed conservation and management measures. However, the Crab EDR was implemented over ten years ago and revisions are needed to improve the usability, efficiency, and consistency of this data collection program and to minimize cost to industry and the Federal government. Several of the revisions to the Crab EDR included in this proposed rule, specifically on the use of third-party audits and blind formatting, could reduce industry and government costs while still maintaining the integrity and confidentiality of this data collection program.

In the original Crab EDR program, several requirements were implemented to provide a higher standard of confidentiality for proprietary business information reported in the Crab EDR. These requirements were stricter than those that apply to all other confidential fisheries information. In practice, these stricter confidentiality requirements have reduced the usability of the data for analysis and increased the cost of the Crab EDR program, without providing additional practical protections for sensitive information. Confidentiality requirements that apply to other routine data collections provide sufficient protections for the EDR data.

Different issues exist in the GOA Trawl EDR program, which was implemented in 2015 and designed to collect baseline information to assess the impacts of a future GOA trawl catch share program. Because no catch share program is in development by the Council and none is apt to be developed in the foreseeable future, the GOA Trawl EDR program is no longer needed.

Challenges With Data Verification and Auditing Requirement

EDR data verification is required under EDR regulations and requires NMFS or its designated agent, known as a data collection agent (DCA), to verify information with a person required to submit the applicable EDR or that person's designated representative. The regulations require the EDR submitter to respond to inquiries from the DCA within 20 days, require the submitter to provide supporting records to the DCA as requested, and authorize the DCA auditor to review the records for the purpose of substantiating values reported in the EDR. In developing the data verification and audit procedures, NMFS has relied on the Council's record of decision for the CR Program for guidance in implementing the Crab EDR, specifically, the CR Program Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA). This guidance states that the verification of data, auditing, and error-checking would be the primary responsibility of the DCA. Further, the guidance provides that the DCA will: (1) develop a system to identify outliers, incomplete data, or anomalies in the data submissions; and (2) retain accountants to review data submissions as part of the audit process and identify errors or flag possible fraudulent submissions.

NMFS began developing data verification protocols and procedures for the Crab EDR in 2005 and has continued to refine the process to identify and correct data reporting errors, while reducing the cost and burden of the audit process. Prior to incorporation of EDR data into the Alaska Fish Information Network (AKFIN) database in 2011, EDR data validation was largely reliant on the audit process. Automation now allows the DCA to identify most errors and obtain corrections from submitters shortly after EDRs are submitted

EDR data verification via automation currently employs a series of procedures, including (1) primary, automated data validation procedures, (2) secondary validation employing statistical procedures and visual inspection to identify data anomalies and statistical outliers, and (3) editing and imputation for data errors identified by data users that were not detected and corrected in primary and secondary validation.

Primary automated validation procedures are executed on each EDR record shortly after receiving a certified EDR submission, with follow-up contacts with submitters to obtain corrections as needed. Most of these errors are identified and corrected easily with a phone call and result in a re-certified EDR submission within two weeks of the submission.

To begin secondary validation via automation, AKFIN completes integration of current year EDR records with other datasets, calculation of pro-rata and statistical indices, and plotting for visual inspection. NMFS and the DCA review the results to identify visual outliers and anomalies. Flagged values are selected for correction through follow-up by the DCA or selection for a third-party verification audit.

By contrast, audit protocols require auditors to notify EDR submitters that have been selected for audit and to request supporting materials to enable auditors to substantiate reported values. Once auditors have received the requested records, the auditors confirm a correct value for the data element (either the original reported value or a corrected value). Auditors also evaluate the quality of supporting information provided by the submitter and characterize the quality and nature of reporting errors. Audit corrections are entered into the EDR database, and AKFIN's production version of the EDR database is finalized after all audit results are entered.

But two issues have emerged with the audit process from working with CPA firms. First, in all the EDR audit reviews conducted since 2006, there has not been a single finding of intentional

misreporting or of any bias in the direction of reporting errors identified by auditors. Most of the errors found between 2006 and the present were unintentional human error and could be easily corrected by contacting the submitter for clarification without the additional cost of hiring a CPA firm. Second, verifying the quality of results produced by CPAs has required NMFS and the DCA to recreate the same work completed by the CPA firms. The tasks involved with auditing EDR data submissions are unique, generally unfamiliar to CPAs, and require one or two annual cycles of EDR submissions to gain experience. Given that CPA firms have chosen to not renew their contracts with NMFS and new contracts must be established, it has proven challenging for CPAs to gain experience auditing EDR data submissions. Without experienced CPAs to complete the audits, NMFS and the DCA must continue to spend significant time and resources verifying the audits. Eliminating the audit authorization would remove these challenges.

Removing the audit requirements would also avoid the DCA from needing to contract a third-party auditor to conduct the audit portion of the data verification. And doing so would not compromise data quality due to the automated EDR data verification procedures described above, which would remain in place and continue to be used under the proposed rule. Additionally, enforcement provisions exist for all recordkeeping and reporting requirements, including the EDR program. Enforcement actions would continue to be possible in cases of noncompliance with the EDR regulatory provisions.

The automated verification and audit processes accrue an annual combined cost for industry that is estimated to be approximately $26,400 for each Crab EDR; $1,480 for each Amendment 80 EDR; and $2,405 for each GOA Trawl EDR. While the removal of the audit processes would reduce these costs, some portion would remain as routine automated data verification procedures would continue as detailed above.

In addition to reducing the cost of industry compliance with audits, the NMFS contracting cost for CPA firms would be eliminated. The Crab EDR costs have ranged from approximately $22,000 to $65,000 annually and have generally been decreasing over the life of the Crab EDR Program. Audits were done in the Amendment 91 program in 2013 and 2014 with costs of between $15,000 and $18,000 annually for audits of the fuel and master surveys. Amendment 80 EDR and GOA Trawl EDR combined have had auditing costs of $30,000 to $35,000 annually. This action would eliminate the audit contracting costs incurred for the EDR program, as well as any associated cost recovery fees.

Challenges With the Blind Formatting Requirement

Blind formatting requires the collection of EDR forms to be performed by a third-party designated data collection auditor (DDCA) and the removal of unique identifiers (*e.g.,* vessel identifiers, permit numbers) from EDR data records accessible to the Council and NMFS. Blind formatting is only required for the Crab EDR and the GOA Trawl EDR. Blind formatting introduces significant administrative challenges for NMFS's management of the EDR program because staff responsible for oversight of data verification and validation processes are prohibited from accessing identifying information. This has impeded timely completion of verification audits and production of economic reports developed from EDR data.

The EDR data confidentiality protocols also impose limitations on the data's usability because the data is aggregated to such an extent that details needed to analyze the associated catch share program's social and economic impacts are not available. The DDCA and blind formatting are unique to the Crab EDR and the GOA Trawl EDR program, as they are not required for the Amendment 80 EDR program or Amendment 91 Chinook Salmon EDR program. The Council wished to apply a higher standard of confidential data protection to the cost data and other proprietary business information collected in EDRs. But these protective standards impede the Council and NMFS analysts' use of the data. Blind data is frequently either inconsistently applied across EDR programs or unusable because critical data elements, such as permit numbers, are not accessible. Analysts' use of blind EDR data also enhances the risk of inadvertently disclosing confidential data. This is because of the small number of entities that may be represented in the EDR records. If the EDR records are not accessible to analysts, it is hard for them to know if the data should be confidential. Analysts may avoid using EDR data even where it may have been the best information available, and choose alternative data sets with lower risk and complexity.

Removing the blind formatting requirements would make the data aggregations and confidentiality protections for the Crab EDR comparable to the requirements under other EDR programs. It would also increase the usability and access to the EDR data for Council and NMFS analysts. Without the concern of inadvertently disclosing confidential data, analysts may be more likely to use the EDR data.

Challenges With the GOA Trawl EDR Program

In its original purpose and need statement for the GOA Trawl EDR in its February 2013 motion, the Council identified a need to establish a baseline information collection that could be used to assess the impacts of a catch share program, particularly on affected harvesters, processors, and communities in the GOA. However, Council action on a catch share program that addressed issues with GOA bycatch management was suspended in December 2016. Thus, the original need for the GOA Trawl EDR has been indefinitely suspended, calling into question the efficacy of continuing the program given that taxpayers and industry bear the cost of maintaining the program. Elimination of the GOA Trawl EDR would avoid the agency-borne programmatic costs since the GOA Trawl EDR is not part of a catch share fishery and, thus, administrative costs are not subject to cost recovery. Elimination of the GOA Trawl EDR program would also eliminate compliance costs for industry. Additional information about the administrative and the industry compliance costs associated with this EDR can be found in Section 4.5 of the Analysis (see **ADDRESSES**).

Proposed Rule

This proposed rule would remove or revise regulations at 50 CFR parts 679 and 680. This proposed rule would remove third-party data verification audits for the Crab EDR, the Amendment 91 EDR, and the Amendment 80 EDR and remove blind formatting requirements for the Crab EDR. This action would also eliminate the GOA Trawl EDR requirements.

Eliminating Data Verification Audits

This proposed rule would remove the data verification audit requirements at § 679.65(e), § 679.94(b), and § 680.6(f), respectively. Removal of the audit authorization would eliminate the need for the DCA to contract with a third-party auditor to conduct the audit portion of the data verification. EDR data verification currently employs a series of validation procedures, as described above. These data validation procedures would remain and continue

to ensure the data reported is error-free. Enforcement actions would continue to be possible in cases of noncompliance with the EDR provisions as part of normal enforcement of record keeping and reporting requirements.

This proposed rule would also remove the definitions for ''Designated data collection auditor'' at § 679.2 and ''Auditor'' at § 680.2. Because the EDR audit requirements would be removed under this proposed rule, these definitions will no longer be required.

Eliminating Blind Formatting

This proposed rule would remove the definitions for ''Blind data'' at § 679.2 and § 680.2. Both definitions describe the required formatting process to remove the personal identifiers to the data collected from the EDRs. The identifiers include Federal fisheries permit numbers and State of Alaska vessel registration numbers that are essential data elements to analysts when developing reports and documents based on EDR data. Removing the blind formatting requirements would make the data aggregations and confidentiality protections for the Crab EDR comparable to the requirements under the other EDR programs. It would also increase the usability and access to the EDR data for Council and NMFS analysts.

Eliminating the GOA Trawl EDR

This proposed rule would remove and reserve Subpart J—Gulf of Alaska Trawl Economic Data. The original purpose of the GOA Trawl EDR was to establish a baseline information collection that could be used to assess the impacts of a catch share program. However, no catch share program has been developed to date or is currently contemplated. The original need for this data collection program has been indefinitely diminished since 2016 when the Council suspended work on a possible GOA catch share program, calling into question the efficacy of continuing the program. Eliminating the GOA Trawl EDR would avoid the agency-borne programmatic costs incurred by the Federal government due to the GOA Trawl EDR not being part of a catch share fishery and, thus, administrative costs not being subject to cost recovery. Elimination of the GOA Trawl EDR program would also eliminate compliance costs for industry.

This proposed rule would also revise section heading at § 679.94 and revise § 679.94(a)(1) to remove GOA Trawl CPs from the requirement to submit the Amendment 80 EDR form. When the GOA Trawl EDR program was implemented, it required owners and leaseholders of any vessel named on an LLP groundfish license authorizing a CP using trawl gear to harvest and process LLP groundfish species in the GOA to complete all portions of the Amendment 80 EDR form. This proposed rule would limit the Amendment 80 EDR requirement to Amendment 80 QS permit holders alone.

Other Regulatory Changes

NMFS proposes to revise regulations at §§ 680.6(a)(2), (a)(3), (c), (d), (e)(1), and (e)(2) to update the instructions for submitting Crab EDR forms to be consistent with the submission instructions for the other more recent EDR programs.

Classification

Pursuant to sections 304(b) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

Certification Under the Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule would remove third party data verification audits and blind formatting requirements for the BSAI crab fisheries EDR, AFA pollock fishery Chinook Salmon EDR, and the BSAI Amendment 80 fisheries EDR. This action would also eliminate altogether the EDR requirements for the GOA trawl fisheries. This proposed rule would improve the usability, efficiency, and consistency of the data collection programs and minimize cost to industry and the Federal government while still maintaining the integrity and confidentiality of the EDR data.

Many of the directly regulated entities potentially affected by this action are considered to be large entities based on cooperative affiliations. These include the AFA CPs, AFA CVs, Amendment 80 CPs, and the Crab CVs. However, there are three AFA motherships that are not likely to exceed the 750 person threshold individually or within the fishing cooperative that they belong to and are considered to be directly regulated small entities. There is also one Amendment 80-eligible CP that is subject to the Amendment 80 EDR that is a small entity with no known cooperative affiliations. Shoreside processors participating in the Crab EDR and GOA Trawl EDR are considered to be directly regulated small entities. The numbers of directly regulated small entities in the shoreside component of the GOA Trawl EDR varies considerably and has been as high as 17 in recent years. Nineteen shoreside crab processors are considered to be directly regulated small entities. The six CDQ organizations are directly regulated small entities within one or more of the EDRs. Finally, 26 of the 78 trawl CVs that submit the GOA trawl EDR are directly regulated small entities. Based on the scope of this action, impacts to small, directly regulated entities are expected to be beneficial because this action would reduce and remove the cost of the EDR requirement to the directly regulated entities.

This action does not place any new regulatory burden on fishery participants required to submit EDRs; it removes reporting burdens to improve the usability, efficiency, and consistency of the data collection programs and minimize cost to participants required to submit EDRs. This proposed action, therefore, is not expected to have a significant economic impact on a substantial number of the small entities directly regulated by this proposed action.

As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

Regulatory Impact Review

A Regulatory Impact Review was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended Amendment 52 and the regulatory revisions in this proposed rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed above in the Certification under the Regulatory Flexibility Act section.

Collection-of-Information Requirements

This proposed rule contains collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. NMFS has submitted these requirements to OMB for approval under OMB control numbers 0648–0518 (Alaska Region Bering Sea and Aleutian Islands Crab EDRs); 0648–0564 (Groundfish Trawl Catcher/Processor

EDR); 0648–0633 (Alaska Chinook Salmon EDR); and 0648–0700 (Gulf of Alaska Catcher Vessel and Processor Trawl EDR). The proposed changes to the collections are described below. The public reporting burden for the information collection requirements provided below includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Control Number 0648–0518

NMFS proposes to revise and extend by three years OMB Control Number 0648–0518. This collection covers the economic data collection requirements for the CR Program and is necessary to monitor and evaluate the CR Program.

This collection would be revised to remove third-party data verification audits and blind formatting requirements for the BSAI crab fisheries EDR because this proposed rule removes these requirements. The three crab EDR forms would be revised to pre-fill data fields that do not change frequently to reduce the burden of the crab EDR forms. Pre-filling the data fields is estimated to reduce the respondent's data entry time by 15 minutes. However, since the burden hour estimates for the forms are rounded to the nearest hour, this modest reduction would not decrease the public reporting burden. Subject to public comment, no changes are made to the estimated reporting or cost burden for the EDRs because the estimates allow for differences in the time needed to complete and submit the forms.

Public reporting burden per individual response is estimated to average 20 hours each for the Annual Catcher Vessel Crab EDR and the Annual CP Crab EDR, 16 hours for the Annual Processor Crab EDR, and 1 hour for an EDR certification page.

The estimated number of respondents for this collection is 77; the estimated total annual burden hours are 1,449 hours; and the estimated total annual cost to the public for recordkeeping and reporting costs is $385.

OMB Control Number 0648–0564

NMFS proposes to revise and extend by three years OMB Control Number 0648–0564. This collection covers the economic data collection requirements for Amendment 80 and GOA trawl CPs. This collection is necessary to help evaluate the Amendment 80 Program, including program-eligible trawl CPs, and is used by NMFS and the Council to assess the impacts of major changes in the groundfish management regime, including programs for prohibited species catch species and target species.

This collection would be revised to remove third-party data verification audits for the Annual Trawl Catcher/Processor EDR and remove requirements for the GOA Trawl EDR Program because this proposed rule removes regulations for the audit authorization and eliminates the GOA Trawl EDR Program. Eliminating the program would simplify the Annual Trawl Catcher/Processor form. This form would be revised to remove data fields that are not being used in analyses and to pre-fill data fields that do not change frequently. These changes to the form are expected to reduce the time burden on respondents by approximately two hours.

Public reporting burden per individual response is estimated to average 20 hours for the Annual GOA Trawl Catcher/Processor EDR.

The estimated number of respondents for this collection is 22; the estimated total annual burden hours are 440 hours; and the estimated total annual cost to the public for recordkeeping and reporting costs is $110.

OMB Control Number 0648–0633

NMFS proposes that OMB Control Number 0648–0633 is revised to remove the verification audit for the Compensated Transfer Report because this rule removes the authorization for third party data verification audits. Subject to public comment, no changes are made to the estimated reporting or cost burden for the EDR forms as the estimates allow for differences in the time needed to complete and submit the forms.

Public reporting burden per individual response is estimated to average 40 hours for the Compensated Transfer Report, 4 hours for the Vessel Fuel Survey, and 4 hours for the Vessel Master Survey.

OMB Control Number 0648–0700

NMFS proposes to discontinue OMB Control Number 0648–0700, which covers the economic data collection requirements for the GOA Trawl EDR Program. The original purpose of the GOA Trawl EDR was to establish a baseline information collection that could be used to assess the impacts of a catch share program. However, no catch share program has been developed to date. The original need for this data collection program has been indefinitely suspended, calling into question the efficacy of continuing the program given that taxpayers and industry bear the cost of maintaining the program. Elimination of the GOA Trawl EDR would eliminate the agency borne programmatic costs incurred by the Federal government as the GOA Trawl EDR is not part of a catch share fishery and thus administrative costs are not subject to cost recovery. Elimination of the GOA Trawl EDR program would also eliminate compliance costs for industry.

Public Comment

Public comment is sought regarding whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection-of-information to NMFS Alaska Region at the **ADDRESSES** above and at *www.reginfo.gov/public/do/PRAMain.*

Notwithstanding any other provisions of law, no person is required to respond to, and no person shall be subject to 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. All currently approved NOAA collections of information may be viewed at *https://www.reginfo.gov/public/do/PRASearch.*

List of Subjects

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 680

Alaska, Reporting and recordkeeping requirements.

Dated: October 20, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 679 and 680 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

§ 679.2 [Amended]

■ 2. In § 679.2, remove the definitions for ''Blind data'' and ''Designated data collection auditor''.

§ 679.65 [Amended]

■ 3. In § 679.65, remove paragraph (e).

■ 4. In § 679.94, revise the section heading, paragraph (a)(1), and remove and reserve paragraph (b) to read as follows:

§ 679.94 Economic data report (EDR) for the Amendment 80 sector.

(a) * * *

(1) *Requirement to submit an EDR.* A person who held an Amendment 80 QS permit during a calendar year must submit a complete Annual Trawl Catcher/Processor EDR for that calendar year by following the instructions on the Annual Trawl Catcher/Processor EDR form.

(b) [Reserved]

Subpart J—[Removed and Reserved]

■ 5. Remove and reserve subpart J, consisting of § 679.110.

* * * * *

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 6. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

§ 680.2 [Amended]

■ 7. In § 680.2, remove the definitions for ''Auditor'' and ''Blind data''.

■ 8. In § 680.6, revise paragraphs (a)(2) and (3), (c), (d), (e)(1) and (2), and remove paragraphs (f) and (g) to read as follows:

§ 680.6 Crab economic data report (EDR).

(a) * * *

(2) A completed EDR or EDR certification pages must be submitted to NMFS, in the manner specified on the NMFS-issued EDR form, for each calendar year on or before 1700 hours, A.l.t., July 31 of the following year.

(3) Annual EDR forms for catcher vessels, catcher/processors, shoreside crab processors, and stationary floating crab processors are available on the NMFS Alaska Region website at *https://alaskafisheries.noaa.gov* or by contacting NMFS at 1–800–304–4846.

* * * * *

(c) *Annual catcher vessel crab EDR*—Any owner or leaseholder of a catcher vessel that landed CR crab in the previous calendar year must submit to NMFS, in the manner specified on the NMFS-issued EDR form, a completed catcher vessel EDR for annual data for the previous calendar year.

(d) *Annual catcher/processor crab EDR*—Any owner or leaseholder of a catcher/processor that harvested or processed CR crab in the previous calendar year must submit to NMFS, in the manner specified on the NMFS-issued EDR form, a completed catcher/processor EDR for annual data for the previous calendar year.

(e) * * *

(1) Any owner or leaseholder of an SFCP or a shoreside crab processor that processed CR crab, including custom processing of CR crab performed for other crab buyers, in the previous calendar year must submit to NMFS, in the manner specified on the NMFS-issued EDR form, a completed processor EDR for annual data for the previous calendar year.

(2) Any holder of a registered crab receiver (RCR) permit that obtained custom processing for CR Program crab in the previous calendar year must submit to NMFS, in the manner specified on the NMFS-issued EDR form, a completed processor EDR for annual data for the previous calendar year.

[FR Doc. 2022–23306 Filed 10–31–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 87, No. 210

Tuesday, November 1, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to Office of Management and Budget (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; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 1, 2022 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.

Rural Utilities Service

Title: Request for Approval to Sell Capital Assets.

OMB Control Number: 0572–0020.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of RUS' main objectives is to safeguard loan security until the loan is repaid. Accordingly, RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et.seq.,* as amended, (RE ACT) and as prescribed by Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

Need and Use of the Information: RUS borrower will use form 369, *Request for Approval to Sell Capital Assets,* to seek agency permission to sell some of its assets. The form is used to collect detailed information regarding the proposed sale of a portion of the borrowers systems. RUS will collect information to determine whether or not the agency should approve a sale and also to keep track of what property exists to secure the loan. If the information in Form 369 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 33.

Frequency of Responses: Recordkeeping; reporting: On occasion; quarterly.

Total Burden Hours: 165.

Rural Utilities Service

Title: 7 CFR 1744–C, Advance and Disbursement of Funds—Telecommunications.

OMB Control Number: 0572–0023.

Summary of Collection: Section 201 of the Rural Electrification Act (RE Act) of 1936 authorizes the Administrator of the Rural Utilities Service (RUS) to make loans for the purpose of providing telephone service to the widest practicable number of rural subscribers. Title VI, Rural Broadband Access, of the RE Act authorizes RUS to provide loans and loan guarantee to fund the cost of construction, improvement, or acquisition facilities and equipment for the provision of broadband service in eligible rural communities.

RUS Form 481, ''Financial Requirement Statement,'' must be submitted by the borrower to request loan advances. A supplemental sheet to Form 481 (a continuation sheet) may be used by borrowers needing additional space. The Form 481 is used by RUS to record and control transactions in the construction fund. Upon receipt of the Form 481 and its accompanying documents complying with provisions of 7 CFR part 1744, subpart c, the Government, within a reasonable amount of time, will make and advance to the borrower a sufficient amount for the purposes specified in the statement of purposes. The borrower must immediately deposit all advanced money into a Special Construction account until disbursed.

Need and Use of the Information: The information collected is used by RUS to record and control transactions and verify that the funds advanced in the construction fund are related directly to loan purposes. If the information were not collected, RUS would not have any control over how loan funds are spent or a record of the balance to be advanced.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 38.

Frequency of Responses: Reporting: annually.

Total Burden Hours: 616.

Rural Utilities Service

Title: 7 CFR 1730, Review Rating Summary.

OMB Control Number: 0572–0025.

Summary of Collection: USDA Rural Development administers rural utilities programs through the Rural Utilities Service (RUS or Agency) and manages loan programs in accordance with the Rural Electrification Act (RE Act) of

1936, 7 U.S.C. 901 *et seq.,* as amended. One of the Agency's main objectives is to safeguard loan security by seeing that Agency financed facilities are being responsibly used, adequately operated, and adequately maintained. Future needs must be anticipated to ensure that facilities will continue to produce revenue and loans will be repaid as required by the Agency mortgage or loan agreement. A periodic operations and maintenance (O&M) review, using the RUS Form 300, Review Rating Summary, in accordance with 7 CFR part 1730, Electric System Operations and Maintenance, is an effective means for RUS to determine whether the Borrowers' systems are being properly operated and maintained, thereby protecting the loan collateral as prescribed by the Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables.

Need and Use of the Information: RUS will collect information using form 300 Review Rate Summary to identity items that may be in need of additional attention; to plan corrective actions when needed; to budget funds and manpower for needed work; and to initiate ongoing programs as necessary to avoid or minimize the need for ''catch-up'' programs.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 151.

Frequency of Responses: Reporting: On occasion; annually.

Total Burden Hours: 604.

Rural Utilities Service

Title: Operating Reports for Telecommunications and Broadband Borrowers.

OMB Control Number: 0572–0031.

Summary of Collection: Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture Rural Development Utilities Programs, hereinafter referred to as RUS or the Agency, is a credit agency of the USDA. It makes loans and loan guarantees to finance electric, broadband, telecommunications, and water and waste facilities in rural areas. In addition to providing loans and loan guarantees, one of the main RUS objectives is to safeguard loan security until the loan is repaid. Section 201 of the Rural Electrification Act of 1936, as amended (RE Act) (7 U.S.C. 901 *et seq.*) authorizes that ''the Secretary is authorized and empowered to make loans to persons now providing or who may hereafter provide telephone service in rural areas . . . for the purposes of financing the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities or systems to furnish and improve telephone service in rural areas.'' Similarly, section 601(c)(1) states that ''the Secretary shall make or guarantee loans to eligible entities . . . to provide funds for the construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities.''

Need and Use of the Information: Information from the Operating Report for both telecommunication and broadband borrowers provides RUS with vital financial information needed to ensure the maintenance of the security for the Government's loans and service data which enables RUS to ensure the provision of quality telecommunications and broadband service as mandated by the RE Act of 1936. Form 674, ''Certificate of Authority to Submit or Grant Access to Data'' will allow telecommunication and broadband borrowers to file electronic Operating Reports with the agency using the new USDA Data Collection System. Accompanied by a Board Resolution, it will identify the name and USDA e-Authentication ID for a certifier and security administrator that will have access to the system for purposes of filing electronic Operating Reports.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 242.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,711.

Rural Utilities Service

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572–0041.

Summary of Collection: The Rural Utilities Service (RUS) is a financing agency of the U.S. Department of Agriculture (USDA). RUS makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended (RE Act). Section 201 of the RE Act provides that loan shall not be made unless RUS finds and certifies that the security for the loan is reasonably adequate and that the loans will be repaid within the time agreed. In addition to providing loans and loan guarantees, one of RUS's main objectives is to safeguard loan security until the loan is repaid. This objective is in accordance with OMB Circular No. A–129, ''*Policies for Federal Credit Programs and Non-Tax Receivables*,'' which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance, and should follow sound financial practices in the administration of credit programs and protect the value of the government's assets.

Need and Use of the Information: A borrower's assets provide the security for a government loan. The selling of assets reduces the security and increases the risk of loss to the Government. A borrower seeking permission to sell some of its assets uses RUS Form 793. The form contains detailed information regarding the proposed sale. If the information in Form 793 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level. This increases the risk of loss to the Government in the case of a default.

Description of Respondents: Businesses or other for-profits: Not-for-profit institutions.

Number of Respondents: 30.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 231.

Rural Utilities Service

Title: Certification of Authority, RUS Form 675.

OMB Control Number: 0572–0074.

Summary of Collection: The Rural Utilities Service manages loan programs in accordance with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901*et seq.*) (RE Act). A major factor in managing loan programs is controlling the advance of funds, including assuring that actual borrowers receive their funds. The OMB Circular A–123, Management Accountability and Control, provides that information should be maintained on a current basis and that funds should be protected from unauthorized use. The use of RUS Form 675 allows effective control against unauthorized release of funds by providing a list of authorized borrower signatures against which signatures requesting funds are compared. The Form 675 allows borrowers to keep RUS up to-date of changes in signature authority and controls release of funds only to authorized borrower representatives.

Need and Use of the Information: RUS will collect information to ensure that only authorized representatives of the borrower signs the lending requisition form. Without the

information RUS would not know if the request for a loan advance was legitimate or not and the potential for waste, loss, unauthorized use, and misappropriation would be increased.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 176.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 18.

Rural Utilities Service

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Summary of Collection: USDA, Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to finance telecommunications, electric, and water and waste facilities in rural areas with a loan portfolio that totals more than $58 billion. In addition to providing loans and loan guarantees, one of the objectives of RUS is to safeguard loan security until the loan is repaid. Accordingly, RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended, (RE Act), and as prescribed by Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that based on a review of a loan application, agencies must determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. Section 201 of the RE Act authorizes the RUS Administrator to make loans to qualified telephone companies for providing telephone service to the widest practicable number of rural subscribers. The reporting burden covered by this collection of information consists of forms, documents and written burden to support a request for funding for a Telecommunications Infrastructure loan.

Need and Use of the Information: RUS will collect information using several forms to determine an applicant's eligibility to borrow from RUS under the terms of the RE Act. The information is also used to determine that the Government's security for loans made by RUS are reasonably adequate and that the loans will be repaid within the time agreed. Without the information, RUS could not effectively monitor each borrower's compliance with the loan terms and conditions to properly ensure continued loan security.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 43.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 11,445.

Rural Utilities Service

Title: 7 CFR part 1786, Prepayment of RUS Guaranteed and Insured Loans to Electric and Telephone Borrowers.

OMB Control Number: 0572–0088.

Summary of Collection: The Rural Electrification (RE) Act of 1936, as amended, authorizes and empowers the Administrator of RUS to make loans in the States and Territories of the United States for rural electrification and furnishing and improving electric and telephone service in rural areas and to assist electric borrowers to implement demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. The RE Act also authorizes and empowers the Administrator of RUS to provide financial assistance to borrowers for purposes provided in the RE Act by guaranteeing loans made by the National Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank (FFB), and other lending agencies.

This information collection package contains the paperwork and reporting burden for 7 CFR part 1786, subpart E, ''Discounted Prepayments on RUS Notes in the Event of a Merger of Certain RUS Electric Borrowers,'' subpart F, ''Discounted Prepayments on RUS Electric Loans,'' and subpart G, ''Refinancing and Prepayment of RUS Guaranteed FFB Loans Pursuant to Section 306(C) of the RE Act.'' 7 CFR 1786, subparts E and F are authorized by section 306(B) of the RE Act of 1936, as amended, and subpart G is authorized by section 306(C) of the RE Act of 1936, as amended.

The overall goal of subparts E and F is to allow Agency borrowers to prepay their RUS loan and the overall goal of subpart G is to refinance. Subpart E allows certain electric borrowers to prepay outstanding RUS Notes at the Discounted Present Value of the RUS Notes with private financing. Subpart F allows borrowers to prepay, with private financing or internally generated funds, outstanding RUS Notes evidencing electric loans at the Discounted Present Value of the RUS Note. Subpart G allows the borrower of an electric or telephone loan made by the FFB and guaranteed by RUS to prepay and refinance a loan or an advance on the loan, or any portion of the loan or advance, after meeting certain conditions using the procedures prescribed in the borrower's note.

Need and Use of the Information: The required documentation and information will be collected from electric and telecommunications program borrowers. The purpose of the information collected is to provide borrowers an opportunity to request prepayment of their notes and to determine that the borrower is qualified to prepay under the authorizing statues. The overall goal of subparts E and F is to allow RUS borrowers to prepay their RUS loan and the overall goal of subpart G is to refinance.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 38.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 76.

Rural Utilities Service

Title: RUS Form 444, ''Wholesale Power Contracts''.

OMB Control Number: 0572–0089.

Summary of Collection: The Rural Electrification Act of 1936 (RE Act) as amended (7 U.S.C. 901 *et seq.*), authorizes the Administrator of RUS to make and guarantee loans in the States and Territories of the United States that will enable rural consumers to obtain electric power. Section 4 of the RE Act (7 U.S.C. 904) authorizes the Administrator to establish terms and conditions of loans to determine that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed.

In response to the RE Act, rural consumers formed non-profit electric distribution cooperatives. Groups of these distribution cooperatives then banded together to form generation and transmission cooperatives (G&T's) that generate or purchase power and transmit the power to the distribution systems. For a RUS loan to a distribution system, a lien on the borrower's assets generally represents an adequate means to protect the Federal Government's security interest. However, since most G&T revenues flow from its distribution members, RUS requires as a condition of a loan or loan guarantee to a G&T that its distribution members enter into a long-term requirements wholesale power contract to purchase power from the G&T at rates that cover all the G&T's expenses, including debt service and margins.

Need and Use of the Information: To fulfill the purposes of the RE Act RUS will collect information to improve the credit quality and credit worthiness of loans and loan guarantees to G&T

borrowers. RUS works closely with lending institutions that provide supplemental loan funds to borrowers. If the information were not collected, RUS could not determine whether Federal security interest would be adequately protected.

Description of Respondents: Not-for profit institutions.

Number of Respondents: 8.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 48.

Rural Utilities Service

Title: 7 CFR 1703, subparts D, E, F, and G, Distance Learning and Telemedicine Loan and Grant Program.

OMB Control Number: 0572–0096.

Summary of Collection: The Rural Utilities Service (RUS), an agency of the U.S. Department of Agriculture (USDA), is authorized by chapter 1 of subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 950aaa *et seq.*) to provide financial assistance for the purpose of financing the construction of facilities and systems to provide telemedicine services and distance learning services in sparsely populated rural areas. Financial assistance provided under the Distance Learning and Telemedicine (DLT) Loan and Grant Program consists of grants, cost of money loans, or both. The purpose of the DLT Loan and Grant Program is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents. Section 6102 of title VI of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) amended 7 U.S.C. 950aaa *et seq,* by extending the term of the program to the year 2023. The Agency administers the DLT Loan and Grant Program through 7 CFR1734, subparts A, B, C, and D.

Need and Use of the Information: The various forms and narrative statements required are collected from eligible applicants that are public and private, for-profit and not-for-profit rural community facilities, schools, libraries, hospitals, and medical facilities. The purpose of this information is to determine such factors as: eligibility of the applicant; the specific nature of the proposed project; the purposes for which loan and grant funds will be used; project financial and technical feasibility; and compliance with the applicable laws and regulations.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 17,814.

Rural Utility Service

Title: Seismic Safety of New Building Construction, 7 CFR 1792, subpart C.

OMB Control Number: 0572–0099.

Summary of Collection: Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, times and location of earthquakes cannot be predicted; most earthquakes strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquakes, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Pub. L. 95–124, 42 U.S.C. 7701 *et seq.*), and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utility Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB.

Need And Use Of The Information: Borrowers and grant recipients must provide to RUS a written acknowledgment from a registered architect or engineer responsible for the designs of each applicable building stating that the seismic provisions to 7 CFR part 1792, subpart C will be used in the design of the building. RUS will use this information to: (1) clarify and inform the applicable borrowers and grant recipients about seismic safety requirements; (2) improve the effectiveness of all RUS programs; and (3) reduce the risk to life and property through the use of approved building codes aimed at providing seismic safety.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8.

Rural Utilities Service

Title: Lien Accommodations and Subordinations 7 CFR part 1717, subparts R and S.

OMB Control Number: 0572–0100.

Summary of Collection: The Rural Electrification Act of 1936 (The RE Act), as amended (7 U.S.C. 901 *et seq.*), authorizes and empowers the Administrator of RUS to make loans in the several United States and Territories of the United States for rural Electrification and the furnishing of electric energy to persons in rural areas who are not receiving central station service. The RE Act also authorizes and empowers the Administrator of RUS to provide financial assistance to borrowers for purposes provided in the RE Act by accommodating or subordinating loans made by the national Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies. Title 7 CFR part 1717, subparts R & S sets forth policy and procedures to facilitate and support borrowers' efforts to obtain private sector financing of their capital needs, to allow borrowers greater flexibility in the management of their business affairs without compromising RUS loan security, and to reduce the cost to borrowers, in terms of time, expenses and paperwork, of obtaining lien accommodations and subordinations. The information required to be submitted is limited to necessary information that would allow the Agency to make a determination on the borrower's request to subordinate and accommodate their lien with other lenders.

Need and Use of the Information: RUS will use the information to determine an applicant's eligibility for a lien accommodation or lien subordination under the RE Act; facilitates an applicant's solicitation and acquisition of non-RUS loans as to converse available Government funds; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; and subsequently to granting the lien accommodation or lien subordination, administer each so as to minimize its cost to the Government. If the information were not collected, RUS would not be able to accomplish its statutory goals.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 19.

Rural Utilities Service

Title: 7 CFR 1778, Emergency and Imminent Community Water Assistance Grants.

OMB Control Number: 0572–0110.

Summary of Collection: The Rural Utilities Service (RUS) is requesting OMB clearance of the reporting requirements for 7 CFR part 1778, Emergency and Imminent Community Water Assistance Grants (ECWAG). The legislative authority for this program is under section 306A of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)), as amended. RUS is authorized to make grants under section 306A of the Consolidated Farm and Rural Development Act (Act)(7 U.S.C. 1926(a)).

Administered by the RUS National Office and Rural Development (RD) State Offices, the ECWAG regulation is used to administer grants made to rural communities of 10,000 or less that are experiencing a significant decline in quantity or quality of water or are expecting such a decline to be imminent. The grants assist the communities in obtaining or maintaining adequate quantities of water, thereby, meeting the standards of the Safe Drinking Water Act (SDWA), (42 U.S.C. 300f, *et seq.*).

Under the ECWAG program, there are two statutory levels of grant limitations—$1,000,000 and $150,000. Grants not to exceed upper threshold may be awarded for projects alleviating significant declines in potable water quantity or quality. The funds can be used for construction of new wells, reservoirs, treatment plants, and other sources of water. Grants awards up to $150,000 may be made for projects that will remedy acute shortages or significant declines in quality or quantity of potable water in an existing system. The funds can be used for distribution waterline extensions, repairs or partial replacement on distribution waterlines, and operation and maintenance items on a distribution system. Grants awarded under the ECWAG program may be made for up to 100 percent of eligible project costs. At least 50 percent of grant funds are targeted to rural areas with populations not exceeding 3,000. Additionally, at least 70 percent of funds are to be used for projects addressing declines in the quantity or quality of water. The rural area's median household income must not exceed 100 percent of a State's non-metropolitan median household income.

Need and Use of the Information: RUS will collect the information from applicants applying for grants under 7 CFR 1778. The information is unique to each borrower and emergency situation. Applicants must demonstrate that there is an imminent emergency or that a decline occurred within 2 years of the date the application was filed with Rural Development.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 409.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,173.

Rural Utilities Service

Title: 7 CFR 1717 subpart D, Mergers and Consolidations of Electric Borrowers.

OMB Control Number: 0572–0114.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, water and waste and water facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended and as prescribed by the Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-tax Receivable, states that agencies must base on a review of a loan application determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

Need and Use of the Information: RUS will collect information to streamline procedures and allow borrowers the flexibility to meet new business challenges and opportunities. The information is necessary for RUS to conduct business with successor entity while protecting the security of Government loans and avoiding defaults and to grant merger approval when required.

Description of Respondents: Business or other for-profit.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 140.

Rural Utilities Service

Title: 7 CFR part 1721, Extensions of Payments of Principal and Interest.

OMB Control Number: 0572–0123.

Summary of Collection: The Rural Utilities Service (RUS) electric program provides loans and loan guarantees to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. Procedures and conditions which borrowers may request extensions of the payment of principal and interest are authorized, as amended, in section 12 of the Rural Electrification Act of 1936, and section 236 of the ''Disaster Relief Act of 1970 (Pub. L. 91–606), as amended by the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354). As a result of obtaining federal financing, RUS borrowers receive economic benefits that exceed any direct economic costs associated with complying with (RUS) regulations and requirements.

Need and Use of the Information: The collection of information occurs only when the borrower requests an extension of principal and interest. Eligible purposes include financial hardship, energy resource conservation loans, renewable energy project, and contributions-in-aid of construction. These procedures are codified at 7 CFR part 1721, subpart B. The collections are made to provide needed benefits to borrowers while also maintaining the integrity of RUS loans and their repayment of taxpayer's monies.

Description of Respondents: Businesses or other for-profits; Not for-profit institutions.

Number of Respondents: 8.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 61.

Rural Utilities Service

Title: Broadband Grant Program.

OMB Control Number: 0572–0127.

Summary of Collection: Congress has recognized the need to facilitate the deployment of broadband service to un-served rural areas. The provision to broadband transmission service is vital to the economic development, education, health, and safety of rural Americans.

The Consolidated Appropriations Act, 2004 (title III, Pub. L. 108–199, Stat.3), 7 CFR 1739 subpart A, as amended, authorizes the Rural Development, Rural Utilities Service (RUS) to administer the Community Connect Grant Program for the provision of broadband transmission service in rural America. Grant authority is utilized to deploy broadband infrastructure to extremely rural, lower income communities on a ''community-oriented connectivity'' basis.

Need and Use of the Information: RUS gives priority to rural areas that it believes have the greatest need for broadband transmission services. This broadband access is intended to promote economic development and provide enhanced educational and health care opportunities. RUS will provide financial assistance to eligible entities that are proposing to deploy

broadband transmission service in rural communities where such service does not currently exist and who will connect the critical community facilities including the local schools, libraries, hospitals, police, fire and rescue services and who will operate a community center that provides free and open access to residents.

Description of Respondents: Business or other for-profit.

Number of Respondents: 73.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 12,286.

Rural Utilities Service

Title: 7 CFR 1728, Electric Standards and Specifications for Materials and Construction.

OMB Control Number: 0572–0131.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.,* as amended, (RE Act) in Sec. 4 (7 U.S.C. 904) authorizes and empowers the USDA Rural Development, Rural Utilities Service (RUS or the Agency) Administrator to direct and coordinate the program to provide loans and loan guarantees to furnish electrification and improve electric energy service to persons in rural areas of the United States and Territories of the United States. The loan term may be up to 35 years and loans are secured by a first mortgage on the borrower's electric system. To assure loans made or guaranteed by RUS are adequately secured, used effectively, and for the intended purposes, the Agency has established standards and specifications for materials, equipment and the construction of electric systems. Utilization of standards and specifications for materials, equipment, and construction helps assure appropriate standards and specifications are maintained, loan security is not adversely affected, and loan and loan guarantee funds are used effectively for intended purposes.

RUS policy is established by 7 CFR part 1728 which provides that materials and equipment purchased by RUS electric borrowers or accepted as contractor-furnished material must conform to Agency standards and specifications where they have been established and, if included in Agency IP 202–1, ''List of Materials Acceptable for Use on Systems of Rural Development Electrification Borrowers'' (List of Materials), must be selected from that list or must have received technical acceptance from Rural Development.

Need and Use of the Information: Manufacturers submit certified data demonstrating product compliance with RUS specifications, usually in the form of laboratory test results, catalog pages, or drawings. RUS will evaluate the data to determine that the quality of the products are acceptable and that their use will not jeopardize loan security. The information is closely reviewed to be certain that test data; product dimensions and product material compositions fully comply with RUS technical standards and specifications that have been established for the particular product. Without this information, RUS has no means of determining the acceptability of products for use in the rural environment.

Description of Respondents: Business or other for-profit.

Number of Respondents: 38.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 2,000.

Rural Utilities Service

Title: Special Evaluation Assistance for Rural Communities and Households Program (SEARCH).

OMB Control Number: 0572–0146.

Summary of Collection: The Food, Conservation and Energy Act of 2008, Public Law 110–246 (Farm Bill) amended section 306(a)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926 (a)(2)). The amendment created a grant program to make Special Evaluation Assistance for Rural Communities and Households (SEARCH) Program grants. Under the SEARCH program, the Secretary may make predevelopment and planning grants to public or quasi-public agencies, organizations operated on a not-for-profit basis or Indian tribes on Federal and State reservations and other federally recognized Indian tribes. The grant recipients shall use the grant funds for feasibility studies, design assistance, and development of an application for financial assistance to financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants for water and waste disposal projects as authorized in sections 306(a)(1), 306(a)(2) and 306(a)(24) of the CONACT.

Need and Use of the Information: Applicants applying for SEARCH grants must submit an application which includes an application form, various other forms, certifications, and supplemental information. Rural Utility Service will use the information collected from applicants, borrowers, and consultants to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements.

Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, or hindrances in making grants authorized by the SEARCH program.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 88.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,985.

Rural Utility Service

Title: New Equipment Contract (Form 395) for Telecommunications and Broadband Borrowers.

OMB Control Number: 0572–0149.

Summary of Collection: The Rural Utility Service (RUS) manages the Telecommunications loan program and the Rural Broadband program, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. RUS has established the use of certain standardized forms for materials, equipment, and construction of electric and telecommunications systems. The use of standard forms, construction contracts, and procurement procedures help to assure that appropriate standards and specifications are maintained by the borrower in order to not adversely affect RUS's loan security and ensure that loan and loan guarantee funds are effectively used for the intended purpose(s).

Need and Use of the Information: This information is used to implement provisions of the Agency standard form of loan documents regarding the Awardee's purchase of materials and equipment and the construction of its telecommunications or broadband system by contract. This collection of information will be used by Agency Awardees and their contractors. In the Telecommunications industry, when a cooperative or company enters into contracts for services, some type of contract form is used. The Agency has developed the specific forms cleared with this package to be used by its Awardees when entering into contracts for goods or services.

Description of Respondents: Businesses or other for-profits.

Number of Respondents: 28.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 114.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–23699 Filed 10–31–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

[OMB Control No. 0503–0024]

Information Collection; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Department of Agriculture.

ACTION: Notice; request for comment.

SUMMARY: The Department of Agriculture, as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on a new proposed collection of information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on new collection proposed by the Agency.

DATES: *Submit comments on or before:* January 3, 2023.

ADDRESSES: Submit comments identified by Information Collection 0503–0024, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), by any of the following methods:

- *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.
- *Mail:* U.S. Department of Agriculture, Office of the Chief Information Officer, 1200 Independence Ave. SW, Washington, DC 20250, Attn: Ruth Brown or Levi Harrell.

A–11 Section 280 Improving Customer Experience.

Instructions: Please submit comments only and cite Information Collection 0503–0024, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ruth Brown, (202) 720–8958, or Levi Harrell, (202) 924–0168, Office of the Chief Information Officer, Information Resources Management Center, 1200 Independence Avenue SW Washington, DC 20250, or via email to: *USDA.PRA@USDA.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the PRA, (44 U.S.C. 3501–3520) Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, USDA is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veterans' benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. USDA will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection

USDA will collect this information by electronic means, when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. USDA may also utilize observational techniques to collect this information.

Data

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

B. Annual Reporting Burden

Affected Public: Collections will be 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. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Estimated Number of Respondents: 2,040,000.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 2 hours to participate in an interview.

Estimated Total Annual Burden Hours: 240,000.

Estimated Total Annual Cost to Public: $0.

C. Public Comments

USDA invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Gary Washington,

Chief Information Officer.

[FR Doc. 2022–23706 Filed 10–31–22; 8:45 am]

BILLING CODE 3410–KR–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 December 1, 2022 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.

Rural Housing Service

Title: 7 CFR 1951–F, Analyzing Credit Needs and Graduation Review.

OMB Control Number: 0575–0093.

Summary of Collection: The Rural Housing Service (RHS or the Agency) offers a variety of programs to build and improve housing and essential community facilities in rural areas. The Agency offers loans, grants, loan guarantees, and supervised credit in the form of Community Facility (CF) loans. The CF loan program of RHS is authorized by Section 306 of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926). The purpose of the CF loan program is to make loans to public entities, nonprofit corporations, and Indian tribes for the development of essential community facilities for public use in rural areas. The notes, security instruments, or loan agreements of most borrowers require them to refinance their Agency loans when other credit becomes available at reasonable rates and terms for loan graduation, otherwise known as loan graduation. Direct loan graduation is an integral part of the Agency's lending, as government issued loans are not meant to be extended beyond a borrower's need for subsidized rates or non-market terms.

Section 333 of the CONACT (7 U.S.C. 1983), as amended, requires the Agency to graduate their direct loan borrowers to other credit when they can. Graduation is required because the government loans are not to be extended beyond a borrower's need for subsidized rates or Government credit. Borrowers must refinance their direct Government loan when other credit becomes available at reasonable rates and terms. If other credit is not available, the Agencies will continue to periodically review the account for possible graduation intervals.

Need and Use of the Information: The information is collected by the Agency which will be used in the Agency's efforts to graduate direct loan borrowers to private credit, with or without the Agency loan guarantees. The Agency will conduct a thorough review of the borrower's financial information to determine whether they are able to graduate to other credit. RHS uses this information to evaluate the borrower's financial condition for direct loan graduation purposes and which assists the Agency with the review of the borrower's financial strength and repayment ability. This review will eliminate borrowers who are unable to meet the lending criteria and policies of the area lenders.

Description of Respondents: Business or other for-profit.

Number of Respondents: 437.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 874.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–23702 Filed 10–31–22; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection: Comment Request—Supplemental Nutrition Assistance Program's Quality Control Review Schedule Form FNS–380–1

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of a currently approved collection.

DATES: Written comments must be received on or before January 3, 2023.

ADDRESSES: Comments may be sent to: John McCleskey, QC Branch chief, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314. Comments may also be submitted via fax to the attention of John McCleskey, QC Branch chief at 703–457–7747 or via email to *SNAPHQ-WEB@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request

for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to John McCleskey at 703–457–7747.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Quality Control Review Schedule.

Form Number: FNS 380–1.

OMB Control Number: 0584–0299.

Expiration Date: July 31, 2023.

Type of Request: Revision of a currently approved collection.

Abstract: The FNS–380–1, Quality Control Review Schedule (QCRS), was developed by the Food and Nutrition Service (FNS) for State use to collect both QC data and case characteristics for SNAP and to serve as the comprehensive data entry form for SNAP QC reviews. The legislative basis for the QC system is in Section 16 of the Food and Nutrition Act of 2008, as amended (the Act). Part 275, Subpart C, of SNAP regulations implements the legislative mandates found in Section 16. The regulatory basis for the QC reporting requirements is provided by 7 CFR 275.14(d) and 7 CFR 275.21. State agencies are required to perform QC reviews for SNAP. The information needed to complete this form is obtained from the SNAP case record through State agency quality control findings. The information is used to monitor and reduce errors, develop policy strategies, and analyze household characteristic data.

Reporting Burden Estimates

Affected Public: 53 State, Local and Tribal Governments.

Estimated Number of Responses per Respondent: 860.433962.

Estimated Total Annual Responses: 45,603 Reponses. This includes 53 State agencies updating State agency discretionary codes on the FNS 380–1 as well as reporting on them.

Estimated Time per Response: 1.05732258 hours. This includes 3 hours per State agencies to update discretionary codes annually, 0.25 hours per respondent to report on the updated discretionary codes to FNS, 1.056 hours per respondent to report the review findings of active reviews.

Estimated Total Annual Burden on Respondents: 48,217.08 hours.

Recordkeeping Burden Estimates

Affected Public: 53 State, Local and Tribal Governments.

Estimated Number of Responses per Respondent: 858.433962.

Estimated Total Annual Responses: 45,497 responses to report on sampled active case files for QC review and 45,497 records being maintained by State agencies.

Estimated Time per Response: 0.0236 hours to maintain records of the cases selected for the active review sample.

Estimated Total Annual Burden on Respondents: 1,073.7292.

Estimated Reporting and Recordkeeping Total Annual Burden on Respondents: 49,290.81 hours. There is no third-party reporting burden associated with this collection request.

See the table below for estimated total annual burden for each type of burden activities for State agency respondents.

Form number	Reg. section	Description of activity	Number of respondents	Est. number of responses per respondent	Est. total annual responses	Number hours per response	Est. total burden hours
Reporting Burden for FNS 380–1, OMB 0584–0299							
FNS–380–1	275.14(d)	Review Processing-Schedules—Update SA Discretionary Codes.	53	1.0000	53	3	159.00
FNS–380–1	275.14(d)	Review Processing-Schedules- Report SA Discretionary code updates.	53	1.0000	53	0.25	13.25
FNS–380–1	275.12(f)	Reporting of Review Findings.	53	858.4340	45,497	1.0560	48,044.83
Subtotal			53.00	860.433962	45,603.00	1.05732258	48,217.08

Form number	Reg. section	Description of activity	Number of record keepers	Est. number of records per record keeper	Est. total annual responses	Number hours per record to be maintained	Est. total burden hours
Recordkeeping Burden for FNS 380–1, OMB 0584–0299							
FNS–380–1	275.4	Record Retention	53	858.433962	45,497	0.0236	1,073.7292

Form number	Reg. section	Description of activity	Number of record keepers	Est. number of records per record keeper	Est. total annual responses	Number hours per record to be maintained	Est. total burden hours
Grand Total Reporting and Record-keeping Burden.	53.00	1,718.87	91,100.00	0.54110627	49,290.81		

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2022–23713 Filed 10–31–22; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the District of Columbia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold project planning meetings via WebEx on the below dates and times. The purpose of these meetings is to plan and discuss the Committee's civil rights project.

DATES:

- Tuesday, October 18, at 12:00 p.m. ET
- Tuesday, November 15, at 12:00 p.m. ET
- Tuesday, December 20, at 12:00 p.m. ET

Each planning meeting will last for approximately one hour.

ADDRESSES:

Meeting Link (Audio/Visual): *https://www.zoomgov.com/j/1616545271.*

Telephone (Audio Only): Dial 833–568–8864 USA Toll Free; Meeting ID: 161 654 5271.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, DFO, at *ero@usccr.gov* or 202–539–8468.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Individuals who are deaf, deafblind and hard of hearing may follow the proceedings by first calling the Federal Relay Service at 800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments via email. The comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed. The email subject line should state: Atten: DC and sent to this email address: *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at *ero@usccr.gov.*

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

Agenda

I. Roll Call

II. Welcome

III. Project Planning

IV. Other Business

V. Next Meeting

VI. Public Comments

VII. Adjourn

Dated: October 27, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–23729 Filed 10–31–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Puerto Rico Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Puerto Rico Advisory Committee to the Commission will convene by virtual web conference on Wednesday, November 16, 2022, at 1 p.m. (AT). The purpose is to discuss the committee's draft project proposal on the civil rights impacts of the Insular Cases and the doctrine of the unincorporated territory.

DATES: November 16, 2022, Wednesday, at 1 p.m. (AT); [12 p.m. ET].

ADDRESSES:

- *To join by web conference, use Zoom link: https://tinyurl.com/4pt9m9vr;* password, if needed: USCCR–PR.
- *To join by phone only, dial 1–551–285–1373; Meeting ID:* 160 588 8392#.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting will be held in Spanish with English interpretation available. This meeting is available to the public through the link above. If joining via phone only, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Also please keep in mind if joining via phone only, no interpretation to English will be available unless you join via the link above or via the Zoom app on your device.

Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period

at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, November 16, 2022; 1 p.m. (AT); [12 p.m. ET]

1. Welcome & Roll Call
2. Committee Discussion and Review of Project Proposal
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: October 27, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–23707 Filed 10–31–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public web briefing and meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the South Dakota State Advisory Committee to the Commission will convene a briefing on Monday, November 14, 2022, from 3:00 p.m.–5:00 p.m. (CT). The purpose of the briefing is to hear from impacted individuals on the topic of voting rights and voter access in South Dakota. The South Dakota Advisory Committee will also convene regular business meetings on the following Mondays from 3:30 p.m.–4:30 p.m. (CT): December 12, 2022, January 9, 2023, and February 13, 2023. The purpose of the business meetings is to discuss testimony heard related to the Committee's topic on voting rights and voter access.

Briefing Date: Monday, November 14, 2022, at 3:00 p.m. (CT).

Briefing Zoom Link (video and audio): https://tinyurl.com/3hwph42r; password, if needed: USCCR–SD.

If Joining Briefing by Phone Only, Dial: 1–551–285–1373; Meeting ID: 161 095 5742#.

Business Meeting Dates: December 12, 2022; January 9, 2023; and February 13, 2023; Mondays at 3:30 p.m. (CT).

Business Meetings Zoom Link: https://tinyurl.com/j9s362sb.

If Joining Business Meetings by Phone Only, Dial: 1–551–285–1373; Meeting ID: 161 950 2444#.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota at *kfajota@usccr.gov.*

SUPPLEMENTARY INFORMATION: The meetings are available to the public through the web links above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with conference details found through registering at the web link above. To request other accommodations, please email *kfajota@usccr.gov* at least 10 business days prior to the meeting for which accommodations are requested.

Members of the public are entitled to make comments during the open period at the end of each meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following each meeting. Written comments may be emailed to Kayla Fajota at *kfajota@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during meetings will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Briefing Agenda: Monday, November 14, 2022; 3:00 p.m. (CT)

I. Welcome Remarks & Roll Call
II. Forum: Impacted Individuals—Voting Rights and Voter Access
III. Closing Remarks
IV. Other Business
V. Adjournment

Business Meeting Agenda: Mondays at 3:30 p.m. (CT)—12/12/22, 1/9/23, and 2/13/23

I. Welcome & Roll Call
II. Announcements and Updates
III. Approval of Minutes from the Last Meeting
IV. Debrief: Panel Briefings and Transcripts
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: October 27, 2022

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–23714 Filed 10–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Census Bureau Field Tests and Evaluations

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 26, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Commerce.

Title: Generic Clearance for Census Bureau Field Tests and Evaluations.

OMB Control Number: 0607–0971.

Form Number(s): Not yet determined.

Type of Request: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Number of Respondents: 100,000 per year.

Average Hours per Response: 25 minutes.

Burden Hours: 41,667 hours annually.

Needs and Uses: The U.S. Census Bureau is committed to conducting research towards census and survey operations that costs less while maintaining high quality results. The Census Bureau requests an extension, without change, of our previous OMB approval to conduct a series of studies to research and evaluate how to improve data collection activities for data collection programs at the Census Bureau. These studies will explore how the Census Bureau can improve efficiency, data quality, and response rates and reduce respondent burden in future census and survey operations, evaluations and experiments. This research program is for respondent communication, questionnaire and procedure development and evaluation purposes. We will use data tabulations to evaluate the results of questionnaire testing.

Affected Public: Individuals or households, businesses or other for profit, farms.

Frequency: Once.

Respondent's Obligation: Voluntary or Mandatory, depending on cited authority.

Legal Authority: Data collection for this project is authorized under the authorizing legislation for the questionnaire being tested. This may be Title 13, Sections 131, 141, 161, 181, 182, 193, and 301 for Census Bureau sponsored surveys, and Title 13 and 15 for surveys sponsored by other Federal agencies. We do not now know what other titles will be referenced, since we do not know what survey questionnaires will be pretested during the course of the clearance.

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 0607–0971.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–23772 Filed 10–31–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on November 16, 2022, 9:30 a.m., in the Herbert C. Hoover Building, Room 48019, 14th Street between Constitution & Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 9, 2022.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 18, 2022, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2022–23701 Filed 10–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology Technical Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology Technical Advisory Committee (ETTAC) will meet on November 18, 2022, at 9:00 a.m., Room 48019, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on the identification of emerging and foundational technologies with potential dual-use applications as early as possible in their developmental stages both within the United States and abroad.

Agenda

Closed Session: 9:00 a.m.–2:30 p.m.

1. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3).

Open Session: 2:40 p.m.–4:00 p.m.

2. Welcome and Introductions.
3. Introducing Special Competitive Studies Projects.
4. Global emerging technology challenges and opportunities. Questions and Answers.
5. Public comments.
6. Announcements.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 10, 2022.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 20, 2022, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2022–23695 Filed 10–31–22; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–883]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that the producers or exporters subject to this review made sales of subject merchandise at less than normal value during the period of review (POR), October 1, 2020, through September 30, 2021. Commerce also determines that one mandatory respondent, did not make sales of subject merchandise at less than normal value during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable November 1, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Williams or Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5166 or (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2016, Commerce published in the **Federal Register** an antidumping duty order on certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea).[1] On October 1, 2021, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order.*[2] On November 29, 2021, based on timely requests for an administrative review, Commerce initiated an administrative review of 16 companies.[3] On June 2, 2022, Commerce extended the time limit for issuing the preliminary results of this review by 120 days to no later than October 31, 2022.[4]

Scope of the Order

The products covered by this *Order* are hot-rolled steel from Korea. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Rates for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely on the basis of facts available.

In this review, we preliminarily calculated a weighted-average dumping margin for one of the mandatory respondents, Hyundai Steel Company (Hyundai Steel) that is not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, because the second mandatory respondent, POSCO's[6] margin is *de minimis,* Commerce preliminarily assigned to the companies not individually examined, listed in the chart below, a margin of 0.91 percent based on Hyundai Steel's calculated weighted-average dumping margin.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the period October 1, 2020, through September 30, 2021:

[1] *See Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders,* 81 FR 67962 (October 3, 2016) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 86 FR 54429 (October 1, 2021).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 67685, 67688 (November 29, 2021) (*Initiation Notice*).

[4] *See* Memorandum, ''Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,'' dated June 2, 2022.

[5] *See* Memorandum, ''Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] We initiated this review with respect to the following companies: POSCO; POSCO Daewoo Corporation (PDW); and POSCO International Corporation. *See Initiation Notice,* 86 FR at 67688. We have previously found that POSCO International Corporation is the successor-in-interest to PDW, and we are treating POSCO and POSCO International Corporation as a single entity, hereinafter collectively referenced as POSCO. *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 59985 (October 29, 2021), and accompanying Preliminary Decision Memorandum, at 6–13, unchanged in *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 87 FR 12660 (March 7, 2022).

Producer/exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	0.91
POSCO; POSCO International Corporation	0.00

Review-Specific Average Rate Applicable to the Following Companies:

Producer/exporter	Weighted-average dumping margin (percent)
Del Trading Inc	0.91
Dongkuk Industries Co., Ltd	0.91
Dongkuk Steel Mill Co., Ltd	0.91
Gs Global Corp	0.91
Gs Holdings Corp	0.91
KG Dongbu Steel Co., Ltd	0.91
Marubeni-Itochu Steel Korea, Ltd	0.91
Samsung C and T Corporation	0.91
Snp Ltd	0.91
Soon Ho Co., Ltd	0.91
Soon Hong Trading Co. Ltd	0.91
Sungjin Co., Ltd	0.91

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results.[7] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If either of the respondents' weighted-average dumping margins is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[11] If either of the respondents' weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we intend to instruct CBP not to assess duties on any entries in accordance with the *Final Modification for Reviews*.[12] The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[13]

For entries of subject merchandise during the POR produced by either of the respondents for which they did not know that the merchandise was destined to the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[14] For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established after the completion of the final results of review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of hot-rolled steel from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the respondents will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or the original investigation but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.05 percent, the all-others rate established in the less-than-fair-value investigation.[15] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'').

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[11] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[12] *Id.,* 77 FR at 8102–03; *see also* 19 CFR 351.106(c)(2).

[13] *See* section 751(a)(2)(C) of the Act.

[14] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Order,* 81 FR at 67965.

could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 26, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2022–23749 Filed 10–31–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

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

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable November 1, 2022.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC Case No.	ITC Case No.	Country	Product	Commerce contact
A–570–977	731–TA–1188	China	High Pressure Steel Cylinders (2nd Review)	Thomas Martin, (202) 482–3936.
A–475–828	731–TA–865	Italy	Stainless Steel Butt-weld Pipe Fittings (4th Review)	Jacky Arrowsmith, (202) 482–5255.
A–557–809	731–TA–866	Malaysia	Stainless Steel Butt-weld Pipe Fittings (4th Review)	Jacky Arrowsmith, (202) 482–5255.
A–565–801	731–TA–867	Philippines	Stainless Steel Butt-weld Pipe Fittings (4th Review)	Jacky Arrowsmith, (202) 482–5255.
C–570–978	701–TA–480	China	High Pressure Steel Cylinders Pipe (2nd Review)	Mary Kolberg, (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F),

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to* COVID–19, 85 FR 41363 (July 10, 2020).

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: October 19, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–23744 Filed 10–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–885]

Phosphor Copper From the Republic of Korea: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on phosphor copper from the Republic of Korea (Korea) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order.

DATES: Applicable November 1, 2022.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482- 8362.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 2017, Commerce published the AD order on phosphor copper from Korea.[1] On March 1, 2022, the ITC instituted,[2] and Commerce initiated, the first sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] As a result of its review, Commerce determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margin likely to prevail should the *Order* be revoked.[4]

On October 25, 2022, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The merchandise covered by the *Order* is master alloys[6] of copper containing between five percent and 17 percent phosphorus by nominal weight, regardless of form (including but not limited to shot, pellet, waffle, ingot, or nugget), and regardless of size or weight. Subject merchandise consists predominantly of copper (by weight), and may contain other elements, including but not limited to iron (Fe), lead (Pb), or tin (Sn), in small amounts (up to one percent by nominal weight). Phosphor copper is frequently produced to JIS H2501 and ASTM B–644, Alloy 3A standards or higher; however, merchandise covered by the *Order* includes all phosphor copper, regardless of whether the merchandise meets, fails to meet, or exceeds these standards.

Merchandise covered by the *Order* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7405.00.1000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of the *Order* is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or a recurrence of dumping, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

[1] *See Phosphor Copper from the Republic of Korea: Antidumping Duty Order,* 82 FR 18893 (April 24, 2017) (*Order*).

[2] *See Phosphor Copper from Korea; Institution of a Five-Year Review,* 87 FR 11467 (March 1, 2022).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 11416 (March 1, 2022) (*Sunset Initiation*). In the *Sunset Initiation,* Commerce inadvertently listed the wrong case number for *Order.* Commerce noted the correct case number, A–580–885, in a subsequent sunset initiation notice. *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 19069 (April 1, 2022).

[4] *See Phosphor Copper from the Republic of Korea: Final Results of the First Expedited Sunset Review of the Antidumping Duty Order,* 87 FR 40502 (July 7, 2022) (*Expedited Final Results*), and accompanying Issues and Decision Memorandum.

[5] *See Phosphor Copper from Korea,* 87 FR 64522 (October 25, 2022).

[6] A ''master alloy'' is a base metal, such as copper, to which a relatively high percentage of one or two other elements is added.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: October 26, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–23742 Filed 10–31–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for December 2022

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in December 2022 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Biodiesel from Argentina, A–357–820 (1st Review)	Jacky Arrowsmith, (202) 482–5255.
Biodiesel from Indonesia, A–560–830 (1st Review)	Jacky Arrowsmith, (202) 482–5255.
Carbon and Certain Alloy Steel Wire Rod from Belarus, A–822–806 (1st Review)	Mary Kolberg, (202) 482–1785.
Carbon and Certain Alloy Steel Wire Rod from Italy, A–475–836 (1st Review)	Mary Kolberg, (202) 482–1785.
Carbon and Certain Alloy Steel Wire Rod from Korea, A–580–891 (1st Review)	Mary Kolberg, (202) 482–1785.
Carbon and Certain Alloy Steel Wire Rod from Russia, A–821–824 (1st Review)	Mary Kolberg, (202) 482–1785.
Carbon and Certain Alloy Steel Wire Rod from South Africa, A–791–823 (1st Review)	Mary Kolberg, (202) 482–1785.
Carbon and Certain Alloy Steel Wire Rod from Spain, A–469–816 (1st Review)	Mary Kolberg, (202) 482–1785.
Carbon and Certain Alloy Steel Wire Rod from Turkey, A–489–831 (1st Review)	Mary Kolberg, (202) 482–1785.
Carbon and Certain Alloy Steel Wire Rod from Ukraine, A–823–816 (1st Review)	Mary Kolberg, (202) 482–1785.
Carbon and Certain Alloy Steel Wire Rod from United Arab Emirates, A–520–808 (1st Review)	Mary Kolberg, (202) 482–1785.
Carbon and Certain Alloy Steel Wire Rod from United Kingdom, A–412–826 (1st Review)	Mary Kolberg, (202) 482–1785.
Certain Softwood Lumber from Canada, A–122–857 (1st Review)	Thomas Martin, (202) 482–3936.
Hardwood Plywood from China, A–570–051 (1st Review)	Thomas Martin, (202) 482–3936.
Multilayered Wood Flooring from China, A–570–970 (2nd Review)	Mary Kolberg, (202) 482–1785.
Tool Chests and Cabinets from China, A–570–056 (1st Review)	Mary Kolberg, (202) 482–1785.
Tool Chests and Cabinets from Vietnam, A–552–821 (1st Review)	Mary Kolberg, (202) 482–1785.
Countervailing Duty Proceedings	
Biodiesel from Argentina, C–357–821 (1st Review)	Jacky Arrowsmith, (202) 482–5255.
Biodiesel from Indonesia, C–560–831 (1st Review)	Jacky Arrowsmith, (202) 482–5255.
Carbon and Certain Alloy Steel Wire Rod from Italy, C–475–837 (1st Review)	Jacky Arrowsmith, (202) 482–5255.
Carbon and Certain Alloy Steel Wire Rod from Turkey, A–489–832 (1st Review)	Thomas Martin, (202) 482–3936.
Certain Softwood Lumber from Canada, C–122–858 (1st Review)	Mary Kolberg, (202) 482–1785.
Hardwood Plywood from China, C–570–052 (1st Review)	Thomas Martin, (202) 482–3936.
Multilayered Wood Flooring from China, C–570–971 (2nd Review)	Mary Kolberg, (202) 482–1785.
Tool Chests and Cabinets from China, C–570–057 (1st Review)	Mary Kolberg, (202) 482–1785.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in December 2022.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[1]

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

Dated: October 19, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–23739 Filed 10–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Welded Carbon Steel Standard Pipes and Tubes From India: Notice of Court Decision Not in Harmony With the Final Results of Antidumping Administrative Review; Notice of Amended Final Results

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

SUMMARY: On October 24, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Garg Tube Export LLP and Garg Tube Limited* v. *United States,* Court No. 20–00026, sustaining the U.S. Department of Commerce's (Commerce) second results of redetermination pertaining to the administrative review of the antidumping duty (AD) order on welded carbon steel standard pipes and tubes (pipe and tube) from India covering the period May 1, 2017, through April 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the weighted-average dumping margin assigned to Garg Tube Export LLP and Garg Tube Limited (collectively, Garg Tube).

DATES: Applicable November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 2020, Commerce published its *Final Results* of the 2017–2018 AD administrative review of welded carbon steel standard pipes and tubes from India.[1] In the *Final Results,* Commerce found that a particular market situation (PMS) existed in India concerning the cost of hot-rolled coil (an input into pipe and tube) and adjusted Garg Tube's reported cost of production (COP) to account for this PMS.[2] Separately, Garg Tube purchased subject merchandise from several unaffiliated suppliers and Commerce requested COP information from two of Garg Tube's unaffiliated suppliers of pipe and tube, in response to which each supplier refused to provide the requested COP information. In the absence of COP information for the pipe and tube produced by these suppliers, Commerce filled the gap in the record (*i.e.,* the missing COP data of these suppliers) using Garg Tube's reported COP for the supplier-produced pipe and tube (which includes Garg Tube's acquisition costs, further processing, general and administrative expenses, and financial expenses), adjusted based on Garg Tube's sale of the supplier-produced pipe and tube which realized the largest loss.[3]

Garg Tube appealed Commerce's *Final Results.* On July 9, 2021, the CIT remanded the *Final Results* to Commerce for further explanation or reconsideration, holding that: (1) Commerce is not authorized under the statute to make a particular market situation (PMS) adjustment to a respondent's COP for purposes of determining which of its home market sales were made below cost; and (2) it was not reasonably discernable from Commerce's analysis in the *Final Results* how it was applying partial adverse facts available under section 776 of the Tariff Act of 1930, as amended (the Act), concerning missing COP data for a certain unaffiliated and uncooperative supplier.[4]

In its *First Redetermination,* issued in October 2021, Commerce recalculated Garg Tube's weighted-average dumping margin by: (1) reversing a PMS adjustment to Garg Tube's COP for purposes of the sales-below-cost test; and (2) relying on neutral facts available to fill the COP gap caused by a certain supplier's non-cooperation.[5] In its *First Redetermination,* Commerce continued to find that a PMS existed in India during the POR concerning the price of hot-rolled coil and continued to apply a PMS adjustment when calculating the COP where normal value (NV) was based on constructed value (CV).[6]

The CIT remanded for a second time, ordering Commerce to further explain or reconsider how its finding that a PMS existed during the POR was supported by substantial evidence, and its resultant use of a PMS adjustment to COP when determining NV on the basis of CV.[7] In its *Second Redetermination,* Commerce declined to find that a PMS existed in India during the POR with respect to the price of hot-rolled coil and, as a result, recalculated Garg Tube's weighted-average dumping margin by removing the PMS adjustment when calculating normal value based on constructed value.[8] Because of its negative PMS finding, Commerce deemed moot the remaining remanded issues concerning its calculation of the PMS adjustment.[9] The CIT sustained Commerce's *Second Redetermination.*[10]

Timken Notice

In its decision in *Timken,*[11] as clarified by *Diamond Sawblades,*[12] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's October 24, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Garg Tube as follows:

Producer or exporter	Weighted-average dumping margin (percent)
Garg Tube Export LLP and Garg Tube Limited	0.00

[1] *See Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 2715 (January 16, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See Final Results* IDM at Comment 1.

[3] *Id.* at Comment 2.

[4] *See Garg Tube Export LLP* v. *United States,* 527 F. Supp. 3d 1362 (CIT 2021) (*Garg Tube I*).

[5] *See Final Results of Redetermination Pursuant to Remand, Garg Tube Export LLP and Garg Tube Limited* v. *United States,* Court No. 20–00026, Slip Op. 21–83 (CIT October 7, 2021) (*First Redetermination*), available at *https://access.trade.gov/Resources/remands/21-83.pdf.*

[6] *Id.*

[7] *See Garg Tube Export LLP* v. *United States,* 569 F. Supp. 3d 1202 (CIT 2022) (*Garg Tube II*).

[8] *See Final Results of Redetermination Pursuant to Remand, Garg Tube Export LLP and Garg Tube Limited* v. *United States,* Court No. 20–00026, Slip Op. 22–18 (CIT March 11, 2022) (*Second Redetermination*), available at *https://access.trade.gov/Resources/remands/22-18.pdf.*

[9] *Id.*

[10] *See Garg Tube Export LLP and Garg Tube Limited* v. *United States,* Court No. 20–00026, Slip Op. 22–120 (CIT October 24, 2022).

[11] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[12] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Cash Deposit Requirements

Because Garg Tube has a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were produced and/or exported by Garg Tube and were entered, or withdrawn from warehouse, for consumption during the period May 1, 2017, through April 30, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Garg Tube, in accordance with 19 CFR 351.212(b). Because Garg Tube's *ad valorem* assessment rate is zero,[13] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Unchanged from the *Final Results,* for entries of subject merchandise during the period of review produced by Garg Tube Limited or Garg Tube Export LLP for which neither company knew its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[14]

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), and 777(i)(1) of the Act.

Dated: October 26, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–23743 Filed 10–31–22; 8:45 am]

BILLING CODE 3510–DS–P

[13] *See* 19 CFR 351.106(c)(2).

[14] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

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

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Respondent Selection

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

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

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

Deadline for Withdrawal of Request for Administrative Review

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

extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

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

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

Opportunity to Request a Review: Not later than the last day of November 2022,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Period
Antidumping Duty Proceedings	
REPUBLIC OF ARMENIA: Certain Aluminum Foil, A–831–804	5/4/21–10/31/22
AUSTRIA: Strontium Chromate, A–433–813	11/1/21–10/31/22
BRAZIL:	
Certain Aluminum Foil, A–351–856	5/4/21–10/31/22
Circular Welded Non-Alloy Steel Pipe, A–351–809	11/1/21–10/31/22
FRANCE: Strontium Chromate, A–427–830	11/1/21–10/31/22
GERMANY: Thermal Paper, A–428–850	5/12/21–10/31/22
INDIA: Welded Stainless Pressure Pipe, A–533–867	11/1/21–10/31/22
INDONESIA:	
Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses, A–560–823	11/1/21–10/31/22
Monosodium Glutamate, A–560–826	11/1/21–10/31/22
ITALY: Forged Steel Fittings, A–475–839	11/1/21–10/31/22
JAPAN: Thermal Paper, A–588–880	5/12/21–10/31/22
MEXICO:	
Circular Welded Non-Alloy Steel Pipe, A–201–805	11/1/21–10/31/22
Seamless Refined Copper Pipe, And Tube, A–201–838	11/1/21–10/31/22
Steel Concrete Reinforcing Bar, A–201–844	11/1/21–10/31/22
OMAN: Aluminum Foil, A–523–815	5/4/21–10/31/22
REPUBLIC OF KOREA:	
Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/21–10/31/22
Thermal Paper, A–580–911	5/12/21–10/31/22
RUSSIA: Certain, Aluminum Foil, A–821–828	5/4/21–10/31/22
SPAIN: Thermal Paper, A–469–824	5/12/21–10/31/22
SOCIALIST REPUBLIC OF VIETNAM: Certain Walk-Behind Lawn Mowers, And Parts[3] Thereof, A–552–830	7/9/21–6/30/22
TAIWAN: Circular Welded Non-Alloy Steel Pipe, A–583–814	11/1/21–10/31/22
TAIWAN: Certain Hot-Rolled Carbon Steel Flat Products, A–583–835	11/1/21–10/31/22
THAILAND: Certain Hot-Rolled Carbon Steel Flat Products, A–549–817	11/1/21–10/31/22
THE PEOPLE'S REPUBLIC OF CHINA:	
Certain Hot Rolled Carbon Steel Flat Products, A–570–865	11/1/21–10/31/22
Certain Coated Paper Suitable For High-Quality Print Graphic Using Sheet-Fed Presses, A–570–958	11/1/21–10/31/22
Certain Cut-To-Length Carbon Steel Plate, A–570–849	11/1/21–10/31/22
Diamond Sawblades, And Parts Thereof, A–570–900	11/1/21–10/31/22
Fresh Garlic, A–570–831	11/1/21–10/31/22
Forged Steel Fittings, A–570–067	11/1/21–10/31/22
Lightweight Thermal Paper, A–570–920	11/1/21–10/31/22
Monosodium Glutamate, A–570–992	11/1/21–10/31/22
Paper Clips, A–570–826	11/1/21–10/31/22
Polyethylene Terephthalate (Pet) Film, A–570–924	11/1/21–10/31/22
Pure Magnesium in Granular Form, A–570–864	11/1/21–10/31/22
Refined Brown, Aluminum Oxide, A–570–882	11/1/21–10/31/22
Seamless Carbon, And, Alloy Steel Standard, Line, And Pressure Pipe, A–570–956	11/1/21–10/31/22
Seamless Refined Copper Pipe, And Tube, A–570–964	11/1/21–10/31/22
Sodium Gluconate, Gluconic, Acid, And Derivative Products, A–570–071	11/1/21–10/31/22
TURKEY: Aluminum Foil, A–489–844	9/23/21–10/31/22
UKRAINE: Certain Hot-Rolled Carbon Steel Flat Products, A–823–811	11/1/21–10/31/22
UNITED, ARAB EMIRATES: Polyethylene Terephthalate (Pet) Film, A–520–803	11/1/21–10/31/22
Countervailing Duty Proceedings	
INDIA: Welded Stainless Pressure Pipe, C–533–868	1/1/21–12/31/21
INDONESIA: Certain Coated Paper Suitable For High-Quality Print Graphics Using Sheet-Fed Presses, C–560–824	1/1/21–12/31/21

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

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

	Period
OMAN: Aluminum Foil, C–523–816	3/5/21–12/31/21
THE PEOPLE'S REPUBLIC OF CHINA:	
Chlorinated Isocyanurates, C–570–991	1/1/21–12/31/21
Certain Coated Paper Suitable For High-Quality Print Graphic Using Sheet-Fed Presses, C–570–959	1/1/21–12/31/21
Forged Steel Fittings, C–570–068	1/1/21–12/31/21
Lightweight Thermal Paper, C–570–921	1/1/21–12/31/21
Seamless Carbon, And, Alloy Steel Standard, Line, And Pressure Pipe, C–570–957	1/1/21–12/31/21
Sodium Gluconate, Gluconic, Acid, And Derivative Products, C–570–072	1/1/21–12/31/21
TURKEY:	
Aluminum Foil, C–489–845	3/5/21–12/31/21
Steel Concrete Reinforcing Bar, C–489–819	1/1/21–12/31/21
Suspension, Agreements	
UKRAINE: Certain Cut-To-Length Carbon Steel Plate, A–823–808	11/1/21–10/31/22

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

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

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[4]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[5] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[6] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov.*[7] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of November 2022. If Commerce does not receive, by the last day of November 2022, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated

[3] In the opportunity notice that published on July 1, 2022 (87 FR 39461) Commerce inadvertently listed the wrong period of review for this case. The correct period of review is listed in this notice.

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

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

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

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

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

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

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[9] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[10] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[11]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.''[12]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[13] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) New interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) Interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[14] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

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

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

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.''[15] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

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

Dated: October 26, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–23740 Filed 10–31–22; 8:45 am]

BILLING CODE 3510–DS–P

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

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

[11] *Id.*

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

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

[14] *See Final Rule,* 86 FR at 52335.

[15] *Id.*

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Application Package for AmeriCorps All-Partner Training and Technical Assistance Survey

AGENCY: 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 a new information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 3, 2023.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method).

(2) By mail sent to: AmeriCorps, Attention Nancy Ferguson, 250 E Street SW, Washington, DC, 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

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: Nancy Ferguson, 202–569–1395, or by email at *nferguson@cns.gov.*

SUPPLEMENTARY INFORMATION: *Title of Collection:* AmeriCorps All-Partner Training and Technical Assistance Survey.

OMB Control Number: 3045–NEW.

Type of Review: New.

Respondents/Affected Public: AmeriCorps grantees and sponsors who have VISTA, AmeriCorps State and National, and AmeriCorps Seniors awards.

Total Estimated Number of Annual Responses: 95,000 annually; an additional 6,000 for a one-time survey.

Total Estimated Number of Annual Burden Hours: 11,750.

Abstract: The purpose of this all-partner training and technical assistance (TTA) survey is to gather information about the experiences our grantees and sponsors have with our current TTA so that we can improve how we develop and deliver TTA to our partners in the future. The changes brought on with the agency's restructuring, rebranding, and the website overhaul have affected the TTA we provide to our grantees and sponsors. As the target audience for the training we develop, grantees and sponsors can offer valuable feedback so AmeriCorps can improve both the trainings and our internal training development processes.

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 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*.

Margery Ansara,

Acting Chief of Program Operations.

[FR Doc. 2022–23676 Filed 10–31–22; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees—United States Military Academy Board of Visitors, United States Naval Academy Board of Visitors, and Board of Visitors of the United States Air Force Academy

AGENCY: Department of Defense (DoD).

ACTION: Charter renewal of Federal Advisory Committees.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the charters for the United States Military Academy Board of Visitors, the United States Naval Academy Board of Visitors, and the Board of Visitors of the United States Air Force Academy; hereafter referred to as ''the Military Service Academy Boards of Visitors.''

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer at *james.d.freeman4.civ@mail.mil,* 703–697–1142.

SUPPLEMENTARY INFORMATION: The charters for the Military Service Academy Boards of Visitors are being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., appendix) and 41 CFR 102–3.50(d). The charters and contact information for the Military Service Academy Boards of Visitors Designated Federal Officers (DFO) can be found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The mission/scope for the Military Service Academy Boards of Visitors along with its membership requirements are described in 10 U.S.C. 7455, 8468, and 9455. Members of the Military Service Academy Boards of Visitors who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services are appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. Members of the Military Service Academy Boards of Visitors who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services are designated pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

The public or interested organizations may submit written statements about the mission and functions of the Military Service Academy Boards of Visitors. Written statements shall be submitted to the respective DFO, and

may be submitted at any time or in response to the stated agenda of an announced meeting of a Military Service Academy Boards of Visitors. The respective DFO shall ensure that all written statements are provided to their respective membership for their consideration.

Dated: October 26, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–23769 Filed 10–31–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0135]

Agency Information Collection Activities; Comment Request; DCIA Aging and Compliance Data Requirements for Guaranty Agencies

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before January 3, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0135. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: DCIA Aging and Compliance Data Requirements for Guaranty Agencies.

OMB Control Number: 1845–0160.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 450.

Total Estimated Number of Annual Burden Hours: 1,188.

Abstract: The Department of Education (the Department) is requesting an extension of the currently approved Guaranty Agencies (GA) reporting requirements for Office of Management and Budget (OMB) approval. The reporting requirements include minor edits together with updated GA and FSA contacts.

The Department is required to report to the U.S. Department of the Treasury (Treasury) the status and condition of its non-tax debt portfolio in accordance with the requirements of the Debt Collection Improvement Act of 1996 (DCIA) and the Digital Accountability and Transparency Act of 2014 (DATA Act). Receivable information is reported to Treasury via the Treasury Report on Receivables and Debt Collection Activities (previously called the TROR).

The Department is unable to prepare an accurate and compliant Treasury Report based on the data it currently receives from its GAs. The continuing guidance requires the GAs to age debt according to DCIA; report the eligibility of DCIA-aged debt for referral to the Treasury Offset Program (TOP); and report compliance with Form 1099–C reporting. The updated document is titled DCIA Aging and Compliance Data Requirements for Guaranty Agencies (the Requirements). The Department plans to issue the Requirements to the GAs in Fiscal Year 2023. The data requirements for GA's are not changing. The updated document includes minor edits together with updated GA and FSA contacts.

Dated: October 27, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–23753 Filed 10–31–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not

be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202)502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP22–2–000	10–20–2022	FERC Staff.[1]
2. CP22–2–000	10–20–2022	FERC Staff.[2]
3. CP16–9–011, CP16–9–012, RP21–1001–000, RP21–1001–001, CP18–46–004, CP15–490–002.	10–24–2022	FERC Staff.[3]
Exempt:		
1. CP22–2–000	10–24–2022	State of Idaho.[4]
2. P–2105–000	10–26–2022	U.S. Congressman Doug LaMalfa.

[1] Emailed comments dated 10/20/22 from Ted Glick.
[2] Emailed comments dated 10/20/22 from Kay Reibold.
[3] Emailed comments dated 1/19/22 from Amanda Nash.
[4] Senator James E. Risch, Governor Brad Little, Senator Mike Crapo, Representative Mike Simpson, and Representative Russ Fulcher.

Dated: October 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23766 Filed 10–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–3–000]

Tres Palacios Gas Storage, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on October 12, 2022, Tres Palacios Gas Storage LLC (Tres Palacios), 811 Main Street, Suite 3400, Houston, Texas 77002, filed in Docket No. CP23–3–000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for authorization to expand its natural gas storage capacity at the existing Tres Palacios natural gas storage facility in Matagorda County, Texas.

Specifically, Tres Palacios proposes to: (1) convert and incorporate an existing third-party brine production well (Trull 11) into an additional natural gas storage cavern (Cavern 4) that will add 6.5 billion cubic feet (Bcf) of working gas capacity and 3.5 Bcf of base gas capacity; (2) develop the Trull 11 well pad site; (3) construct a 0.6 mile, 16-inch-diameter pipeline connecting Cavern 4 to the storage facility; (4) install a new 5,500 horsepower (hp) electric-motor driven reciprocating compressor unit; (5) add a new dehydration unit; (6) abandon in-place a 15,300 hp electric-motor driven centrifugal compressor unit; and (7) construct various appurtenances. Further, Tres Palacios requests reaffirmation of its market-based rate authority and related authorizations and waivers, all as more fully set forth in the request 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 the application should be directed to Kimberly Gee, Assistant General Counsel, Crestwood Midstream Partners LP, 811 Main Street, Suite 3400, Houston, Texas 77002, by telephone at (832) 519–2200, or by email at: *Kim.Gee@Crestwoodlp.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

[1] 18 CFR (Code of Federal Regulations) 157.9.

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 November 16, 2022.

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 November 16, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP23–3–000 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 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 can file a paper copy of your comments by mailing them to the following address below. Your written comments must reference the Project docket number (CP23–3–000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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,[2] 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 [3] and the regulations under the NGA [4] by the intervention deadline for the project, which is November 16, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as 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 CP23–3–000 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 can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP23–3–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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.*

Protests and motions to intervene must be served to the applicant either by mail or email (with a link to the document) at: Kimberly Gee, Assistant General Counsel, Crestwood Midstream Partners LP, 811 Main Street, Suite 3400, Houston, Texas 77002, or *Kim.Gee@Crestwoodlp.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.

All timely, unopposed [5] motions to intervene are automatically granted by operation of Rule 214(c)(1).[6] 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.[7] 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)

[2] 18 CFR 385.102(d).

[3] 18 CFR 385.214.

[4] 18 CFR 157.10.

[5] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[6] 18 CFR 385.214(c)(1).

[7] 18 CFR 385.214(b)(3) and (d).

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 *http://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 November 16, 2022.

Dated: October 26, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–23735 Filed 10–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–31–000]

Commission Information Collection Activities (FERC–574) Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–574 (Gas Pipeline Certificates: Hinshaw Exemption).

DATES: Comments on the collection of information are due Januaru 2, 2023.

ADDRESSES: You may submit your comments (identified by Docket No. IC22–31–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission,12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–574 (Gas Pipeline Certificates: Hinshaw Exemption).

OMB Control No.: 1902–0116.

Type of Request: Three-year extension of the FERC–574 with no changes to the current reporting requirements.

Abstract: The Commission uses the information collected under the requirements of FERC–574 to implement the statutory provisions of Sections 1(c), 4, and 7 of the Natural Gas Act (NGA). Natural gas pipeline companies file applications with the Commission furnishing information in order to facilitate a determination of an applicant's qualification for an exemption under the provisions of the section 1(c). If the Commission grants an exemption, the natural gas pipeline company is not required to file certificate applications, rate schedules, or any other applications or forms prescribed by the Commission.

The exemption applies to companies engaged in the transportation, sale, or resale of natural gas in interstate commerce if: (a) they receive gas at or within the boundaries of the state from another person at or within the boundaries of that state; (b) such gas is ultimately consumed in such state; (c) the rates, service and facilities of such company are subject to regulation by a State Commission; and (d) that such State Commission is exercising that jurisdiction. 18 CFR part 152 specifies the data required to be filed by pipeline companies for an exemption.

Type of Respondents: Pipeline companies.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden and cost [2] for the information collection as:

FERC–574—GAS PIPELINE CERTIFICATES: HINSHAW EXEMPTION

Number of respondents (1)	Number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & average cost ($) per response (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)	Cost ($) per respondent (5) ÷ (1) = (6)
2	1	2	60 hours; $5,460	120 hours; $10,920	$5,460

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of

[1] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[2] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–574 are approximately the same as the Commission's average cost. The FERC 2022 average salary plus benefits for one FERC full-time equivalent (FTE) is $188,922/year (or $91.00/hour).

the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 25, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–23662 Filed 10–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–503–000, Docket No. CP22–502–000]

Columbia Gas Transmission, LLC; Transcontinental Gas Pipe Line Company, LLC; Notice of Intent To Prepare an Environmental Impact Statement for The Proposed Virginia Reliability Project and Commonwealth Energy Connector 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 Virginia Reliability Project and Commonwealth Energy Connector Project involving construction and operation of facilities by Columbia Gas Transmission, LLC (Columbia) and Transcontinental Gas Pipe Line Company, LLC (Transco), respectively. Columbia's project would involve construction and operation of certain natural gas pipeline facilities in Greensville, Prince George, Sussex, Surry, Southampton, and Isle of Wight Counties, Virginia and in the cities of Suffolk and Chesapeake, Virginia. Transco's project would also involve construction and operation of natural gas pipeline facilities in Mecklenburg, Brunswick, and Greensville Counties, Virginia. The Commission will use this EIS in its decision-making process to determine whether the projects are 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 February 22, 2022, in Docket Nos. PF22–3–000 and PF22–4–000, the Commission opened a scoping period during Columbia's and Transco's planning processes for the projects and prior to filing formal applications with the Commission, a process referred to as ''pre-filing.'' By supplemental notice issued on March 7, 2022, the Commission extended the scoping period due to inadvertent mailing issues. Columbia and Transco have now filed respective applications 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.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document, including 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 November 25, 2022. Comments may be submitted in written form. 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 April 6, 2022; however, Commission staff continued to accept comments during the entire pre-filing process. Staff also held two virtual scoping sessions to take oral scoping comments on March 15 and 30, 2022. All substantive written and oral comments provided during pre-filing will be addressed in the EIS. Therefore, if you submitted comments on these projects to the Commission during the pre-filing process in Docket Nos. PF22–3–000 and PF22–4–000 you do not need to file those comments again. Likewise, if you submitted comments in response to the Notice of Applications issued by the Commission on September 8, 2022, 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.

Columbia and Transco 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 (CP22–503–000 for Virginia Reliability Project or CP22–502–000 for Commonwealth Energy Connector Project) 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. If using this service, you will need to subscribe for each docket separately to receive notifications for both projects.

Summary of the Proposed Projects, the Projects Purpose and Need, and Expected Impacts

Virginia Reliability Project

Columbia proposes to replace and expand existing facilities associated with its VM–107 and VM–108 pipelines in southeast Virginia. The Virginia Reliability Project would increase the capability of Columbia's existing pipeline facilities to provide incremental firm transportation service of 100,000 dekatherms per day (Dth/d), while increasing the reliability of Columbia's system by replacing 1950s vintage pipelines. According to Columbia, its project would meet the increasing market demand of residential, commercial, and industrial consumers in southeast Virginia.

The Virginia Reliability Project would consist of the following:

- replacement of 49.2 miles of existing, 1950s vintage 12-inch-diameter VM–107 and VM–108 pipelines with 24-inch-diameter pipeline mostly within Columbia's existing right-of-way, in Sussex, Surry, Southampton, and Isle of Wight Counties, as well as the cities of Suffolk and Chesapeake;
- installation of one new 5,500-horsepower (HP) dual-drive compressor unit at the existing Emporia Compressor Station in Greensville County;
- a facility upgrade involving additional gas cooling and an increase of 2,700 HP at the existing Petersburg Compressor Station in Prince George County;
- modification of the Emporia Point of Receipt in Greensville County; Regulator Station 7423 in Prince George County; and the MS–831010 Point of Delivery in the City of Chesapeake; and
- eight mainline valve replacements, five new pig launcher/receiver installations,[1] and other minor appurtenant facilities.

The general location of the Virginia Reliability Project facilities is shown in appendix 1.[2]

Based on the environmental information provided by Columbia, construction of the proposed facilities would disturb about 802.6 acres of land. Following construction, Columbia would maintain about 307.2 acres for operation of the project facilities; the remaining acreage would be restored and revert to former uses. About 92 percent of the replacement pipeline routes would parallel Columbia's existing right-of-way and/or other existing pipeline, utility, railroad, or road rights-of-way.

Based on an initial review of Columbia's proposal, public comments received during the pre-filing process, and public comments received on the Notice of Application, Commission staff have identified several expected impacts that deserve attention in the EIS. The Virginia Reliability Project would cross 131 waterbodies, 130.2 acres of wetland, several conservation sites, and about 0.5 mile of the Great Dismal Swamp National Wildlife Refuge. Three federally listed species (northern long-eared bat, red-cockaded woodpecker, and eastern black rail) may be affected by the project. Five state-listed species have potential to occur in the project area, and the potential for impacts on these species is being assessed. Environmental justice populations are present in the project area and may be affected by the project. The project would cross about 1.5 miles of the Sunray Agricultural Historic District, along Columbia's existing permanent right-of-way.

Commonwealth Energy Connector Project

Transco proposes to expand its existing natural gas transmission system in southeast Virginia to provide 105,000 Dth/d of incremental firm transportation capacity from its Compressor Station 165 in Pittsylvania County to its existing Emporia Metering and Regulation Station in Greensville County on its existing South Virginia Lateral B-Line Pipeline. According to Transco, the project would provide firm, year-round access to incremental natural gas supply, increase the overall reliability and diversification of energy supply for its customer, and add natural gas infrastructure to meet growing demand in the Mid-Atlantic area.

The Commonwealth Energy Connector Project would consist of the following:

- construction of a 6.35-mile-long, 24-inch-diameter pipeline loop[3] (referred to as the Commonwealth Loop), including valve and pig launcher/receiver facilities, in Brunswick and Greensville Counties;
- addition of a 33,000–HP electric motor-drive compressor unit at the existing Compressor Station 168 in Mecklenburg County; and
- modifications to the existing Emporia Metering and Regulation Station in Greensville County.

The general location of the Commonwealth Energy Connector Project facilities is also shown in appendix 1.

Based on the environmental information provided by Transco, construction of the proposed facilities would disturb about 161.3 acres of land. Following construction, Transco would maintain about 1.8 acres (in addition to the existing permanent right-of-way) for operation of the project facilities. The remaining acreage would be restored and revert to former uses. All of the proposed pipeline route parallels Transco's existing pipeline right-of-way.

Based on an initial review of Transco's proposal, public comments received during the pre-filing process, and public comments received on the Notice of Application, Commission staff have identified several expected impacts that deserve attention in the EIS. Commission staff have identified several expected impacts that deserve attention in the EIS. The project would cross 14 waterbodies and 2.5 acres of wetlands. One federally listed species (northern long-eared bat) potentially occurs within the project area. Fifteen state-protected species potentially occur

[1] 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.

[3] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

in the project area; however, these species are not expected to be affected by the project. Environmental justice populations are present in the project area and may be affected by the project.

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 projects under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics and environmental justice;
- land use;
- air quality and noise;
- climate change; 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 U.S. Army Corps of Engineers (USACE) and U.S. Fish and Wildlife Service (FWS) are cooperating agencies in the preparation of the EIS.[4] 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. The draft and final EIS will be available in electronic format in the public record through eLibrary [5] 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 actions.[6] Alternatives currently under consideration include:

- the no-action alternative, meaning the projects are not implemented;
- Virginia Reliability Project pipeline segment routes that avoid wetlands, waterbodies, the Sunray Agricultural Historic District, or the Great Dismal Swamp National Wildlife Refuge; and
- options to reduce the length of the Commonwealth Energy Connector Project pipeline.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed actions or segments of the proposed actions. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the project(s) 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 projects in the notice issued on February 22, 2022, with the applicable State Historic Preservation Office, and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the projects' potential effects on historic properties.[7] This notice is a continuation of section 106 consultation for the Project. The EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On September 8, 2022, the Commission issued its Notice of Applications for the projects. 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 requests for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the projects. This notice identifies the Commission staff's planned schedule for completion of the final EIS for the projects, which is based on an issuance of the draft EIS in April 2023.

Issuance of Notice of Availability of the Final EIS—September 15, 2023

90-day Federal Authorization Decision Deadline [8]—December 16, 2023

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 EIS progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the projects 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 these projects. 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
Virginia Reliability Project	
FERC	Certificate of Public Convenience and Necessity.
USACE Norfolk District	Clean Water Act Section 404 Permit. Rivers and Harbors Act Section 10 Permit. Section 408 Permit.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40 Code of Federal Regulations (CFR), Section 1501.8. (2021)

[5] For instructions on connecting to eLibrary, refer to the last page of this notice.

[6] 40 CFR 1508.1(z)

[7] 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.

[8] 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.

Agency	Permit
Virginia Department of Environmental Quality—Water Division	Issuance of a Water Quality Certification under Section 401 of the Clean Water Act =.
FWS Virginia Ecological Field Services Office	Consultation under Section 7 of the Endangered Species Act.
FWS Great Dismal Swamp National Wildlife Refuge	Authorization to Construction and Operate the Project.
Virginia Department of Historic Resources	Consultation under Section 106 of the National Historic Preservation Act.
Commonwealth Energy Connector Project	
FERC	Certificate of Public Convenience and Necessity.
USACE Norfolk District	Clean Water Act Section 404 Permit.
Virginia Department of Environmental Quality—Water Division	Issuance of a Water Quality Certification under Section 401 of the Clean Water Act =.
FWS Virginia Ecological Field Services Office	Consultation under Section 7 of the Endangered Species Act.
Virginia Department of Historic Resources	Consultation under 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 projects which includes 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 projects 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 projects. State and local government representatives should notify their constituents of these proposed projects 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 CP22–502–000 for Commonwealth Energy Connector Project or CP22–503–000 for Virginia Reliability Project 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 projects 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.,* CP22–502 or CP22–503). 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: October 25, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–23664 Filed 10–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–12–000.

Applicants: Uniper Global Commodities North America LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Uniper Global Commodities North America, LLC.

Filed Date: 10/25/22.

Accession Number: 20221025–5198.

Comment Date: 5 p.m. ET 11/15/22.

Docket Numbers: EC23–13–000.

Applicants: AEP Oklahoma Transmission Company, Inc., Caddo Wind, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Caddo Wind, LLC, et al.

Filed Date: 10/26/22.

Accession Number: 20221026–5189.

Comment Date: 5 p.m. ET 11/16/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–14–000.

Applicants: Daggett Solar Power 1 LLC.

Description: Daggett Solar Power 1 LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/26/22.

Accession Number: 20221026–5081.

Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: EG23–15–000.

Applicants: Daggett Solar Power 2 LLC.

Description: Daggett Solar Power 2 LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/26/22.

Accession Number: 20221026–5105.

Comment Date: 5 p.m. ET 11/16/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2483–001.

Applicants: Mountain View Power Partners, LLC.

Description: Notice of Change in Status of Mountain View Power Partners, LLC.
Filed Date: 10/25/22.
Accession Number: 20221025–5200.
Comment Date: 5 p.m. ET 11/15/22.

Docket Numbers: ER21–2156–002.
Applicants: Antelope Expansion 1B, LLC.
Description: Notice of Change in Status of Antelope Expansion 1B, LLC.
Filed Date: 10/25/22.
Accession Number: 20221025–5201.
Comment Date: 5 p.m. ET 11/15/22.

Docket Numbers: ER22–2494–000.
Applicants: FirstEnergy Service Company.
Description: FirstEnergy Service Company submits Supplement to the Request for Limited Waiver of Affiliate Rules submitted on July 25, 2022.
Filed Date: 10/14/22.
Accession Number: 20221014–5251.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: ER22–2966–001.
Applicants: Public Service Company of New Mexico.
Description: Tariff Amendment: Motion for Leave to Answer and Answer of PNM and Supplement to Filing to be effective 10/1/2022.
Filed Date: 10/20/22.
Accession Number: 20221020–5173.
Comment Date: 5 p.m. ET 11/10/22.

Docket Numbers: ER22–484–001; ER21–2217–004.
Applicants: Lincoln Land Wind, LLC, Ford County Wind Farm LLC.
Description: Notice of Change in Status of Ford County Wind Farm LLC, et al.
Filed Date: 10/25/22.
Accession Number: 20221025–5199.
Comment Date: 5 p.m. ET 11/15/22.

Docket Numbers: ER23–190–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3987 City of New Madrid, Missouri NITSA NOA to be effective 10/1/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5039.
Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–191–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–10–26_SA 3143 Termination of Blazing Star-NSPM E&P (J460) to be effective 10/27/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5048.
Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–192–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–10–26_SA 3145 Termination of Heartland Wind-NSPM E&P (J432) to be effective 10/27/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5055.
Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–193–000.
Applicants: Wisconsin Power and Light Company.
Description: § 205(d) Rate Filing: WPL Administrative Changes to Depr Rates and Formula Rate Schedules to be effective 12/25/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5077.
Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–194–000.
Applicants: Basin Electric Power Cooperative.
Description: § 205(d) Rate Filing: Basin Electric Power Cooperative, Submission of Revised Rate Schedule A to be effective 1/1/2023.
Filed Date: 10/26/22.
Accession Number: 20221026–5108.
Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–195–000.
Applicants: Blooming Grove Wind Energy Center LLC.
Description: § 205(d) Rate Filing: Revisions to Market-Based Rate Tariff to Reflect Change in Seller Categories to be effective 12/26/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5115.
Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–197–000.
Applicants: ISO New England Inc., Central Maine Power Company, Versant Power, Eversource Energy Service Company (as agent), Green Mountain Power Corporation, New England Power Company, Fitchburg Gas and Electric Light Company, New Hampshire Transmission, LLC, Vermont Transco LLC.
Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Proposed Rev to Attachment F to Comply w/IRS's Depreciation Normalization Req. to be effective 1/1/2023.
Filed Date: 10/26/22.
Accession Number: 20221026–5126.
Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–198–000.
Applicants: Idaho Power Company.
Description: Compliance filing: Compliance Filing for Order No. 676–J to be effective N/A.
Filed Date: 10/26/22.
Accession Number: 20221026–5129.
Comment Date: 5 p.m. ET 11/16/22.

Docket Numbers: ER23–199–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6668; Queue No. AE2–282 to be effective 9/26/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5171.
Comment Date: 5 p.m. ET 11/16/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23765 Filed 10–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23–3–000]

Commission Information Collection Activities (FERC–725M); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725M (Mandatory Reliability Standard: Transmission Vegetation Management).

DATES: Comments on the collection of information are due January 3, 2023.

ADDRESSES: You may submit your comments (identified by Docket No. IC23–3–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native

applications and print-to-PDF, but not in scanned or picture format.

• For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission,12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at: *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at: (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725M (Mandatory Reliability Standard: Transmission Vegetation Management).

OMB Control No.: 1902–0263.

Type of Request: Three-year extension of the FERC–725M with no updates to the current reporting requirements.

Abstract: On September 19, 2013, the Commission issued Order No. 785, Docket No. RM12–16–000, a Final Rule [1] approving modifications to four existing Reliability Standards submitted by the North American Electric Reliability Corporation (NERC), the Commission certified Electric Reliability Organization. Specifically, the Commission approved Reliability Standards FAC–001–1 (Facility Connection Requirements), FAC–003–3 (Transmission Vegetation Management), PRC–004–2.1a (Analysis and Mitigation of Transmission and Generation Protection System Misoperations), and PRC–005–1.1b (Transmission and Generation Protection System Maintenance and Testing).[2] The modifications improved reliability either by extending applicability of the Reliability Standard to certain generator interconnection facilities, or by clarifying that the existing Reliability Standard is and remains applicable to generator interconnection facilities.

The currently effective reliability standard is FAC–003–4 (Transmission Vegetation Management). Reliability Standard FAC–003–4 includes the Minimum Vegetation Clearance Distances (MVCDs) which are based on additional testing regarding the appropriate gap factor to be used to calculate clearance distances for vegetation. NERC previously explained that Reliability Standard FAC–003–4 includes higher and more conservative MVCD values and, therefore, maintained that FAC–003–4 would ''enhance reliability and provide additional confidence by applying a more conservative approach to determining the vegetation clearing distances.''

On March 4, 2022, a Delegated Letter Order was issued, Docket No. RD22–2–000, approving FAC–003–5. The Reliability Standard FAC–003–5 set fourth requirements to maintain a reliable electric transmission system by using a defense-in-depth strategy to manage vegetation located on transmission rights of way (ROW) and minimize encroachments from vegetation located adjacent to the ROW, thus preventing the risk of those vegetation-related outages that could lead to cascading. Specific to FAC–003–5 modifications were done to replace the Interconnection Reliability Operating Limit (IROL) with new language. The requirements in FAC–003–5 result in two years of one-time costs, which are reflected in the burden table below.

In FERC–725M we are renewing the information collection requirements that are currently in Reliability Standard FAC–003–4 but were not specified in RD22–2–000. Furthermore, we are adjusting the burden in FAC–003–4 to reflect the latest number of applicable entities based on the NERC Compliance Registry as of September 16, 2022.

Type of Respondents: Transmission Owner (TO); Generator Owner (GO); and Regional Entity (RE).

Estimate of Annual Burden.[3] The Commission estimates the annual public reporting burden and cost [4] for the information collection as:

FERC–725M, MANDATORY RELIABILITY STANDARDS: GENERATOR REQUIREMENTS AT THE TRANSMISSION INTERFACE

	Number of respondents [5]	Annual number of responses per respondent	Total number of responses	Average burden hours & cost per response	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Currently Effective Standard: FAC–003–4 (Transmission Vegetation Management)						
Generator Owners, Regional Entities: Quarterly Reporting (Compliance 1.4).	[6] 116	4	464	0.25 hrs.; $18.50	116 hrs.; $8,584.00	$74.00
Generator Owners: Annual Veg. inspect. Doc. (M6); Work Plan (M7); Evidence of Mgt. of Veg. (M1 & M2); Confirmed Veg. Condition (M4); & Corrective Action (M5).	110	1	110	2 hrs.; $148.00	220 hrs.; $16,280.00	148.00

[1] *Generator Requirements at the Transmission Interface,* 144 FERC ¶ 61,221 (2013).

[2] The burden included in information collection FERC–725M corresponds to FAC–003–3 (Transmission Vegetation Management). The Final Rule RM12–16–000 modifications included in PRC–004–2.1a and PRC–005–1.1b, which are not a subject of the 725M information collection.

[3] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[4] The estimated hourly cost (salary plus benefits) are based on the figures for May 2022 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm*) and updated May 2022 for benefits information (at *http://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are:

—Manager (code 11–0000), $102.41

—Information and Records Clerks (code 43–4199), $42.35

—Electrical Engineer (code 17–2071), $77.02

The average hourly burden cost for this collection is $68.08 [($102.41 + $42.35 + $77.02)/3 = $73.93)]. and is rounded to $74.00 an hour.

FERC–725M, MANDATORY RELIABILITY STANDARDS: GENERATOR REQUIREMENTS AT THE TRANSMISSION INTERFACE—Continued

	Number of respondents [5] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Generator Owners, Transmission Owners: Record Retention (Compliance 1.2).	437	1	437	1 hr.; $74.00	437 hrs.; $32,338.00	74.00
Sub-Total for standards in FAC–003–4.			1,011		773 hrs.; $57,202.00	
FERC–725M (Modifications from RD22–2–000) [7] One Time Estimate Years 1 and 2 [8]						
FAC–003–5	TO (325) GO (1068)	4 4	1,300 4,272	8 hrs.; $728 8 hrs.; $728	10,400 hrs.; $946,400 34,176 hrs.; $3,110,016	
Sub-Total for standards in FAC–003–5.			5,572		44,576 hrs.; $4,056,416	
Average Annual Burden over 3 years.			1,857.33		14,858.67 hrs.; $1,352,138.97	
Total of 725M			2,868.33		15,631.67 hrs.; $1,422,481.97	

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

[5] According to the NERC Compliance Registry as of September 16, 2022, there are 1,099 generator owners and 327 transmission owners registered in North America. We estimate that approximately 10 percent (or 110) of these generator owners have interconnection facilities that are applicable to the standard.

[6] The estimated number of respondents (116) includes 110 generator owners and 6 Regional Entities.

[7] RD22–2–000 and the related reliability standards in FAC–003–5 becomes effective 4/1/2023 and are one-time burdens for year 1 and 2. These modifications are currently under review at OMB. This renewal covers other information collection requirements in 725M that were not part of RD22–2–000.

[8] Commission staff estimated that the industry's skill set (wages and benefits) for RD22–2–000 is comparable to the Commission's skill set. The FERC 2022 average salary plus benefits for one FERC full-time equivalent (FTE) is $188,922 year (or $91 per hour [rounded]).

Dated: October 25, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–23665 Filed 10–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–68–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.26.22 Negotiated Rates—DTE Energy Trading, Inc. R–1830–14 to be effective 11/1/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5019.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: RP23–69–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.26.22 Negotiated Rates—Emera Energy Services, Inc. R–2715–47 to be effective 11/1/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5020.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: RP23–70–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.26.22 Negotiated Rates—Emera Energy Services, Inc. R–2715–48 to be effective 11/1/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5021.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: RP23–71–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.26.22 Negotiated Rates—Emera Energy Services, Inc. R–2715–49 to be effective 11/1/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5024.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: RP23–72–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.26.22 Negotiated Rates—Mercuria Energy America, LLC R–7540–02 to be effective 11/1/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5031.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: RP23–73–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.26.22 Negotiated Rates—Vitol Inc. R–7495–12 to be effective 11/1/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5032.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: RP23–74–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 10.26.22 Negotiated Rates—Vitol Inc. R–7495–13 to be effective 11/1/2022.

Filed Date: 10/26/22.
Accession Number: 20221026–5033.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: RP23–75–000.
Applicants: Sierrita Gas Pipeline LLC.
Description: § 4(d) Rate Filing: 2022 Oct Quarterly FL&U Filing to be effective 12/1/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5053.
Comment Date: 5 p.m. ET 11/7/22.

Docket Numbers: RP23–76–000.
Applicants: National Grid LNG, LLC.
Description: Compliance filing: 2022–10–26 Fields Point Liquefaction Project In-Service Tariff Filing to be effective 11/28/2022.
Filed Date: 10/26/22.
Accession Number: 20221026–5093.
Comment Date: 5 p.m. ET 11/7/22.

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.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 26, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23768 Filed 10–31–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1773–000]

Moon Lake Electric Association, Inc.; Notice of Authorization for Continued Project Operation

The license for the Yellowstone Hydroelectric Project No.1773 was issued for a period ending September 30, 2022.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No.1773 is issued to the Moon Lake Electric Association, Inc for a period effective October 1, 2022, through September 30, 2023, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before September 30, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the Moon Lake Electric Association, Inc. is authorized to continue operation of the Yellowstone Hydroelectric Project under the terms and conditions of the prior license until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

Dated: October 26, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–23736 Filed 10–31–22; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, November 15, 2022, at 10:00 a.m. and its continuation at the conclusion of the open meeting on November 17, 2022.

PLACE: 1050 First Street NE, Washington, DC, and Virtual (This meeting will be a hybrid meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–23794 Filed 10–28–22; 11:15 am]

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 December 1, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309 or electronically to *Applications.Comments@atl.frb.org:*

1. *Commercial Bancgroup, Inc., and its parent companies, Unified Shares, LLC, and Robertson Holding Company, L.P., all of Harrogate, Tennessee;* to acquire AB&T Financial Corporation and thereby indirectly acquire Alliance Bank & Trust Company, both of Gastonia, North Carolina.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–23767 Filed 10–31–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 202 3185]

Drizly, LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 1, 2022.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Drizly, LLC; File No. 202 3185'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jamie Hine (202–326–2188) or Elizabeth Averill (202–326–2993), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 1, 2022. Write ''Drizly, LLC; File No. 202 3185'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Drizly, LLC; File No. 202 3185'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 1, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a Proposed Consent Order (''Proposed Order'') from Drizly, LLC (''Drizly'' or ''Corporate Respondent'') and James Cory Rellas (''Rellas'' or ''Individual Respondent''), individually and as an officer of Drizly (collectively, ''Respondents'').

The Proposed Order has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's Proposed Order.

This matter involves Respondents' data security practices. Drizly operates an e-commerce platform that enables local retailers to sell alcohol online to consumers of legal drinking age and stored personal information for more than 2.5 million consumers. Respondents engaged in a number of unreasonable data security practices which caused or are likely to cause substantial consumer injury. In addition, Corporate Respondent made a number of misrepresentations to consumers in its privacy policies about the measures it took to protect consumers' personal information.

The Commission's proposed two-count complaint alleges that Respondents have violated section 5(a) of the Federal Trade Commission Act. First, the complaint alleges that Respondents have engaged in a number of unreasonable security practices that led to a hacker's unauthorized download of personal information about 2.5 million consumers.

The complaint alleges that Respondents:

- Failed to develop adequate written information security standards, policies, procedures, or practices; assess or enforce compliance with the written standards, policies, procedures, and practices that it did have; and implement training for employees (including engineers) regarding such standards, policies, procedures, and practices;
- Failed to securely store AWS and database login credentials, by including them in GitHub repositories, and failed to use readily available measures to scan these repositories for unsecured credentials (such as usernames, passwords, API keys, secure access tokens, and asymmetric private keys);
- Failed to impose reasonable data access controls such as: (1) unique and complex passwords or multifactor authentication to access source code or databases; (2) enforcing role-based access controls; (3) monitoring and terminating employee and contractor access to source code once they no longer needed such access; (4) restricting inbound connections to known IP addresses; and (5) requiring appropriate authentications between Drizly applications and the production environment;
- Failed to prevent data loss by monitoring for unauthorized attempts to transfer or exfiltrate consumers' personal information outside the company's network boundaries; continually log and monitor its systems and assets to identify data security events; and perform regular assessments as to the effectiveness of protection measures;
- Failed to test, audit, assess, or review its products' or applications' security features; and failed to conduct regular risk assessments, vulnerability scans, and penetration testing of its networks and databases; and
- Failed to have a policy, procedure, or practice for inventorying and deleting consumers' personal information stored on its network that was no longer necessary.

The complaint alleges that Respondents could have addressed each of the failures described through well known, readily available, and relatively low-cost measures. It also alleges Respondent's failures caused or are likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers themselves. Such practice constitutes an unfair act or practice under section 5 of the FTC Act.

Second, the complaint alleges Drizly made false statements on its corporate website and in its mobile apps about its information security practices. Specifically, Corporate Respondent misrepresented to consumers that the information it collects from them is securely stored and protected by commercially reasonable security practices. The complaint alleges Corporate Respondent's actions constitute deceptive acts or practices in violation of section 5(a) of the FTC Act.

The Proposed Order contains injunctive provisions addressing the alleged unfair and deceptive conduct in connection with Respondent's sale of dealer management system software and services. Part I of the Proposed Order prohibits Corporate Respondent from misrepresenting the privacy and security measures it uses to protect consumers' information and privacy.

Part II of the Proposed Order requires Corporate Respondent to delete within 60 days any ''Covered Information'' that is not being used or retained in connection with providing products or services to consumers, and to provide written statements to the Commission describing the specific deletion of any such ''Covered Information.'' In addition, Corporate Respondent must refrain from collecting or maintaining any future ''Covered Information,'' if the purpose is not necessary for specific purposes described in a retention schedule.

Part III of the Proposed Order requires Drizly to create and display on its website and apps a retention schedule for any ''Covered Information'' it collects, maintains, uses, discloses, or provides access. The schedule must provide a purpose for the information collection, the business need for any retention, and a timeframe for eventual deletion.

Part IV of the Proposed Order requires Corporate Respondent to implement an Information Security Program, requiring among other things:

- Training in secure software development principles, including secure engineering and defensive programming concepts;
- Measures to prevent the storage of unsecured access keys or other unsecured credentials;
- Implementation of data access controls;
- Risk assessment of source code and controls such as software code review; and
- Use of non-SMS based multi-factor authentication for employees and offering multi-factor authentication as an option for consumers.

Drizly must also obtain initial and biennial third-party assessments of its Information Security Program implementation (Part V), cooperate with the third-party assessor performing such assessments (Part VI), have a senior corporate manager or corporate officer make annual certifications regarding Corporate Respondent's compliance with the Proposed Order's data security requirements (Part VIII), and report to the Commission any event involving consumers' personal information that constitutes a reportable event to any U.S. federal, state, or local government authority (Part IX).

Part VII of the Proposed Order requires Individual Respondent James Cory Rellas, for a period of ten years, for any business that he is a majority owner, or is employed or functions as a CEO or other senior officer with responsibility for information security, to ensure the business has established and implements, and thereafter maintains, an information security program.

Parts X–XIII of the Proposed Order are standard scofflaw provisions requiring acknowledgment of the Order to be delivered for ten years to corporate officers and employees engaged in the

conduct related to the order; a compliance report to be submitted within one year of the order and after corporate changes; recordkeeping requirements that last twenty years; and the submission, upon request, of additional reports and records for compliance monitoring.

Part XIV of the Proposed Order provides that the order terminates 20 years after its issuance or 20 years after the latest complaint filed in federal court alleging a violation of the order.

The purpose of this analysis is to aid public comment on the Proposed Order. It is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify in any way the Proposed Order's terms.

By direction of the Commission, Commissioner Wilson dissenting in part.

April J. Tabor,

Secretary.

Statement of Chair Lina M. Khan Joined by Commissioner Alvaro M. Bedoya

Today the Commission announced a settlement with the alcohol delivery platform Drizly, LLC, and its CEO, James Cory Rellas, over the company's alleged failure to implement reasonable security policies. According to the complaint, this failure led to several data breaches that exposed the personal information of 2.5 million consumers. Drizly, a wholly owned subsidiary of Uber, collects and stores a vast amount of user data, including names, physical addresses, geolocation, and alcohol order history. It also stores information about consumers that it purchases from third parties.

The Commission's complaint alleges that in 2018, Rellas and Drizly were alerted to security weaknesses that put its stockpile of consumer data at risk, yet they did not address the problem. According to the complaint, the company neglected to implement basic best practices, such as developing a written data security policy or hiring a qualified employee responsible for data security. Then, in 2020, a hacker was able to access a massive trove of customer data by using login credentials reused by an executive across personal accounts. During this period, Drizly also allegedly made multiple misrepresentations about its data security practices in the privacy policy on its corporate website.

The Commission's proposed order imposes several important conditions to prevent similar failures in the future. It prohibits Drizly from collecting or storing consumer data that is not necessary for pre-specified business purposes. Drizly must also implement a comprehensive security program that features the latest multifactor authentication requirements outlined in recent orders and prevents storage of unsecured credentials on its network or in any cloud-based service. In addition, Drizly must create a public retention schedule for such data, including timeframes for eventual deletion of stored data.

Notably, the order applies personally to Rellas, who presided over Drizly's lax data security practices as CEO. In the modern economy, corporate executives sometimes bounce from company to company, notwithstanding blemishes on their track record.[1] Recognizing that reality, the Commission's proposed order will follow Rellas even if he leaves Drizly. Specifically, Rellas will be required to implement an information security program at future companies if he moves to a business collecting consumer information from more than 25,000 individuals, and where he is a majority owner, CEO, or senior officer with information security responsibilities. Our colleague Commissioner Wilson dissents from the portion of the settlement that personally applies to Rellas. She argues that CEOs of large companies must be allowed to decide for themselves whether or not to pay attention to data security. Respectfully, we disagree. Overseeing a big company is not an excuse to subordinate legal duties in favor of other priorities. The FTC has a role to play in making sure a company's legal obligations are weighed in the boardroom. Today's settlement sends a very clear message: protecting Americans' data is not discretionary. It must be a priority for any chief executive. If anything, it only grows more important as a firm grows.

Today's action will not only correct Drizly's lax data security practices but should also put other market participants on notice. Limiting the baseline collection and retention of data, as we do here, is a critical tool for protecting Americans from the risks of data breaches, and we will continue to explore remedies centered on limiting the data that is collected or retained in the first place.[2] Finally, holding individual executives accountable, as we also do here, can further ensure firms and the officers that run them are better incentivized to meet their legal obligations.[3]

Statement of Commissioner Rebecca Kelly Slaughter

The kinds of lax and unreasonable data security practices the Commission has alleged in this settlement with Drizly [1] have caused immense and often incalculable harm to consumers. As the complaint recounts, Drizly's carelessness with customer information led to an intruder gaining access to its systems and downloading the personal information of 2.5 million people.

This order is commendable and marks a meaningful step forward in our data security enforcement. Naming Drizly's CEO, James Corey Rellas, who oversaw these practices, helps ensure that corporate leadership must take seriously their obligation to safeguard customer information. Mechanisms like the proposed data retention schedule are also an excellent approach to provide accountability for data use and misuse. Ensuring that Drizly only collects information necessary to effectuate its published business needs should exert a disciplining influence on its collection of consumer information. The retention schedule also provides a clear hook for future FTC enforcement actions should Drizly not follow its strict requirements under this proposed order.

Going forward, I believe the law would support us doing more to safeguard Americans' data, including requiring substantive limits on

[1] *See, e.g.,* Rani Molla, *Why Does the WeWork Guy Get to Fail Up?,* Recode (Aug 17, 2022), *https://www.vox.com/recode/2022/8/17/23309756/wework-adam-neumann-flow-andreessen-venture-capital.*

[2] *See* Press Release, Fed. Trade Comm'n, FTC Takes Action Against CafePress for Data Breach Cover Up (Mar. 15, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-cafepress-data-breach-cover;* Press Release, Fed. Trade Comm'n, Press Release, Fed. Trade Comm'n, FTC Takes Action Against Company Formerly Known as Weight Watchers for Illegally Collecting Kids' Sensitive Health Data (Mar. 4, 2022), *https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-company-formerly-known-weight-watchers-illegally-collecting-kids-sensitive; see also* Statement of Chair Lina M. Khan Regarding the Report to Congress on Privacy and Security (Oct. 1, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1597024/statement_of_chair_lina_m_khan_regarding_the_report_to_congress_on_privacy_and_security_-_final.pdf;* Remarks of Chair Lina M. Khan As Prepared for Delivery, IAPP Global Privacy Summit 2022 (Apr. 11, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/Remarks%20of%20Chair%20Lina%20M.%20Khan%20at%20IAPP%20Global%20Privacy%20Summit%202022%20-%20Final%20Version.pdf; see generally* Trade Regulation Rule on Commercial Surveillance and Data Security, 87 FR 51273 (Aug. 22, 2022).

[3] *See* Press Release, Fed. Trade Comm'n, FTC Bans SpyFone and CEO from Surveillance Business and Orders Company to Delete All Secretly Stolen Data (Sept. 1, 2021), *https://www.ftc.gov/news-events/news/press-releases/2021/09/ftc-bans-spyfone-ceo-surveillance-business-orders-company-delete-all-secretly-stolen-data.*

[1] Drizly is now a wholly owned subsidiary of Uber which reached a settlement with the FTC over its allegedly lax data security practices in 2018. I worry greatly about this matryoshka doll of companies with a spotty track record of protecting consumer data.

appropriate collection and use. While the disclosure requirements in this order have value, disclosure alone is not enough. We know that endless terms-of-service and other disclosures have not improved customer understanding, facilitated meaningful choice, or protected data from security breaches. But hackers cannot steal data that companies did not collect in the first place; requirements that limit what data can be collected, used, and retained could meaningfully foil and deter data security breaches.

There are many ways to approach data collection guardrails. As the FTC further develops a minimization framework, one framework I hope we consider is centering a consumer's reasonable expectation that there should be limits on the collection and use of their information based on the service they've actually requested. I believe the agency is in a better position to effectuate this expectation than it is to anticipate, understand, and police every claim of reasonable business necessity. A consumer centered data minimization standard could work hand-in-hand with the kinds of disclosures and effective data security practices in this proposed order to protect Americans from the ongoing epidemic of data breaches, which are greatly exacerbated by overcollection of consumer information.

I am grateful to the staff for their hard work on this strong order. I look forward to seeing how our work continues to evolve in the pursuit of protecting Americans' data and ensuring our confidence in the practices of the businesses with which we all transact.

Concurring and Dissenting Statement of Commissioner Christine S. Wilson

Today the Commission announces a complaint and settlement resolving allegations that Drizly, LLC and its CEO, James Cory Rellas, violated Section 5 of the FTC Act. The complaint asserts that Drizly made false statements on its website and in its mobile apps about its information security practices. The Commission also alleges that Drizly engaged in several unreasonable data security practices that led to multiple security breaches, including a hacker's unauthorized download of personal information about 2.5 million consumers.

The FTC has long provided clear guidance to the business community about the fundamentals of sound data security.[1] But, as the complaint details, Drizly failed to develop any written information security standards, policies, or procedures; failed to require unique and complex passwords or multifactor authentication to access source code or databases; failed to terminate employee or contractor access to data once they no longer needed such access; failed to monitor for unauthorized attempts to transfer or exfiltrate consumers' personal information outside company networks; and engaged in other security shortcomings. Notably, simple, readily available, low-cost measures could have addressed Drizly's security shortcomings. I support the complaint against the company and the order provisions that require Drizly to implement numerous data security practices to address the company's missing security safeguards.[2] In particular, my Democratic colleagues and I agree that data minimization plays an important role in a healthy data security program. As Commissioner Slaughter notes in her concurring statement, ''hackers cannot steal data that companies did not collect in the first place.''

While I support the complaint against the corporate defendant, I do not support holding the individual defendant, Rellas, liable. To seek injunctive relief with respect to a CEO or other principal, the Commission must show only that the individual ''participated directly in the deceptive practices *or* had authority to control those practices.'' [3] Authority to control does not require the FTC to show a ''specific link from [the individual] to the particular deceptive [acts] and instead looks at whether [the individual] had authority to control the corporate entity's practices.'' [4] This broad standard effectively could enable the Commission to hold individually liable the CEOs of most companies against which we initiate enforcement action.

The Commission traditionally has exercised its prosecutorial discretion and assessed a variety of factors when deciding whether to name a CEO or principal, including consideration of whether individual liability is necessary to obtain effective relief, and the level of the individual's knowledge and participation in the alleged illegal conduct.[5]

The order against Drizly requires the company to implement extensive data security safeguards regardless of whether Rellas is at the helm of the organization. Naming Rellas does not change the injunctive obligations placed on the company to ensure that customers' personal information is protected going forward. Moreover, the case against Drizly makes clear that the FTC expects technology start-ups to start with security and establish reasonable data security practices that grow with the company.

As for knowledge and participation, the number of issues crossing a CEO's desk on any given day is substantial. In most large companies, I would expect CEOs to have little to no involvement with, and no direct knowledge of, practices that are the subject of an FTC investigation. Here, we do not allege that Rellas oversaw day-to-day operations of the company's data security practices, had any data security expertise, or was responsible for decisions about data security policies, procedures, or programs.[6] Instead, we allege that Rellas did not appropriately

[1] Fed. Trade Comm'n, *Start with Security: A Guide for Business* (Jun. 2015), *https://www.ftc.gov/tips-advice/business-center/guidance/start-security-guide-business;* Press Release, Fed. Trade Comm'n, Stick with Security: FTC to Provide Additional Insights on Reasonable Data Security Practices (July 21, 2017), *https://www.ftc.gov/news-events/press-releases/2017/07/sticksecurity-ftc-provide-additional-insights-reasonable-data.*

[2] While I support the settlement against Drizly, I continue to question whether data security orders should remain in effect for 20 years. It is not realistic for the Commission to expect that injunctive relief with respect to this dynamic and rapidly evolving issue will remain relevant and beneficial to consumers for 20 years. *See* Concurring Statement of Commissioner Christine S. Wilson, *In the Matter of* InfoTrax Systems, L.C. and Mark Rawlins, File No. 1623130 (Nov. 19, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1553676/162_3130_infotrax_concurring_statement_cw_11-12-2019.pdf.*

[3] *FTC* v. *Ross,* 743 F.3d 886, 892–93 (4th Cir. 2014) (adopting the test for individual liability used by other federal appellate courts, including the First, Seventh, Ninth, Tenth, and Eleventh Circuits). The Commission also can establish liability for monetary relief by showing the defendant ''had actual knowledge of the deceptive conduct, was recklessly indifferent to its deceptiveness, or had an awareness of a high probability of deceptiveness and intentionally avoided learning the truth.'' *Id.*

[4] *Id.* at 893.

[5] Many FTC cases involve fraudulent or deceptive conduct by small, closely held companies that essentially serve as the alter egos of their principal or CEO. I support naming the CEO in such a case because the individual defendant is necessary to obtain effective relief and/or to prevent the fraudster from opening and shuttering companies to stay one step ahead of law enforcement. *See* Concurring Statement of Commissioner Christine S. Wilson Regarding *FTC* v. *Progressive Leasing, LLC,* File No. 1823127 (April 20, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1571921/182_3127_prog_leasing_-_statement_of_commissioner_christine_s_wilson_0.pdf.*

[6] *Cf* Complaint, *In re InfoTrax Systems, L.C., a limited liability company, and Mark Rawlins,* Docket No. C–4696 (Dec. 30, 2019) (alleging Rawlins spent eighteen years at a software company, studied computer science in college, ''reviewed and approved InfoTrax's information technology security policies, was involved in discussions with clients about data security regularly, and was involved in the company's long-term data security strategy.''), *https://www.ftc.gov/system/files/documents/cases/c-4696_162_3130_infotrax_complaint_clean.pdf.*

prioritize hiring a senior executive responsible for privacy and data security. Our complaint notes that he hired other members of the c-suite but not a Chief Technology Officer or Chief Information Security Officer. And for Rellas' failure to prioritize information security over other business obligations, the order imposes on Rellas significant compliance obligations even if he leaves Drizly.[7]

By naming Rellas, the Commission has not put the market on notice that the FTC will use its resources to target lax data security practices. Instead, it has signaled that the agency will substitute its own judgement about corporate priorities and governance decisions for those of companies.[8] There is no doubt that robust data security is important. Having a federal data security law would signal to companies, executives, and boards of directors the importance of implementing and maintaining data security programs that address potential risks, taking into account the size of the business and the nature of the data at issue. But CEOs have hundreds of issues and numerous regulatory obligations to navigate. Companies, not federal regulators, are better positioned to evaluate what risks require the regular attention of a CEO. And when companies err in making those assessments, the government will hold them accountable.

Accordingly, I dissent from the inclusion of the individual defendant in the complaint and settlement in this matter.

[FR Doc. 2022–23669 Filed 10–31–22; 8:45 am]

BILLING CODE 6750–01–P

[7] The Order binds Rellas to implement an information security program at any future company in which he is a majority owner, CEO, or senior officer with information security responsibilities, where that company collects personal information from at least 25,000 individuals. The Order does not address scenarios in which Boards of Directors, other owners, or higher-ranking executives make it impossible for Rellas to fulfill his obligations.

[8] Then-Commissioner Phillips and I raised similar concerns in our dissents to the FTC's regulatory reviews of the Safeguards Rule. *See* Joint Statement of Commissioners Noah Joshua Phillips and Christine S. Wilson, In the Matter of the Final Rule amending the Gramm-Leach-Bliley Act's Safeguards Rule, File No. P145407 (Oct. 27, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1597994/joint_statement_of_commissioners_phillips_and_wilson_in_the_matter_of_regulatory_review_of_the_1.pdf;* Dissenting Statement of Commissioner Noah Joshua Phillips and Commissioner Christine S. Wilson, Regulatory Review of Safeguards Rule, File No. P145407 (Mar. 5, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1466705/reg_review_of_safeguards_rule_cmr_phillips_wilson_dissent.pdf.*

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2022–06; Docket No. 2022–0002; Sequence No. 26]

Notice of Intent To Prepare an Environmental Impact Statement and Initiate Section 106 Consultation for Four Buildings at 202, 208–212, 214 and 220 South State Street, Chicago, Illinois, and Notice of Public Scoping Meetings and Comment Period

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice; public meeting.

SUMMARY: The General Services Administration (GSA) intends to prepare an Environmental Impact Statement (EIS) and conduct the Section 106 Process of the National Historic Preservation Act (NHPA) to address the future of buildings 202, 208–212, 214 and 220 South State Street between Adams Street and Jackson Boulevard, adjacent to the Dirksen Federal Courthouse in Chicago's South Loop, downtown Chicago, Illinois. All four properties, for which Congress has appropriated funds for demolition, reside in the Loop Retail Historic District listed in the National Register of Historic Places. Two of the four buildings, the Century Building (202 State Street) and the Consumers Building (220 South State Street) are identified as contributing structures to the historic district.

DATES: A scoping meeting will be held at the Morrison Conference Center in the Ralph H. Metcalfe Federal Building, 77 W. Jackson Blvd., Chicago, IL 60604, on Thursday, November 10, 2022, from 4 to 7 p.m., CST (Central Standard Time). Written comments must be received by Monday, December 12, 2022, in order to be considered in the EIS. Participants will be given an opportunity to comment based on the order in which they register. Each person will be allowed three minutes to comment during the meeting. Written comments will be accepted before and after the meeting and given the same priority as oral comments.

ADDRESSES: People wishing to attend the public meeting in-person or virtually are asked to register for the event at this link: *https://GSA-South_State-Street-Scoping-Meeting.eventbrite.com.* Written comments may be sent by the following methods:

- *Email: statestreet@gsa.gov.*
- *Mail:* Joseph Mulligan, U.S. General Services Administration, 230 S. Dearborn St., Suite 3600, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Mulligan, U.S. General Services Administration, 230 S. Dearborn St., Suite 3600, Chicago, IL 60604; email: *statestreet@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Scoping Process

The purpose of the public scoping process is to identify relevant issues that will influence the scope of analysis of the human and natural environment including cultural resources. The EIS will include public input on alternatives and impacts. This meeting will also initiate GSA's public consultation required by NHPA. GSA seeks input at this meeting that will assist the agency in planning for the Section 106 consultation process, identifying consulting parties, determining the area of the undertaking's potential effects on cultural resources (Area of Potential Effects), and envisioning alternatives to demolition that will avoid, minimize or mitigate adverse effects. Federal, state, and local agencies, along with affected members of the public, are invited to participate in the NEPA scoping and Section 106 process.

The National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) are two separate laws which require federal agencies to consider the impacts to historic properties and the human environment before making decisions. NHPA and NEPA are independent statutes, yet may be executed concurrently to optimize efficiencies, transparency, and accountability to better understand the effects to the human, natural, and cultural environment. The EIS will be prepared pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality NEPA regulations, and the GSA Public Buildings Service *NEPA Desk Guide.* GSA will also consult with appropriate parties in accordance with Section 106 of the National Historic Preservation Act (NHPA) of 1966.

Opportunities for affected members of the public to become a consulting party during the NHPA Section 106 process will be presented during the public scoping meeting. You may submit a comment to express your interest in being a consulting party if you cannot attend the meeting.

Purpose and Need for the Proposed Action and Undertaking

The purpose of the Proposed Action and Undertaking is to address the potential security vulnerabilities associated with buildings 202, 208–212,

214 and 220 South State Street, to respond to the passing of the 2022 Consolidated Appropriations Act, which calls for the demolition of these buildings and to effectively manage federal property. The Proposed Action and Undertaking is specifically needed for the following reasons:

Address Security

- The Dirksen Federal Courthouse and its occupants are at particular risk of harm by hostile acts.
- Physical security surrounding the courthouse needs to be maintained and enhanced.

Respond to Congressional Intent

- Congress passed the 2022 Consolidated Appropriations Act with the following expectations:
  - Defined scope to demolish the four properties.
  - Funding for demolition of the four properties.

Manage Assets

- There is no federal occupancy need for the buildings.

Proposed Action and Undertaking and Preliminary Alternatives

The proposed action and undertaking are to address the future of buildings 202, 208–212, 214 and 220 South State Street, Chicago, Illinois. GSA has identified the following preliminary alternatives for the proposed action. However, additional alternatives proposed by the public may be considered in the EIS.

Demolition (Alternative A): GSA is considering the demolition of four buildings at 202, 208–212, 214 and 220 South State Street, Chicago, Illinois, per the 2022 Consolidated Appropriations Act. The funds appropriated by Congress are available only for demolition, securing the site, and landscaping the vacant site following demolition. The proposed action includes protection of adjacent properties during demolition, securing the vacant site of the demolished buildings and landscaping of the vacant site following demolition.

Viable Adaptive Reuse (Alternative B): The following is a current listing of reuse criteria developed in collaboration with the United States District Court, Northern District of Illinois, and federal law enforcement agencies. References therein to ''Developer'' include lessees, tenants, or other occupants and users of the properties. There are no federal funds available for rehabilitation, preservation, or restoration of buildings at 202, 208–212, 214 and 220 South State Street, Chicago, Illinois. Rehabilitation or modification of the properties in order to meet the following criteria will not be performed at the Government's expense. These restrictions are necessary to meet the security needs of the Dirksen U.S. Courthouse and would be applicable to any uses of the property.

1. The Federal government must retain ownership interests to achieve its security objectives, as determined by the government in its discretion.
2. Occupancy/Use: Properties shall not be used for short-term or long-term residential or lodging, places of worship, or medical treatment, services, or research. No use that requires access to outdoor areas is permitted.
3. Access to the roof is restricted to maintenance and repair activities. Personnel and materials that will be present in this area shall be subject to clearance and controls necessary to meet court security objectives.
4. Developer would have no access or use rights to Quincy Court.
5. Loading is prohibited in Quincy Court and otherwise restricted in a manner to achieve court security. Loading on State or Adams Streets would be subject to local ordinance requirements.
6. Occupants and users of the buildings shall have no sight lines into the Dirksen Courthouse, the Dirksen Courthouse ramp, or the Quincy Court properties owned by GSA.
7. No parking or vehicle access is permitted on or within the properties.
8. Developer is responsible for staffing, at their expense, security 24 hours with personnel approved by the Federal Protective Service or an entity to whom security services are delegated by Federal Protective Service.
9. Developer must obtain and maintain access control systems to prevent unauthorized access to any location within the structures. Each exterior entrance point must have an intrusion detection system and access control system installed, and Developer must provide federal law enforcement access to each system.
10. Developer must install and maintain interior and exterior security cameras and provide federal law enforcement officials with access and the ability to monitor the feeds in real time.
11. Developer must install exterior lighting necessary to achieve courthouse security objectives.
12. Perimeter Security: Developer must prevent unauthorized access to the properties that would result in an unapproved sight line.
13. Fire escapes, and any other structures that would allow access from the street, must be removed.
14. All construction documents and specifications for any renovation, rehabilitation, modification, or construction of any portion of the building (interior or exterior) will be subject to review and approval by federal law enforcement agencies.
15. No project may start without the advance approval of GSA.

No Action Alternative: GSA would continue with the status quo; the buildings would remain in place, vacant with significant repairs needed, and with limited federal funds available for maintenance.

Summary of Potential Impacts

The EIS will identify, describe, and analyze the potential effects of the Action and No Action alternatives. This will include direct, indirect, and cumulative effects resulting from the implementation of the Action and No Action Alternatives. At present, GSA has identified the following resources for analysis of both beneficial and adverse potential impacts: cultural resources; aesthetic and visual quality; land use and zoning; community cohesion; socioeconomics; hazardous materials; air quality; noise; transportation and traffic; human health and safety; coastal zones; and geology, soils, and topography. The EIS will consider measures that would avoid, minimize, or mitigate identified adverse impacts. GSA welcomes public input on these potential impacts and other resources that should be considered.

Anticipated Permits and Authorizations

In addition to NEPA, federal permits and other federal authorizations may be required for execution of the proposed action and undertaking or its alternatives. GSA's activities to meet its obligations under NEPA and Section 106 are not intended or presumed to effect compliance with all environmental regulation that may apply to the proposed action and undertaking, which involve separate regulatory permitting procedures. Examples include those required by the Clean Water Act, Clean Air Act, and applicable non-federal permitting laws.

Schedule for Decision-Making Process

The following is a list of *estimated milestones* and timeframes for the EIS process:

- EIS Notice of Intent (NOI) in **Federal Register**: November 2022
- NEPA Scoping Meeting Conducted with Initiation of Section 106: November 2022

- End of NEPA Scoping Period: December 2022
- Publication of the Draft EIS: April 2023
- Draft EIS Public Comment Period: April-June 2023
- Completion of Section 106 Process: January 2024
- Final EIS: January 2024
- Record of Decision: February 2024

William Renner,

Director, Facilities Management and Services Programs Division, U.S. General Services Administration.

[FR Doc. 2022–23721 Filed 10–31–22; 8:45 am]

BILLING CODE 6820–A9–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment for the SimCore PSO, LLC

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ accepted a notification of proposed voluntary relinquishment from the SimCore PSO, LLC, PSO number P0189, of its status as a PSO, and has delisted the PSO accordingly.

DATES: The delisting was applicable 12:00 Midnight ET (2400) on October 14, 2022.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N100B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, 42 U.S.C. 299b–21 to 299b–26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008 (73 FR 70732–70814), establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for the aggregation and analysis of patient safety work product.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of PSOs.

AHRQ has accepted a notification of proposed voluntary relinquishment from the SimCore PSO, LLC to voluntarily relinquish its status as a PSO. Accordingly, the SimCore PSO, LLC, PSO number P0189, was delisted effective at 12:00 Midnight ET (2400) on October 14, 2022.

SimCore PSO, LLC has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO and of section 3.108(c)(2)(ii) regarding disposition of PSWP consistent with section 3.108(b)(3). According to section 3.108(b)(3) of the Patient Safety Rule, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov.*

Dated: October 26, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–23711 Filed 10–31–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10398 #7]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the ''generic'' clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial collections,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938–1148 (CMS–10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of

the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by November 15, 2022.

ADDRESSES: When commenting, please reference the applicable form number (see below) and the OMB control number (0938–1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10398 (#7)/OMB control number: 0938–1148, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collections

1. *Title of Information Collection:* CHIPRA Connecting Kids to Coverage Outreach and Enrollment Grants; *Type of Information Collection Request:* Revision of a currently approved collection; *Use:* The primary goal of the HEALTHY KIDS Act cooperative agreements is to enroll eligible but uninsured children, with the option to target parents, into Medicaid and CHIP and assist currently enrolled children with the renewal process to keep eligible children enrolled in coverage. In order to measure this aspect of grantee performance, grantees are required to report certain data elements. Section 2113(d) of the Social Security Act requires that CMS publish enrollment data and annual reports to Congress on the grant-funded outreach and enrollment efforts. This October 2022 iteration: (1) adds a new round of HEALTHY KIDS cooperative agreements awarded in July 2022 identified as HK2022, (2) adds a revised Cycle Vb. Monthly Progress Report Template and a revised Cycle Vb. Monthly Progress Report Template with AI/AN Targets, and adds language for a proposed round of HEALTHY KIDS AI/AN cooperative agreements scheduled for award in FY2023. *Form Number:* CMS–10398 (#7) (OMB control number: 0938–1148); *Frequency:* Yearly, quarterly, once, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 47; *Total Annual Responses:* 3,822; *Total Annual Hours:* 19,838. For policy questions regarding this collection contact Joyce Jordan at 410–786–3413.

Dated: October 26, 2022.

William N. Parham, III

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–23670 Filed 10–31–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Operation Allies Welcome Survey of Resettled Afghans (New Collection)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new Operation Allies Welcome (OAW) Survey of Resettled Afghans.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about 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. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Under the Afghanistan Supplemental Appropriations Act, 2022, and Additional Afghanistan Supplemental Appropriations Act, 2022, Congress authorized ORR to provide resettlement assistance and other benefits available to refugees to specific Afghan populations, in response to their emergency evacuation and resettlement. The OAW Survey of Resettled Afghans would help ORR to identify service needs and gaps in resettlement services. Data collection is to inform better targeted assistance and training or technical assistance, and to inform refinement and improvements to ORR's programs and services to adequately meet the needs of ORR-eligible OAW Afghan populations.

Respondents: ORR-eligible OAW Afghan populations.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total/annual burden hours
OAW Survey of Resettled Afghans	3,400	1	0.25	850 *

* Survey is one-time and will be completed within the 1st year.

Estimated Total Annual Burden Hours: 850.

Authority:

Div. C, Title III, Pub. L. 117–43, 135 Stat. 374

Div. B, Title III, Pub. L. 117–70, 1102 Stat. 4

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–23710 Filed 10–31–22; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; The Role of Licensing in Early Care and Education (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for Public Comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), is proposing to collect information for The Role of Licensing in Early Care and Education (TRLECE) project. This data collection aims to examine the child care and early education (CCEE) licensing system through surveys of child care licensing administrators, front-line child care licensing staff, and child care providers.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about 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. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* All emailed requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION: *Description:* The TRLECE project is proposing a new information collection to deepen the field's understanding of the CCEE licensing system. Information will be collected from child care licensing administrators, front-line child care licensing staff, and child care providers. This information collection will include three national surveys:

1. A one-time nationwide survey of the child care licensing administrator in each state, territory, and the District of Columbia (N=56) regarding the licensing system, as well as administrators' characteristics, experiences, and perceptions of the licensing system. Child care licensing administrators oversee critical systems that regulate CCEE settings for young children.

2. A one-time nationwide survey of front-line child care licensing staff from each of the 50 states and the District of Columbia about their characteristics, experiences, responsibilities, and perceptions of the CCEE licensing system. By front-line child care licensing staff we mean individuals who routinely conduct licensing inspections of child care programs. They may have other responsibilities as well, as long as one of their jobs is to routinely conduct inspections.

3. A one-time nationwide survey of licensed child care providers from each of the 50 states and the District of Columbia about their perceptions of and experiences with the CCEE licensing system. For the purposes of this study, licensed providers are defined as program owners/directors who oversee the day-to-day operations in a licensed center, as well as owners/operators of licensed family child care (FCC) programs (including group and family child care homes).

Respondents: We will invite all child care licensing administrators in each state/territory and the District of Columbia, and all front-line child care licensing staff in each state and the District of Columbia to participate in a comprehensive one-time web-based or telephone survey. For the survey of providers, the goal for the final sample will be a nationally representative sample of 2,000 licensed providers from all 50 states and the District of Columbia (1000 randomly selected licensed child care centers and 1000 randomly selected family child care homes).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Child care licensing administrator survey	48	1	0.5	24
Front-line child care licensing staff survey	1650	1	0.5	825
Child care provider survey	2000	1	0.5	1000

Estimated Total Annual Burden Hours: 1,849.

Authority: 42 U.S.C. 9858.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–23761 Filed 10–31–22; 8:45 am]

BILLING CODE 4184–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2440]

Agency Information Collection Activities; Proposed Collection; Comment Request; Biologics License Applications Procedures and Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information associated with biologics license application (BLA) procedures and requirements.

DATES: Either electronic or written comments on the collection of information must be submitted by January 3, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 3, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–2440 for ''Biologics License Applications Procedures and Requirements.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques, when appropriate, and other forms of information technology.

Biologics License Applications Procedures and Requirements

OMB Control Number 0910–0338—Extension

This information collection supports Agency regulations and recommendations found in associated guidance pertaining to BLA procedures and requirements. A BLA is a request for permission to introduce, or deliver for introduction, a biological product into interstate commerce (601.2 (21 CFR 601.2)). BLAs are regulated under parts 600 through 680 (21 CFR parts 600 through 680). A BLA is submitted by any legal person or entity who is engaged in manufacture or an applicant for a license who takes responsibility for compliance with product and establishment standards. Interested persons may visit *https://www.fda.gov/vaccines-blood-biologics/development-approval-process-cber/biologics-license-applications-bla-process-cber* for additional information, including available Agency resources.

Regulations in part 601 set forth applicable procedures for the submission of license application information, including content and format elements. The regulations also explain requirements for suspension, revocation, and reissuance of BLAs and communicate procedures for requesting a hearing. Additionally, the information collection includes the submission of manufacturing change information governed by section 506A of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 356a), as well as postmarketing reports for approved human drugs and licensed biological products governed by section 506B of the FD&C Act (21 U.S.C. 356b). Finally, regulations in parts 610 through 680 establish both general and specific biological product standards.

To implement these provisions, we have developed the following collection instruments:

1. Forms

Form FDA 356h, *Application to Market a New or Abbreviated New Drug or Biologic for Human Use,* provides a uniform format for submitting BLAs. Form FDA 356h is a fillable PDF form that may be submitted through our Electronic Submission Gateway (ESG), for which respondents must create and maintain a user account. Utilizing Form FDA 356h helps to ensure that an application is complete and contains all the necessary information, so that delays due to lack of information may be avoided. In addition, the form provides key information to FDA for efficient handling and distribution to the appropriate staff for review. We have recently made minor updates to Form FDA 356h resulting from the October 3, 2022, reauthorization of the Prescription Drug User Fee Act (PDUFA). In this collection we account for BLAs submitted using Form FDA 356h.

Form FDA 2252, *Transmittal of Annual Report for Drugs and Biologics for Human Use,* is used by an applicant of a licensed biological product to submit annual reports required by § 601.70(b) (21 CFR 601.70(b)). Form FDA 2252 is also a fillable PDF form and approved in OMB control number 0910–0001; however, in this information collection we account for submissions pertaining to biological products.

Form FDA 2253, *Transmittal of Advertisements and Promotional Labeling for Drugs and Biologics for Human Use,* was developed for use by respondents to transmit specimens of advertisements and promotional labeling (*e.g.,* circulars, package labels, container labels, etc.), as well as labeling changes. The submission of this information is required by 601.12 (21 CFR 601.12) for biological products and by 21 CFR 314.81 for drug products. Form FDA 2253 is a fillable PDF form and is approved for use in OMB control number 0910–0001; however, in this information collection we account for submissions pertaining to biological products.

Form FDA 3674, *Certificate of Compliance Under 42 U.S.C. 282(j)(5)(B), with Requirements of ClinicalTrials.gov Data Bank,* was developed for use by respondents to certify submissions as required by section 402(j)(5)(B) of the PHS Act and is submitted through our ESG. Form FDA 3674 is a fillable PDF form and is approved for use in OMB control number 0910–0616; however, in this information collection we account for submissions pertaining to biological products.

2. Cover Sheets

As provided for under part 601.2(a), we also utilize cover sheets, so denoted for purposes of identifying specific content information within a given application.

3. Guidance Documents

The guidance document ''Cooperative Manufacturing Arrangements for Licensed Biologics,'' (November 2008), available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/cooperative-manufacturing-arrangements-licensed-biologics,* discusses strategies for meeting an increased need for flexible manufacturing arrangements. Since cooperative manufacturing arrangements can take a considerable amount of time to develop, the guidance is intended to be useful for planning purposes in the early phases of product development. Many companies that perform only limited aspects of manufacturing processes are interested in sharing or contracting parts of manufacturing to facilitate product development and manufacturing flexibility. The guidance discusses recommended communication between licensed manufacturers and contract manufacturers regarding changes to production and facilities, results of tests and investigations regarding the product, types of products manufactured in the contract facility, and standard operating procedures. We believe that the information collection provisions in the guidance do not create a new burden for respondents. We believe the reporting and recordkeeping provisions are part of usual and customary business practices.

All Agency guidance documents issued are consistent with our good guidance practice regulations in 21 CFR 10.115, which provide for public comment at any time. We maintain a searchable database of our guidance documents at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.*

Respondents to this collection of information are licensed manufacturers of biological products. Based on the number of 2021 fiscal year application submissions, we estimate there are 371 such respondents. The total annual responses are based on the number of submissions (*i.e.,* license applications, labeling and other supplements, protocols, advertising and promotional labeling, notifications) for a particular product received annually by FDA. The hours per response are based on informal communications with industry and our experience with the information collection.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section or other citation; activity	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]
601.2(a) and 610.60 through 610.65; Application for biologics license (includes labeling).	356h	51	1.078	55	860	47,300
601.5(a); Requirement to notify FDA of intention to discontinue manufacture of a product or all products.	NA	17	1.0589	18	0.33 (20 minutes).	6
601.6(a); Requirement to provide FDA with copy of notification to selling agents and distributors upon suspension of its license.	NA	1	1	1	0.33 (20 minutes).	1
601.12(a)(5); Requirement to inform FDA of changes to an approved application.	NA	327	10.263	3,356	1	3,356
601.12(b)(1), (b)(3), and (e); Requirement to inform FDA of changes to an approved application.	356h	195	5.795	1,130	80	90,400
601.12(c)(1) and (3); Requirement to inform FDA of changes to an approved application.	356h	153	4.6536	712	50	35,600
601.12(c)(5); Requirement to inform FDA of changes to an approved application.	356h	73	2.740	200	50	10,000
601.12(d)(1), (d)(3), and (f)(3); Requirement to inform FDA of changes to an approved application.	356h	279	3.398	948	24	22,752
601.12(f)(1); Requirement to inform FDA of changes to an approved application.	2253	64	2.75	176	40	7,040
601.12(f)(2); Requirement to inform FDA of changes to an approved application.	2253	66	1.758	116	20	2,320
601.12(f)(4) and 601.45; Requirement to inform FDA of changes to an approved application.	2253	173	340.416	58,892	10	588,920
601.27(b); Request for deferred submission of some or all safety and effectiveness assessments.	NA	9	1.778	16	24	384
601.27(c); Request for full or partial waiver of safety and effectiveness assessments.	NA	8	1	8	8	64
601.70(b) and (d), and 601.28; Annual progress reports of postmarketing studies.	2252	101	1.84	186	24	4,464
610.15(d); Request for exceptions or alternatives to the regulation for constituent materials.	NA	1	1	1	1	1
680.1(c); Requirement to annually update a license file with the list of source materials and the suppliers of the materials.	NA	9	1	9	2	18
680.1(b)(3)(iv); Requirement to notify FDA when certain diseases are detected in source materials.	NA	1	1	1	2	2
601.12; Amendments/Resubmissions	356h	170	27.888	4741	20	94,820
Section 402(j)(5)(B) of the PHS Act; Certification to accompany biological product applications.	3674	1,291	1	1,291	0.28 (17 minutes).	358
Total						907,806

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The numbers in this column have been rounded to the nearest whole number.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR section; activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]
601.6(a); Requirement to notify selling agents and distributors upon suspension of license.	1	20	20	0.33 (20 minutes)	7

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The number in this column has been rounded to the nearest whole number.

Our estimated burden for the information collection reflects an overall increase of 467,907 hours and a corresponding increase in responses. We attribute part of this adjustment in the total hours to an increase in the number of submissions that we have received under 601.12(b)(1) and (3), (e), and (f)(4), and 601.45 over the last few years, which accounts for an increase of 467,549 hours. An additional increase of 358 hours is associated with certifications on Form FDA 3674.

Dated: October 27, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23728 Filed 10–31–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–3535]

Agency Information Collection Activities; Proposed Collection; Comment Request; Special Protocol Assessment; Guidance for Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection in the guidance for industry entitled ''Special Protocol Assessment'' (Revision 1).

DATES: Either electronic or written comments on the collection of information must be submitted by January 3, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 3, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. 2016–N–3535 for ''Special Protocol Assessment'' (Revision 1). Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this

requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Special Protocol Assessment

OMB Control Number 0910–0470—Extension

This information collection request supports Agency guidance entitled ''Special Protocol Assessment'' (Revision 1) (2018) that describes Agency procedures to evaluate issues related to the adequacy (*e.g.,* design, conduct, analysis) of certain proposed studies. The guidance (available at *https://www.fda.gov/media/97618/download*) describes procedures for sponsors to request special protocol assessment and for FDA to act on such requests. The guidance provides information on how FDA interprets and applies provisions of the Food and Drug Administration Modernization Act and specific Prescription Drug User Fee Act (PDUFA) goals for special protocol assessment associated with the development and review of PDUFA products. The guidance describes the following two collections of information: (1) the submission of a notice of intent to request special protocol assessment of a carcinogenicity protocol; and (2) the submission of a request for special protocol assessment.

I. Notification for a Carcinogenicity Protocol

As described in the guidance, a sponsor interested in an FDA assessment of a carcinogenicity protocol should notify the appropriate division in FDA's Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) of an intent to request special protocol assessment at least 30 days prior to submitting the request. With such notification, the sponsor should submit relevant background information so that FDA may review reference material related to carcinogenicity protocol design before receiving the carcinogenicity protocol.

II. Request for Special Protocol Assessment

The guidance asks that a request for special protocol assessment be submitted as an amendment to the investigational new drug application (IND) for the underlying product and that it be submitted to FDA in triplicate along with Form FDA 1571.[1] The guidance also suggests that the sponsor submit the cover letter to a request for special protocol assessment via Fax to the appropriate division in CDER or CBER. FDA regulations (21 CFR 312.23(d)) state that information provided to us as part of an IND is to be submitted in triplicate and with the appropriate cover form (Form FDA 1571). An IND is submitted to FDA under existing regulations in part 312 (21 CFR part 312), which specifies the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of investigational drugs and biological products. The information collection requirements resulting from the preparation and submission of an IND under part 312 have been estimated by FDA, and the reporting and recordkeeping burden has been approved by OMB under OMB control number 0910–0014.

FDA suggests that the cover letter to the request for special protocol assessment be submitted via Fax to the appropriate division in CDER or CBER to enable FDA staff to prepare for the arrival of the protocol for assessment. FDA recommends that a request for special protocol assessment be submitted as an amendment to an IND for two reasons: (1) to ensure that each request is kept in the administrative file with the entire IND and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in FDA's tracking databases enables the appropriate Agency official to monitor progress on the evaluation of the protocol and to ensure that appropriate steps will be taken in a timely manner.

The guidance recommends that the following information should be submitted to the appropriate CBER or CDER division with each request for special protocol assessment so that the division may quickly and efficiently respond to the request:

- Questions to FDA concerning specific issues regarding the protocol.
- All data, assumptions, and information needed to permit an adequate evaluation of the protocol, including: (1) the role of the study in the overall development of the drug; (2) information supporting the proposed trial, including power calculations, the choice of study endpoints, and other critical design features; (3) regulatory outcomes that could be supported by the results of the study; (4) final labeling that could be supported by the results of the study; and (5) for a stability protocol, product characterization, and relevant manufacturing data.

Description of Respondents: A sponsor, applicant, or manufacturer of a drug or biologic product that FDA regulates under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) requesting special protocol assessment.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Information collection activity; guidance document section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Notification for Carcinogenicity Protocols; Sections III. and V	99	0.94	93	8	744
Requests for Special Protocol Assessment Reports; Sections IV. and VI	100	1.54	154	15	2,310

[1] Form FDA 1571 is available at *https://www.fda.gov/media/116608/download.*

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Information collection activity; guidance document section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total			247		3,054

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Burden Estimate: Table 1 provides an estimate of the annual reporting burden for notifications for a carcinogenicity protocol and requests for a special protocol assessment.

Notification for a Carcinogenicity Protocol: Based on the number of notifications for carcinogenicity protocols and the number of carcinogenicity protocols currently submitted to CDER and CBER, CDER estimates that it will receive approximately 92 notifications of an intent to request special protocol assessment of a carcinogenicity protocol per year from approximately 98 sponsors. CBER estimates that it will receive approximately one notification of an intent to request special protocol assessment of a carcinogenicity protocol per year from approximately one sponsor. The hours per response, which is the estimated number of hours that a sponsor would spend preparing the notification and background information to be submitted in accordance with the guidance, is estimated to be approximately 8 hours.

Requests for Special Protocol Assessment: Based on the number of requests for special protocol assessment currently submitted to CDER and CBER, CDER estimates that it will receive approximately 152 requests for special protocol assessment per year from approximately 98 sponsors. CBER estimates that it will receive approximately two requests from approximately two sponsors. The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted with a request for special protocol assessment, including the time it takes to gather and copy questions to be posed to the Agency regarding the protocol and data, assumptions, and information needed to permit an adequate evaluation of the protocol. Based on our experience with these submissions, we estimate approximately 15 hours on average would be needed per response.

The information collection reflects an adjustment decrease in burden by 196 hours. We attribute this adjustment to a decrease in the number of notifications for carcinogenicity protocols and an increase in the number of requests for special protocol assessment reports we received over the last few years.

Dated: October 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23727 Filed 10–31–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0760]

Measuring Growth and Evaluating Pubertal Development in Pediatric Clinical Trials; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Measuring Growth and Evaluating Pubertal Development in Pediatric Clinical Trials.'' The purpose of this draft guidance is to outline the most appropriate methods for measuring and recording growth and evaluating pubertal development for drugs or biological products in development for pediatric use when such an assessment is necessary to support safety. This draft guidance is intended to encourage a consistent approach to collecting interpretable and accurate growth and pubertal development data. This draft guidance does not address use of growth or pubertal development data to support primary evidence of efficacy in growth disorders and does not address evaluation of nutritional status.

DATES: Submit either electronic or written comments on the draft guidance by January 3, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0760 for ''Measuring Growth and Evaluating Pubertal Development in Pediatric Clinical Trials.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be

made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

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

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: George Greeley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6406, Silver Spring, MD 20993–002, 301–796–4025; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Measuring Growth and Evaluating Pubertal Development in Pediatric Clinical Trials.'' The purpose of this draft guidance is to assist sponsors in monitoring growth and pubertal development in clinical trials that enroll pediatric patients with both rare and common diseases. This draft guidance is focused on the most appropriate methods for measuring and recording growth and evaluating pubertal development for evaluation of safety.

If an investigational drug or biological product may affect growth or pubertal development, then accurate, serial measurement and recording of growth parameters are essential for data interpretation in pediatric clinical trials. In general, growth is assessed using measurements of weight, linear growth (length and height), and when appropriate, head circumference. Additional measurements and calculations may be needed in certain pediatric age groups and disease populations. In general, pubertal development is assessed using clinical phenotyping. Identifying the onset and progression of puberty are essential for accurate interpretation of growth data.

This draft guidance addresses measurement of growth, evaluation of pubertal development, and other measurements. The discussion of growth measurements consists of general considerations to ensure accurate, reproducible measurements followed by specific suggestions about how to measure weight, linear growth (length and height), and head circumference in the entire pediatric population starting at birth. The recommendations for pubertal development focus on use of the sexual maturity rating. The draft guidance also provides recommendations on other measurements, specifically use of skeletal age and dual-energy X-ray absorptiometry.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Measuring Growth and Evaluating Pubertal Development in Pediatric Clinical Trials.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collection of information in 21 CFR part 314 has been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: October 27, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23730 Filed 10–31–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics; Meeting and RFC

AGENCY: Centers for Disease Control and Prevention, HHS.

ACTION: Notice of meeting. notice of request for comment (RFC).

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting and related Request for Comment (RFC). The meeting is open to the public. The public is welcome to obtain the link to attend this meeting by following the instructions posted on the Committee website: *https://ncvhs.hhs.gov/*

meetings/standards-subcommittee-hearing/.

Name: National Committee on Vital and Health Statistics (NCVHS) Standards Subcommittee Meeting.

DATES: The meeting will be held Wednesday, January 18, 2023: 10:00 a.m.–5:30 p.m. EST and Thursday, January 19, 2023: 10:00 a.m.–5:30 p.m. EST.

To submit comments in response to the RFC, please send by close of business December 15, 2022, to *NCVHSmail@cdc.gov,* and include on the subject line: RFC on X12 and CAQH CORE Proposals.

ADDRESSES: Virtual open meeting.

FOR FURTHER INFORMATION CONTACT: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, via electronic mail to *vgh4@cdc.gov;* or by telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the home page of the NCVHS website *https://ncvhs.hhs.gov/,* where further information including an agenda and instructions to access the broadcast of the meeting will be posted.

Should you require reasonable accommodation, please telephone the CDC Office of Equal Employment Opportunity at (770) 488–3210 as soon as possible.

SUPPLEMENTARY INFORMATION: As outlined in its Charter, the National Committee on Vital and Health Statistics assists and advises the Secretary of HHS on health data, data standards, statistics, privacy, national health information policy, and the Department's strategy to best address those issues. This includes the adoption and implementation of transaction standards, unique identifiers, and code sets adopted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA),[1] and operating rules adopted under the Patient Protection and Affordable Care Act (ACA).[2]

Purpose: The purpose of this hearing is to inform the Committee as it develops recommendations to HHS. During the hearing, the Committee will receive input from representatives of standards development organizations (SDOs), Operating Rule Authoring Entities (ORAEs) and industry stakeholders in response to requests received from two organizations: X12[3] and the Council for Affordable Quality Healthcare's (CAQH) Committee on Operating Rules for Information Exchange (CORE) Board.[4] Together, these requests ask NCVHS to consider and develop recommendations to HHS regarding proposed mandatory updates to four HIPAA-adopted transactions, mandatory updates to four adopted operating rules, and six new operating rules described below.

The agenda for the hearing dedicates one day to the X12 proposed standards updates and one day to the proposed updated and new operating rules. The agenda on both days will include time for public comment. Meeting times and topics are subject to change.

Request for comment: This Notice also serves as a Request for Comment (RFC) to solicit input from industry stakeholders, patients, any interested individuals and organizations, or any members of the public to the Subcommittee in advance of the January 18–19, 2023, hearing. The Committee is seeking input about the value of the proposed transactions and operating rules, including costs, benefits, test results, and overall impact of updating and adopting (or not adopting) these transaction standards and operating rules. The comments will inform the Committee's deliberations about the value, benefits, and costs of the proposed updates to the standard transactions and operating rules. The Committee will compile the responses in advance of the January 18–19, 2023, hearing and consider them together with the live testimony of subject matter experts provided at the meeting. In addition, NCVHS is collaborating with the Workgroup for Electronic Data Interchange (WEDI) that is also gathering and providing information as described below.

The RFC includes suggested topics and questions to guide commenters. However, comments are welcome on any subject relevant to the Committee's inquiry and any aspect of the agenda. The suggested topics and questions are available on the Committee's website at: *https://ncvhs.hhs.gov/January-2023-Standards-Subcommittee-Hearing-Public-Comment-Guidelines.* To submit comments in response to the RFC, please send by December 15, 2022, to *NCVHSmail@cdc.gov, and* include on the subject line: RFC on X12 and CAQH CORE Proposals.

Requests From X12 and CAQH CORE

On June 7, 2022, X12 submitted a letter to NCVHS to recommend an update of adopted transactions: from version 5010 to version 8020 for the adopted administrative standard for the health care claims (professional, institutional, and dental) and the remittance advice transactions.[5]

HIPAA requires the Secretary of HHS to promulgate regulations adopting standards, code sets, and identifiers to support the exchange of electronic health information between covered entities, including standards for retail pharmacy and medical transactions. Standards setting organizations or the Designated Standards Maintenance Organization (DSMO) bring forward new versions of the adopted standards to NCVHS after completion of a consensus-based review and evaluation process. Under section 1173(3)(B), the organizations with whom a DSMO should consult for input include the National Uniform Billing Committee, the National Uniform Claim Committee, the Workgroup for Electronic Data Interchange, and the American Dental Association.

On May 23, 2022, the CAQH CORE submitted a letter to NCVHS to consider a package of CAQH CORE Operating Rules for federal adoption as follows:[6]

Updates to Adopted Operating Rules

- Updated Eligibility & Benefits Data Content Rule;
- Updated Claim Status Infrastructure Rule (updates + reference to new Connectivity rule);
- Updated Payment & Remittance Advice Infrastructure Rule (reference to new Connectivity rule);
- Updated Eligibility & Benefits Infrastructure Rule (updates + reference to new Connectivity rule).

Proposed New Operating Rules

- CAQH CORE Connectivity Rule vC4.0.0—replaces existing connectivity requirements in infrastructure components of adopted operating rules; adds new requirements to all operating rules;
- New CAQH CORE Eligibility & Benefits (270/271) Single Patient Attribution Data Content Rule;

[1] Public Law 104–191, 110 Stat. 1936 (Aug 21, 1996), available at: *https://www.congress.gov/104/plaws/publ191/PLAW-104publ191.pdf.*

[2] Public Law 111–148, 124 Stat. 119 (Mar 23, 2010), available at: *https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf.*

[3] Letter from X12 to NCVHS, June 7, 2022: *https://ncvhs.hhs.gov/wp-content/uploads/2022/09/X12-Request-for-review-of-8020-transactions-060822-to-NCVHS-508.pdf.*

[4] Letter from CAQH CORE to NCVHS, May 23, 2022: *https://ncvhs.hhs.gov/wp-content/uploads/2022/09/CAQH-CORE-Board-Letter-to-NCVHS-re-New-Updated-OR-052322-508.pdf.*

[5] Letter from X12 to NCVHS, June 7, 2022: *https://ncvhs.hhs.gov/wp-content/uploads/2022/09/X12-Request-for-review-of-8020-transactions-060822-to-NCVHS-508.pdf.*

[6] Letter from CAQH CORE to NCVHS dated May 23, 2022: *https://ncvhs.hhs.gov/wp-content/uploads/2022/09/CAQH-CORE-Board-Letter-to-NCVHS-re-New-Updated-OR-052322-508.pdf.*

- New Attachments Prior Authorization Infrastructure Rule;
- New Attachments Prior Authorization Data Content Rule;
- New Attachments Health Care Claims Infrastructure Rule;
- New Attachments Health Care Claims Data Content Rule.

Section 1104 of ACA amended HIPAA by introducing the requirement to adopt operating rules to support the business function of each HIPAA-adopted standard transaction. HHS has adopted operating rules for the eligibility, claim status, electronic remittance advice, and electronic funds transfer transactions. HHS has not yet adopted operating rules for health care claims, enrollment/disenrollment, premium payments, prior authorization for referrals, or health care claim attachments transactions.

Additional Opportunity To Provide Comment

In addition to the January 18–19, 2023, hearing and RFC, the Committee is collaborating with the Workgroup for Electronic Data Interchange (WEDI) in its role as advisor to the Secretary of Health and Human Services (HHS). WEDI is considered an authority on the use of health information technology (HIT) to improve health information exchange. Its membership includes a cross-section of HIPAA covered entities that implement the HIPAA standards and operating rules, as well as vendors and other subject matter experts who support those implementations. WEDI is supporting NCVHS' efforts to obtain input from a diverse group of stakeholders through educational programs, its annual conference October 25–27, 2022, and other organized information gathering activities. WEDI will compile and analyze this information and share the results with NCVHS by early December 2022. Additional information regarding the WEDI conference and its upcoming outreach efforts is available at: *https://www.wedi.org/about-us/* and *https://members.wedi.org/event-calendar.* The results of WEDI's upcoming information-gathering activities will be presented during NCVHS's January 18–19, 2023, hearing.

Sharon Arnold,

Associate Deputy Assistant Secretary, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2022–23678 Filed 10–31–22; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Trials SEP (UG3, U24, R34).

Date: November 30, 2022.

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: Zhihong Shan, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 205–J, Bethesda, MD 20892, (301) 827–7085, *zhihong.shan@nih.gov.*

(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: October 26, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23686 Filed 10–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel R13 Conference Grant Review.

Date: December 1, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Tony L Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 207–Q, Bethesda, MD 20892–7924, (301) 827–7913, *creazzotl@mail.nih.gov*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Diversity Training Grants.

Date: December 6, 2022.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Sun Saret, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–S, Bethesda, MD 20892, (301) 435–0270, *sun.saret@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Catalyze: Enabling Technologies.

Date: December 14, 2022.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kristin Goltry, Ph.D.,Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 209–B, Bethesda, MD 20892, (301) 435–0297, *goltrykl@mail.nih.gov.*

(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 2 Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 26, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23692 Filed 10–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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: Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Study Section.

Date: December 2, 2022.

Time: 11:00 a.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: Melissa H. Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–R, Bethesda, MD 20892, (301) 827–7951, *nagelinmh2@nhlbi.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: October 26, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23691 Filed 10–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Research Coordinating Center to Support Climate Change and Health Community of Practice.

Date: November 15, 2022.

Time: 10:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27713 (Virtual Meeting).

Contact Person: Linda K Bass, Ph.D. Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 984–287–3236, *bass@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of NIEHS Career and Pathway to Independence Awards.

Date: November 17–18, 2022.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27713 (Virtual Meeting).

Contact Person: Qingdi Quentin Li, MD, Ph.D. Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709 (240) 858–3914 *liquenti@mail.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Revolutionizing, Innovative, Visionary Environmental Health Research (RIVER).

Date: November 17–18, 2022.

Time: 10:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27713 (Virtual Meeting).

Contact Person: Leroy Worth, Ph.D. Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 984–287–3340, *worth@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; R13 NIH Support for Conferences and Scientific Meetings.

Date: December 8, 2022.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building 530 Davis Drive, Research Triangle Park, NC 27713 (Virtual Meeting).

Contact Person: Beverly W. Duncan, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Keystone Building, 530 Davis Drive, Room 3130, Durham, NC 27713, (240) 353–6598, *beverly.duncan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 26, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23687 Filed 10–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary, Interagency Pain Research Coordinating Committee Call for Committee Membership Nominations

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) (Department) has created the Interagency Pain Research Coordinating Committee and is seeking nominations for this committee.

DATES: Nominations are due by 5:00 p.m. EST on November 30, 2022.

ADDRESSES: Nominations must be submitted through the following webform: *https://www.surveymonkey.com/r/iprcc-member-nomination-form.*

FOR FURTHER INFORMATION CONTACT: Linda Porter, *porterl@ninds.nih.gov,* 301–451–4460.

SUPPLEMENTARY INFORMATION: As specified in Public Law 111–148 (''Patient Protection and Affordable Care Act'') the Committee will: (a) develop a summary of advances in pain care research supported or conducted by the

Federal agencies relevant to the diagnosis, prevention, and treatment of pain and diseases and disorders associated with pain; (b) identify critical gaps in basic and clinical research on the symptoms and causes of pain; (c) make recommendations to ensure that the activities of the National Institutes of Health and other Federal agencies are free of unnecessary duplication of effort; (d) make recommendations on how best to disseminate information on pain care; and (e) make recommendations on how to expand partnerships between public entities and private entities to expand collaborative, cross-cutting research.

Membership on the committee will include six (6) non-Federal members from among scientists, physicians, and other health professionals and six (6) non-Federal members of the general public who are representatives of leading research, advocacy, and service organizations for individuals with pain-related conditions. Members will serve overlapping three-year terms. It is anticipated that the committee will meet at least once a year.

The Department strives to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of diverse ethnic and racial groups and people with disabilities are represented on HHS Federal advisory committees, and the Department, therefore, encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Department is soliciting nominations for one (1) non-Federal member from among scientists, physicians, and other health professionals and for two (2) non-Federal members of the general public who represent a leading research, advocacy, or service organization for people with pain-related conditions. These candidates will be considered to fill positions opened through completion of current member terms. Nominations are due by 5:00 p.m. EST on November 30, 2022, using the following webform: *https://www.surveymonkey.com/r/iprcc-member-nomination-form.*

Walter J. Koroshetz,

Director, National Institute of Neurological Disorders and Stroke, National Institutes of Health.

[FR Doc. 2022–23700 Filed 10–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: December 1, 2022.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: The purpose of this meeting is to update the Advisory Board and public stakeholders on the research agenda across NIH for the upcoming fiscal year, and the activities of professional societies.

Place: Virtual-Teleconference and *ZoomGov.*

Telephone Access: 1–669–254–5252 (Meeting ID:160 764 0327 Passcode: 416595).

Virtual Access: https://nih.zoomgov.com/j/1607640327?pwd=bFlKdkNKcUNhblp6VlczSnVmOGtyZz09 (Meeting ID:160 764 0327 Passcode: 416595).

Contact Person: Marishka Brown Ph.D., SDRAB Executive Secretary, Director, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Dr., RKL1/407–B, Bethesda, MD 20814–7952, 301.435.0199, *ncsdr@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: October 26, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23689 Filed 10–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed 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: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Study Section.

Date: December 2, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, RKI, 6705 Rockledge Drive, Bethesda, MD 20850 (Virtual Meeting).

Contact Person: Michael Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, 301–827–7975, *reillymp@nhlbi.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 1Diseases

and Resources Research, National Institutes of Health, HHS)

Dated: October 26, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23690 Filed 10–31–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–

3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: October 27, 2022.

Carlos Castillo,

Public Health Analyst.

[FR Doc. 2022–23705 Filed 10–31–22; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0124]

Cargo Container and Road Vehicle Certification for Transport Under Customs Seal

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than December 1, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 34895) on June 8, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Cargo Container and Road Vehicle Certification for Transport under Customs Seal

OMB Number: 1651–0124.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The United States is a signatory to several international Customs conventions governing cargo container and road vehicle certification procedures that specify the technical requirements that containers and road vehicles must meet to be acceptable for transport under Customs seal. U.S. Customs and Border Protection (CBP) has the responsibility of administering the procedures within Title 19, Part 115 for the purpose of certifying U.S.-manufactured containers and road vehicles for use in international transport under Customs seal. The certification process involves container and road vehicle manufacturers, owners, or operators submitting applications for approval to the certifying authorities (the entities designated in 19 CFR 115.6: The American Bureau of Shipping; International Cargo Gear Bureau, Inc.; The National Cargo Bureau, Inc.). Applications to request certification approvals from the above-mentioned certifying authorities are submitted directly to these organizations on the appropriate forms (*i.e.,* that are created by the organizations themselves). The certification process is voluntary for manufacturers, and therefore Part 115 does not require certification of said container and road vehicles. A certification of compliance facilitates the efficient movement of containers and road vehicles across international territories. The procedures for obtaining a certification of a container or vehicle are set forth in 19 CFR part 115.

The respondents to this information collection are members of the trade community who are familiar with CBP regulations.

Type of Information Collection: Cargo Container/Vehicle Certification.

Estimated Number of Respondents: 25.

Estimated Number of Annual Responses per Respondent: 120.

Estimated Number of Total Annual Responses: 3,000.

Estimated Time per Response: 3.5 hours.

Estimated Total Annual Burden Hours: 10,500.

Dated: October 27, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–23746 Filed 10–31–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0017]

Protest (CBP Form 19)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than December 1, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 34894) on June 8, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Protest.

OMB Number: 1651–0017.

Form Number: CBP Form 19.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: U.S. Customs and Border Protection (CBP) Form 19, *Protest,* is filed to seek the review of a CBP decision. This review may be conducted by CBP personnel who participated directly in the underlying decision. This form is also used to request ''Further Review,'' which means a request for review of the protest to be performed by CBP personnel who did not participate directly in the protested decision or by the Commissioner, or his designee, as provided in the CBP regulations.

The matters that may be protested include: the appraised value of merchandise; the classification and rate and amount of duties chargeable; all charges within the jurisdiction of the Secretary of Homeland Security or the Secretary of the Treasury; exclusion of merchandise from entry or delivery, or demand for redelivery; the liquidation or reliquidation of an entry or any modification of an entry; the refusal to pay a claim for drawback; refusal to reliquidate an entry made before December 18, 2004 under section 520(c) of the Tariff Act of 1930; or refusal to reliquidate an entry under section 520(d) of the Tariff Act of 1930.

The parties who may file a protest or application for further review include: the importer or consignee shown on the entry papers, or their sureties; any person paying any charge or exaction; any person seeking entry or delivery, with respect to a determination of origin under 19 CFR 181 Subpart G any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a Certification of Origin covering the merchandise as provided for in 19 CR 181.11(a); of any person filing a claim for drawback; or any authorized agent of any of the persons described above.

CBP Form 19 collects information such as the name and address of the protesting party, information about the entry being protested, detailed reasons for the protest, and justification for applying for further review.

The information collected on CBP Form 19 is authorized by Sections 514 and 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514 and 1514 (a)) and provided for by 19 CFR part 174 *et seq.* This form is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title_1=19.*

Type of Information Collection: Protest (Form 19).

Estimated Number of Respondents: 3,750.

Estimated Number of Annual Responses per Respondent: 12.

Estimated Number of Total Annual Responses: 45,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 45,000.

Dated: October 27, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–23747 Filed 10–31–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0053]

Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than December 1, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 39107) on June 30, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and af fected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers.

OMB Number: 1651–0053.

Form Number: CBP Form 6478.

Current Actions: This submission is being made to extend the expiration date with a decrease to the burden hours. There is no change to the information collected or method of collection.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: Commercial laboratories seeking to become a Customs and Border Protection (CBP) Accredited Laboratory and commercial gaugers seeking to become a CBP Approved Gauger must submit the information specified in 19 CFR 151.12 and 19 CFR 151.13, respectively, to CBP on CBP Form 6478. After the initial accreditation and/or approval, a private company may apply to include additional facilities under its accreditation and/or approval by submitting a formal written request to CBP. This application process is authorized by Section 613 of Public Law 103–182 (North American Free Trade

Agreement Implementation Act), codified at 19 U.S.C. 1499(b), which directs CBP to establish a procedure to accredit privately owned testing laboratories. The information collected is used by CBP in deciding whether to approve individuals or businesses desiring to measure bulk products or to analyze importations. Instructions for completing these applications are accessible at: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

CBP Form 6478 is accessible at: *https://www.cbp.gov/sites/default/files/assets/documents/2022-May/CBP%20Form%206478.pdf.*

Type of Information Collection: Application.

Estimated Number of Respondents: 8.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 8.

Estimated Time per Response: 75 minutes.

Estimated Total Annual Burden Hours: 10.

Dated: October 27, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–23745 Filed 10–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0082]

African Growth and Opportunity Act (AGOA) Textile Certificate of Origin

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than December 1, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 37881) on June 24, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: African Growth and Opportunity Act (AGOA) Textile Certificate of Origin.

OMB Number: 1651–0082.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with an increase in burden hours due to revised agency estimates, there is no change to the information collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: The African Growth and Opportunity Act (AGOA) was adopted by the U.S. with the enactment of the Trade and Development Act of 2000 (Pub. L. 106–200). The objectives of AGOA are (1) to provide for extension of duty-free treatment under the Generalized System of Preferences (GSP) to import sensitive articles normally excluded from GSP duty treatment, and (2) to provide for the entry of specific textile and apparel articles free of duty and free of any quantitative limits from eligible countries of sub-Saharan Africa.

For preferential treatment of textile and apparel articles under AGOA, the exporter or producer is required to prepare a certificate of origin and provide it to the importer. The certificate of origin includes information such as name and address of the exporter, producer, and importer; the basis for which preferential treatment is claimed; and a description of the imported article(s). The importers are required to have the certificate in their possession at the time of the claim, and to provide it to Customs and Border Protection (CBP) upon request. The collection of this information is provided for in 19 CFR 10.214, 10.215, and 10.216.

Instructions for complying with this regulation are posted on *CBP.gov* website at: *https://www.cbp.gov/trade/rulings/informed-compliance-publications.* This collection of information applies to the importing and trade community who are familiar with import procedures and with the CBP regulations.

Type of Information Collection: AGOA Textile Certificate of Origin.

Estimated Number of Respondents: 68.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 68.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 23 hours.

Dated: October 27, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–23741 Filed 10–31–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0085]

Administrative Rulings

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than December 1, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (87 FR 35563) on June 10, 2022, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions 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, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Administrative Rulings.
OMB Number: 1651–0085.
Form Number: N/A.
Current Actions: CBP proposes to extend the expiration date of this information collection with an increase in the estimated burden hours previously reported. There is no change to the information being collected.
Type of Review: Extension (with change).
Affected Public: Businesses.
Abstract: The collection of information in 19 CFR part 177 is necessary in order to enable Customs and Border Protection (CBP) to respond to requests by importers and other interested persons for the issuance of administrative rulings. These rulings pertain to the interpretation of applicable laws related to prospective and current or completed transactions involving, but not limited to classification, marking, valuation, carrier, and country of origin. The collection of information in Part 177 of the CBP Regulations is also necessary to enable CBP to make proper decisions regarding the issuance of binding rulings that modify or revoke prior CBP binding rulings. This collection of information is authorized by 5 U.S.C. 301, 19 U.S.C. 66, 1202, (General Note 3(i), Harmonized Tariff Schedule of the United States), 1502, 1624, 1625. The application to obtain an administrative ruling is accessible at: *https://erulings.cbp.gov/s/* or the public can submit a ruling request by mail (or email).

This collection of information applies to the importing and trade community who are familiar with import procedures and with the CBP regulations.

Type of Information Collection: Administrative Rulings.
Estimated Number of Respondents: 3,500.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 3,500.
Estimated Time per Response: 20 hours.
Estimated Total Annual Burden Hours: 70,000.
Type of Information Collection: Appeals.
Estimated Number of Respondents: 100.
Estimated Number of Annual Responses per Respondent: 1.
Estimated Number of Total Annual Responses: 100.
Estimated Time per Response: 30 hours.
Estimated Total Annual Burden Hours: 3,000.

Dated: October 27, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–23748 Filed 10–31–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

FY 2022 Senior Executive Service Performance Review Boards

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Correction notice.

SUMMARY: This notice corrects the October, 25, 2022 notice announcing the appointment of members of the FY 2022 Senior Executive Service (SES) Performance Review Boards (PRBs) for the Department of Homeland Security

(DHS). The purpose of the PRBs is to make recommendations to the appointing authority (*i.e.,* Component head) on the performance of senior executives (career, noncareer, and limited appointees), including recommendation on performance ratings, performance-based pay adjustments, and performance awards. The PRBs will also make recommendations on the performance of Transportation Security Executive Service, Senior Level, and Scientific and Professional employees. To make its recommendations, the PRBs will review performance appraisals, initial summary ratings, any response by the employee, and any higher-level official's findings.

DATES: This Notice corrects the notice published on October, 25, 2022 at 87 FR 64513 and is applicable as of October 25, 2022.

FOR FURTHER INFORMATION CONTACT: Christian Fajardo, Human Resources Specialist, Office of the Chief Human Capital Officer, *christian.fajardo@hq.dhs.gov,* 771–200–0392.

SUPPLEMENTARY INFORMATION: This notice corrects the notice published on October, 25, 2022 at 87 FR 64513, to add a name to the FY 2022 SES PRBs for the Department of Homeland Security (DHS), to read as follows:

In accordance with 5 U.S.C. 4314(c) and 5 CFR 430.311, each agency must establish one or more PRBs to make recommendations to the appointing authority (*i.e.,* Component head) on the performance of its senior executives. Each PRB must consist of three or more members. More than one-half of the membership of a PRB must be SES career appointees when reviewing appraisals and recommending performance-based pay adjustments or performance awards for career appointees. Composition of the specific PRBs will be determined on an ad hoc basis from among the individuals listed below:

List of Names (alphabetical order)

Abdelall, Brenda
Acosta, Juan L
Adamcik, Carol A
Aguilar, Max
Alfonso-Royals, Angelica
Alles, Randolph D
Almeida, Corina
Anderson, Sandra D
Antalis, Casie
Antognoli, Anthony
Armstrong, Gloria R
Baden, Mary
Baidwan, Meant S
Baker, Jeremy D
Baker, Paul E
Baroukh, Nader
Barrera, Staci A
Barrera, Staci E
Barrett, Lawrence R
Basham, Craig
Belcher, Brian C
Berg, Peter
Berg, Peter B
Berger, Katrina W
Bhagowalia, Sanjeev
Bible, Daniel A
Bible, Kenneth
Blackwell, Juliana J
Blessey, Caroline
Bobich, Jeffrey M
Bonner, Bryan
Borka, Robert
Borkowski, Mark S
Boulden, Laurie
Boyd, John
Boyer, Stephen A
Brane, Michelle
Braun, Jacob H
Breitzke, Erik P
Brewer, Julie S
Bright, Andrea J
Brito, Roberto
Brown, Billy
Browne, Rene E
Brundage, William
Bryan, Michelle C
Bucholtz, Kathleen L
Bullock, Edna
Burgess, Kenneth
Burks, Atisha
Burriesci, Kelli A
Bush, William B
Cagen, Steven W
Caine, Jeffrey
Callahan, Mary Ellen
Cameron, Michael K
Canegallo, Kristie
Canevari, Holly E
Canty, Rachel E
Cappello, Elizabeth A
Carnes, Alexandra
Carpio, Philip F
Carraway, Melvin J
Chaleki, Thomas D
Cheatle, Kimberly A
Cheng, Wen-Ting
Clark, Alaina
Clark, Kenneth N
Cleary Stannard, Jennifer S
Cline, Richard K
Cloe, David
Clutter, Mason
Companion, Tod T
Cook, Charles
Cormier, Tracy J
Coronado, Luis
Corrado, Janene M
Cotter, Daniel
Courey, Marc B
Courtney, Paul
Coven, Phyllis
Cox, Adam
Cox, Debra S
Cross, Catherine C
Crumpacker, Jim H
Culliton-Gonzalez, Katherine
Cunningham, John D
Dainton, Albert J
Dargan, John L
Das, Sharmistha
Daskal, Jennifer
Davidson, Michael J
Dawson, Inga I
Dembling, Ross W
DeNayer, Larry C
Di Pietro, Joseph R
DiFalco, Frank J
Dobitsch, Stephanie M
Doran, Thomas J
Dorko, Jeffrey
Dorr, Robert
Doyle, Kerry
Dunbar, Susan C
Dunlap, James
Dupree, Lynn
Eaton, Joseph J
Ederheimer, Joshua A
Edwards, Benjamin R
Eldredge, Deborah N
Ellison, Jennifer
Emerson, Michael D
Emrich, Matthew D
Enriquez Mcdivitt, Mariam
Escobar Carrillo, Felicia A
Espinosa, Marsha
Essaheb, Kamal
Evetts, Mark V
Falk, Scott K
Fenton, Jennifer M
Ferraro, Nina M
Fields, Kathy
Fitzhugh, Peter C
Fitzmaurice, Stacey D
Fitzpatrick, Ronnyka
Flores, Pete R
Fong, Heather
Francis, Steve K
Fujimura, Paul
Gabbrielli, Tina
Gaches, Michael
Gandhi, Pritesh
Gantt, Kenneth D
George, Michael
Gersten, David
Gladwell, Angela R
Glass, Veronica
Gorman, Chad M
Gould, Austin J
Gountanis, John
Granger, Christopher
Grazzini, Christopher
Griggs, Christine
Groom, Molly
Gunter, Brett A
Guzman, Nicole
Habersaat, Mark S
Hall, Christopher J
Harris, Melvin
Harvey, Melanie K
Hatch, Peter
Havranek, John F
Heinz, Todd W
Henderson, Rachelle B
Hess, David A
Higgins, Jennifer B
Highsmith, AnnMarie R
Hinkle-Bowles, Paige
Holzer, James
Hoover, Crinley S
Horton, Michael G
Horyn, Iwona B
Hott Jr., Russell E
Howard, Tammy
Hoy, Serena
Huffman, Benjamine C
Hughes, Clifford T
Hunter, Adam
Huse, Thomas F
Hysen, Eric

Jackson, Arnold D
James, Michele M
Jenkins, Donna
Johnson, James V
Johnson, Tae D
Jones, Eric C
Joves, Alexander
Kahangama, Iranga A
Katz, Evan C
Kaufman, Steven
Kerner, Francine
Kim, Ted
King, Matthew H
King, Tatum S
Klein, Matthew
Koumans, Marnix R
Kronisch, Matthew L
Kuepper, Andrew
Kuhn, Karen A
LaJoye, Darby R
Lambeth, John
Langley, Monica
Lanum, Scott F
Larrimore, David
Laurance, Stephen A
Lawrence, Jamie
Lechleitner, Patrick J
Leckey, Eric
Lee, Grace
Lee, Kimya S
Leonard, John P
Letowt, Philip J
Lewis, James
Loiacono, Adam V
Lotspeich, Katherine
Lugo, Alice
Luke, Adam
Lundgren, Karen E
Lynch, Steven M
Lynum, Kara
Lyon, Shonnie R
Maday, Brian
Magrino, Christopher
Maher, Joseph B
Malik, Irfan
Mapar, Jalal
Marcott, Stacy
Martin, Joseph F
Maurer, Tim
Maykovich, Vincent
McComb, Richard
McCullar, Shannon
McDermott, Thomas
McDonald, Christina E
McDonough, Bryn
McElwain, Patrick J
McEntee, Jonathan
McGough, Daniel
McGovern, Helen Mary
McLane, JoAnn
Meckley, Tammy M
Medina, Yvonne R
Meyer, Joel T
Meyer, Jonathan
Michelini, Dennis J
Miles, John D
Miller, Alice
Miller, Gail
Mina, Peter E
Mitchell, Kathryn C
Moman, Christopher C
Morant, Cardell T
Murphy, Mark
Mussington, David
Myers, Heidi Y
Nally, Kevin J
Navarro, Donna M
Neitzel, Beth
Newman, Robert B
Nunn, Willie
Ocker, Ronald J
O'Connor, Kimberly
Olson, David
Ortiz, Raul L
Padilla, Kenneth
Padilla Jr, Manuel
Palmer, David J
Paramore, Faron K
Paschall, Robert D
Patel, Kalpesh A
Patterson, Leonard E
Pavlik-Keenan, Catrina
Perez, Nelson
Perriott, Harvey
Petit, Nanci
Picarelli, John
Piccone, Colleen C
Pineiro, Marlen
Podonsky, Glenn S
Pohlman, Teresa R
Porto, Victoria
Powell, Jonathan
Price, Corey A
Prosnitz, Susan M
Punteney, James
Quinn, Timothy J
Radgowski, Jeffrey
Raines, Ariana M
Rapp, Marc A
Raymond, John J
Renaud, Daniel M
Renaud, Tracy L
Rezmovic, Jeffrey M
Ritter, David
Roncone, Stephen A
Rosenblum, Marc R
Rowe Jr., Ronald L
Rubino, Jaclyn
Russell, Anthony
Russell, Gabriel
Ryan, Michael P
Rynes, Joel C
Sabatino, Diane J
Sahakian, Diane V
Salazar, Rebecca A
Salazar, Ronald M
Saltalamachea, Michael
Salvano-Dunn, Dana
Scanlon, Julie A
Scardaville, Michael
Scott, Kika M
Scudder, Ryan J
Sequin, Debbie W
Seidman, Ricki
Sejour, Soldenise
Selby, Cara M
Sevier, Adrian
Shearer, Ruth C
Short, Victoria D
Silas, Z. Traci
Siler, Tracy
Silvers, Robert
Singh, Neil S
Skelton, Kerry T
Smislova, Melissa
Smith, David M
Smith, Frederick B
Smith, Stacy M
Solnet, Jeffrey
Stanton, Joshua B
Stephens, Celisa M
Stevenson, Tirelle D
Stiefel, Nathaniel I
Stough, Michael S
Street, Stacey
Stuntz, Shelby
Sulc, Brian
Swartz, Neal J
Sykes, Gwendolyn
Szczech, Gracia
Tabaddor, Afsaneh
Tapscott, Wallicia
Todd, Sarah
Tomney, Christopher J
Toris, Randolph B
Try, Gregory W
Tulis, Dana
Turi, Keith
Valverde, Michael
Van Houten, Ann
Venture, Veronica
Vespe, Erin E
Vinograd, Samantha
Wainstein, Ken
Walters, Thomas J
Washington, Karinda
Wasowicz, John A
Watkins, Tracey L
Watson, Andre R
Wawro, Joseph D
Wells, James
Whalen, Mary Kate
Wheaton, Kelly D
Williams, Marta
Windham, Nicole
Witte, Diane L
Wolfe, Herbert
Wong, Sharon M
Wright, Christopher J
Yarwood, Susan A

Dated: October 25, 2022.

Gregory Ruocco,

Director, Executive Resources, Office of the Chief Human Capital Officer.

[FR Doc. 2022–23557 Filed 10–31–22; 8:45 am]

BILLING CODE 9112–FC–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6327–C–02]

Notice of Annual Factors for Determining Administrative Fees for the Section 8 Housing Choice Voucher, Mainstream, and Moderate Rehabilitation Programs for Calendar Year 2021; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice, correction.

SUMMARY: On August 15, 2022, HUD published a notice in the **Federal Register** entitled, ''Notice of Annual Factors for Determining Administrative Fees for the Section 8 Housing Choice Voucher, Mainstream, and Moderate Rehabilitation Programs for Calendar Year 2021''. The notice published omitted specific information and included incorrect website links. To

clarify any misinformation, this notice replaces the notice published on August 15, 2022, and republishes the methodology HUD used in determining the on-going administrative fees for public housing agencies (PHAs) administering the Housing Choice Voucher (HCV), Mainstream, and Moderate Rehabilitation programs, including the Moderate Rehabilitation Single Room Occupancy program, during calendar year (CY) 2021.

FOR FURTHER INFORMATION CONTACT: Miguel A. Fontánez, Director, Housing Voucher Financial Management Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW, Room 4222, Washington, DC 20410–8000, telephone number 202–402–2934. (This is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: On August 15, 2022, HUD issued the ''Notice of Annual Factors for Determining Administrative Fees for the Section 8 Housing Choice Voucher, Mainstream, and Moderate Rehabilitation Programs for Calendar Year 2021'' at 87 FR 50095. The notice published omitted specific information and included incorrect website links. This notice replaces that notice in its entirety for added clarity but does not change the Annual Factors for Determining Administrative Fees.

A. Background

HUD is required by statute to notify the public of the methodology used to determine administrative fee rates for each calendar year. HUD is issuing this Notice in compliance with this statutory requirement. The 2021 administrative fee rates were previously published at the following link: *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidance_and_notices.* This Notice provides HUD's methodology used to determine the CY 2021 administrative fee rates by area, which HUD used to determine administrative fees for the HCV, Mainstream, and Moderate Rehabilitation programs, including the Moderate Rehabilitation Single Room Occupancy (SRO) program. The HCV program is the Federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market.

Mainstream Vouchers are tenant-based vouchers serving households that include a non-elderly person with a disability. The Moderate Rehabilitation program provides project-based rental assistance for low-income families and the Mod Rehab SRO program provides assistance to individuals experiencing homelessness. Both programs have been repealed and no new projects are authorized for development. Assistance is limited to properties previously rehabilitated pursuant to an Agreement to enter into a Housing Assistance Payments (HAP) Contract between an owner and a PHA, with assistance being provided pursuant to a HAP contract between the PHA and owner.

B. CY 2021 Methodology

For CY 2021, in accordance with the 2021 Consolidated Appropriations Act (Pub. L. 116–260), administrative fees were determined based on vouchers leased as of the first day of each month. This data was extracted from the Voucher Management System (VMS) at the close of each reporting cycle and validated prior to use. For the Moderate Rehabilitation program, including the SRO program, administrative fees were earned based on the units under a HAP contract. In some cases, the fee rates calculated for CY 2021 were lower than those established for CY 2020. In these cases, the affected PHAs were held harmless at the CY 2020 fee rates.

The fee rates for each PHA generally cover the fees for areas in which the PHA had the greatest proportion of its participants. This was determined using Public Housing Information Center (PIC) data submitted by the PHA. In some cases, PHAs had participants in more than one fee area. If such a PHA chooses, the PHA could request that HUD establish a blended fee rate to proportionately all areas in which participants were located. Once a blended rate was established, it was used to determine the PHA's fee eligibility for all months in CY 2021. The 2021 HCV Funding Implementation Notice described how to apply for blended fee rates and the deadline date for submitting such requests. The notice can be accessed through the following link: *https://www.hud.gov/sites/dfiles/PIH/documents/pih2021-10.pdf.*

PHAs operating over large geographic areas, defined as multiple counties, could request a higher administrative fee rate if eligible under the criteria described in the CY 2021 implementation notice. The 2021 HCV Funding Implementation Notice described when to apply for higher fee rates and the deadline date for such requests. Higher administrative fee rates differed from blended administrative fee rates in how they were calculated. Requests for higher administrative rates must have clearly demonstrated that the PHA's published rate cannot cover their projected expenses. Next, a breakeven rate was calculated to ensure the PHA received sufficient funds to cover their expenses while also ensuring the administrative fee reserves did not grow.

This notice identifies the monthly per-voucher-unit fee rates that were used in CY 2021 to determine PHA administrative fee eligibility for the programs identified in this notice. These fee rates remain posted on the Department's website at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv,* under Program Related Information.

Questions concerning this notice should be directed to the PHA's assigned representative at the Financial Management Center or the Financial Management Division at *PIHFinancialManagementDivision@hud.gov.*

C. Moving To Work (MTW) Agencies

In cases where an MTW Agency has an alternative formula for calculating HCV administrative fees in Attachment A of its MTW Agreement, HUD calculates the HCV administrative fees in accordance with the MTW Agreement provision.

Dominique Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

PHA	A rate	B rate
AK901	$105.58	$98.55
AL001	70.47	65.77
AL002	71.58	66.82
AL004	69.54	64.90
AL005	73.06	68.19
AL006	69.54	64.90
AL007	69.54	64.90
AL008	68.62	64.05
AL011	68.62	64.05
AL012	69.54	64.90
AL014	68.62	64.05
AL047	71.60	66.84
AL048	69.54	64.90
AL049	69.54	64.90
AL050	69.54	64.90
AL052	68.62	64.05
AL053	68.62	64.05
AL054	69.54	64.90
AL060	68.62	64.05
AL061	69.54	64.90
AL063	70.47	65.77
AL068	69.54	64.90
AL069	70.47	65.77
AL072	70.47	65.77
AL073	68.79	64.20

PHA	A rate	B rate
AL075	68.62	64.05
AL077	69.54	64.90
AL086	70.47	65.77
AL090	68.62	64.05
AL091	68.62	64.05
AL099	68.62	64.05
AL105	68.62	64.05
AL107	68.62	64.05
AL112	68.62	64.05
AL114	68.62	64.05
AL115	68.62	64.05
AL116	68.62	64.05
AL118	68.62	64.05
AL121	68.62	64.05
AL124	68.79	64.20
AL125	70.47	65.77
AL129	69.54	64.90
AL131	69.54	64.90
AL138	69.54	64.90
AL139	69.54	64.90
AL152	69.54	64.90
AL154	68.62	64.05
AL155	68.62	64.05
AL160	68.62	64.05
AL165	72.62	67.78
AL169	71.58	66.82
AL171	68.62	64.05
AL172	69.54	64.90
AL174	68.62	64.05
AL177	68.62	64.05
AL181	68.62	64.05
AL192	68.62	64.05
AL202	71.58	66.82
AR002	72.66	67.83
AR003	67.37	62.88
AR004	72.66	67.83
AR006	72.66	67.83
AR010	64.07	59.80
AR012	64.07	59.80
AR015	67.59	63.08
AR016	64.07	59.80
AR017	66.60	62.16
AR020	64.07	59.80
AR024	70.49	65.79
AR031	66.60	62.16
AR033	64.07	59.80
AR034	66.60	62.16
AR035	64.07	59.80
AR037	64.07	59.80
AR039	64.07	59.80
AR041	72.66	67.83
AR042	66.60	62.16
AR045	64.07	59.80
AR052	64.07	59.80
AR066	64.07	59.80
AR068	64.07	59.80
AR082	64.07	59.80
AR104	66.60	62.16
AR117	64.07	59.80
AR121	64.07	59.80
AR131	66.60	62.16
AR152	64.07	59.80
AR161	64.07	59.80
AR163	66.60	62.16
AR166	64.07	59.80
AR170	72.66	67.83
AR175	72.66	67.83
AR176	64.07	59.80
AR177	64.07	59.80
AR181	66.60	62.16
AR194	67.37	62.88
AR197	64.07	59.80
AR200	64.07	59.80
AR210	64.07	59.80
AR211	64.07	59.80
AR213	64.07	59.80
AR214	64.07	59.80
AR215	64.07	59.80
AR223	64.07	59.80
AR224	64.07	59.80
AR225	64.07	59.80
AR232	66.60	62.16
AR240	64.07	59.80
AR241	66.97	62.51
AR247	64.07	59.80
AR252	72.66	67.83
AR257	64.07	59.80
AR264	70.49	65.79
AR265	64.07	59.80
AR266	64.07	59.80
AZ001	76.57	71.46
AZ003	76.57	71.46
AZ004	75.70	70.64
AZ005	76.57	71.46
AZ006	83.71	78.14
AZ008	61.13	57.06
AZ009	76.57	71.46
AZ010	76.57	71.46
AZ013	85.07	79.40
AZ021	76.57	71.46
AZ023	64.42	60.12
AZ025	75.70	70.64
AZ028	76.57	71.46
AZ031	76.57	71.46
AZ032	76.57	71.46
AZ033	75.70	70.64
AZ034	62.91	58.71
AZ035	85.07	79.40
AZ037	62.91	58.71
AZ041	83.71	78.14
AZ043	102.52	95.69
AZ045	63.35	59.12
AZ880	76.57	71.46
AZ901	83.71	78.14
CA001	132.51	123.69
CA002	132.51	123.69
CA003	132.51	123.69
CA004	132.51	123.69
CA005	100.64	93.93
CA006	92.33	86.17
CA007	100.64	93.93
CA008	100.98	94.25
CA011	132.51	123.69
CA014	132.51	123.69
CA019	105.71	98.67
CA021	129.40	120.75
CA022	105.71	98.67
CA023	86.76	80.98
CA024	96.56	90.13
CA026	97.24	90.74
CA027	105.71	98.67
CA028	92.33	86.17
CA030	86.10	80.37
CA031	132.51	123.69
CA032	132.51	123.69
CA033	114.17	106.54
CA035	132.51	123.69
CA039	96.08	89.68
CA041	115.04	107.37
CA043	88.74	82.81
CA044	100.64	93.93
CA048	76.15	71.07
CA052	132.51	123.69
CA053	83.34	77.78
CA055	115.04	107.37
CA056	132.51	123.69
CA058	132.51	123.69
CA059	132.51	123.69
CA060	132.51	123.69
CA061	87.64	81.79
CA062	132.51	123.69
CA063	118.48	110.57
CA064	114.71	107.06
CA065	115.04	107.37
CA066	115.04	107.37
CA067	132.51	123.69
CA068	132.51	123.69
CA069	92.33	86.17
CA070	80.20	74.86
CA071	132.51	123.69
CA072	132.51	123.69
CA073	115.04	107.37
CA074	132.51	123.69
CA075	132.51	123.69
CA076	129.40	120.75
CA077	118.48	110.57
CA079	132.51	123.69
CA082	132.51	123.69
CA084	94.45	88.15
CA085	129.24	120.64
CA086	90.28	84.25
CA088	129.24	120.64
CA092	132.51	123.69
CA093	132.51	123.69
CA094	132.51	123.69
CA096	92.33	86.17
CA102	132.51	123.69
CA103	132.51	123.69
CA104	132.51	123.69
CA105	132.51	123.69
CA106	92.33	86.17
CA108	118.48	110.57
CA110	132.51	123.69
CA111	132.51	123.69
CA114	132.51	123.69
CA116	118.48	110.57
CA117	132.51	123.69
CA118	132.51	123.69
CA119	132.51	123.69
CA120	132.51	123.69
CA121	132.51	123.69
CA123	132.51	123.69
CA125	115.04	107.37
CA126	132.51	123.69
CA128	100.64	93.93
CA131	115.04	107.37
CA132	118.48	110.57
CA136	132.51	123.69
CA143	96.08	89.68
CA144	87.64	81.79
CA149	100.64	93.93
CA151	100.64	93.93
CA155	118.48	110.57
CO001	80.87	75.48
CO002	74.71	69.72
CO005	84.45	78.82
CO006	72.29	67.47
CO016	91.77	85.64
CO019	80.87	75.48
CO024	72.29	67.47
CO028	75.44	70.42
CO031	72.29	67.47
CO034	86.96	81.17
CO035	74.99	70.00
CO036	80.87	75.48
CO040	111.64	104.20
CO041	86.96	81.17
CO043	84.45	78.82
CO045	72.29	67.47
CO048	80.87	75.48
CO049	80.87	75.48
CO050	80.87	75.48

PHA	A rate	B rate
CO051	94.61	88.30
CO052	80.87	75.48
CO057	80.87	75.48
CO058	80.87	75.48
CO061	91.77	85.64
CO070	91.77	85.64
CO071	75.44	70.42
CO072	80.87	75.48
CO079	84.45	78.82
CO087	111.64	104.20
CO090	74.99	70.00
CO095	106.75	99.63
CO101	72.29	67.47
CO103	86.96	81.17
CO888	74.71	69.72
CO911	80.87	75.48
CO921	80.87	75.48
CT001	102.92	96.06
CT002	110.32	102.97
CT003	97.01	90.53
CT004	106.93	99.80
CT005	97.01	90.53
CT006	87.62	81.78
CT007	110.32	102.97
CT008	97.01	90.53
CT009	97.01	90.53
CT010	87.62	81.78
CT011	106.93	99.80
CT013	97.01	90.53
CT015	102.92	96.06
CT017	102.92	96.06
CT018	95.23	88.88
CT019	110.32	102.97
CT020	110.32	102.97
CT023	97.01	90.53
CT024	87.62	81.78
CT026	97.01	90.53
CT027	102.92	96.06
CT028	97.01	90.53
CT029	106.93	99.80
CT030	102.92	96.06
CT031	85.76	80.04
CT032	97.01	90.53
CT033	97.01	90.53
CT036	97.01	90.53
CT038	97.01	90.53
CT039	97.01	90.53
CT040	97.01	90.53
CT041	97.01	90.53
CT042	106.93	99.80
CT047	87.62	81.78
CT048	97.01	90.53
CT049	97.01	90.53
CT051	97.01	90.53
CT052	102.92	96.06
CT053	97.01	90.53
CT058	87.62	81.78
CT061	87.62	81.78
CT063	106.93	99.80
CT067	106.93	99.80
CT068	97.01	90.53
CT901	97.01	90.53
DC001	119.93	111.95
DC880	119.93	111.95
DE001	95.93	89.53
DE002	81.97	76.51
DE003	95.93	89.53
DE005	95.93	89.53
DE901	81.97	76.51
FL001	77.34	72.19
FL002	81.65	76.20
FL003	81.65	76.20
FL004	85.28	79.59
FL005	110.80	103.42
FL007	81.85	76.40
FL008	89.61	83.64
FL009	86.52	80.75
FL010	103.74	96.83
FL011	67.96	63.43
FL013	110.95	103.57
FL015	72.67	67.82
FL017	110.80	103.42
FL018	66.39	61.96
FL019	78.72	73.49
FL020	78.72	73.49
FL021	86.52	80.75
FL022	81.85	76.40
FL023	89.61	83.64
FL024	81.85	76.40
FL025	78.72	73.49
FL026	67.96	63.43
FL028	103.74	96.83
FL030	81.85	76.40
FL031	64.53	60.23
FL032	66.92	62.45
FL033	85.28	79.59
FL034	81.65	76.20
FL035	66.39	61.96
FL037	77.34	72.19
FL041	86.98	81.19
FL045	86.98	81.19
FL046	66.39	61.96
FL047	85.84	80.13
FL049	64.53	60.23
FL053	66.92	62.45
FL057	64.53	60.23
FL060	83.59	78.02
FL062	81.65	76.20
FL063	73.37	68.48
FL066	110.80	103.42
FL068	110.80	103.42
FL069	66.39	61.96
FL070	73.37	68.48
FL071	67.96	63.43
FL072	81.85	76.40
FL073	72.67	67.82
FL075	81.65	76.20
FL079	103.74	96.83
FL080	86.52	80.75
FL081	103.74	96.83
FL083	86.52	80.75
FL092	66.92	62.45
FL093	85.28	79.59
FL102	66.39	61.96
FL104	81.65	76.20
FL105	89.61	83.64
FL106	85.28	79.59
FL110	66.39	61.96
FL113	81.85	76.40
FL116	103.74	96.83
FL119	86.52	80.75
FL123	81.42	75.99
FL128	85.84	80.13
FL132	86.66	80.91
FL136	103.74	96.83
FL137	81.65	76.20
FL139	67.96	63.43
FL141	89.33	83.37
FL144	110.95	103.57
FL145	110.80	103.42
FL147	66.39	61.96
FL201	85.28	79.59
FL202	64.53	60.23
FL881	110.80	103.42
FL888	81.65	76.20
GA001	73.06	68.19
GA002	73.06	68.19
GA004	73.06	68.19
GA006	89.08	83.13
GA007	73.06	68.19
GA009	73.06	68.19
GA010	89.08	83.13
GA011	89.08	83.13
GA023	73.06	68.19
GA062	69.28	64.66
GA078	89.08	83.13
GA095	89.08	83.13
GA116	89.08	83.13
GA188	89.08	83.13
GA228	89.08	83.13
GA232	89.08	83.13
GA237	89.08	83.13
GA264	89.08	83.13
GA269	89.08	83.13
GA285	73.06	68.19
GA901	89.08	83.13
GQ901	122.03	113.90
HI002	122.57	114.40
HI003	135.89	126.84
HI004	135.90	126.85
HI005	138.05	128.86
HI901	135.89	126.84
IA002	68.84	64.25
IA004	72.37	67.55
IA015	68.84	64.25
IA018	72.49	67.66
IA020	81.99	76.53
IA022	83.57	78.01
IA023	73.28	68.40
IA024	79.38	74.08
IA030	68.84	64.25
IA038	79.69	74.38
IA042	68.84	64.25
IA045	76.02	70.96
IA047	68.84	64.25
IA049	68.84	64.25
IA050	79.69	74.38
IA056	68.84	64.25
IA057	68.84	64.25
IA084	68.84	64.25
IA087	73.46	68.56
IA098	72.52	67.70
IA100	68.84	64.25
IA107	68.84	64.25
IA108	68.84	64.25
IA113	79.69	74.38
IA114	68.84	64.25
IA117	73.28	68.40
IA119	68.84	64.25
IA120	81.99	76.53
IA122	68.84	64.25
IA124	68.84	64.25
IA125	68.84	64.25
IA126	76.02	70.96
IA127	68.84	64.25
IA128	68.84	64.25
IA129	68.84	64.25
IA130	68.84	64.25
IA131	81.99	76.53
IA132	79.69	74.38
ID005	71.57	66.80
ID013	88.94	83.01
ID016	88.94	83.01
ID021	88.94	83.01
ID901	74.09	69.14
IL002	100.65	93.93
IL003	79.48	74.18
IL004	72.43	67.60
IL006	70.94	66.21
IL009	76.02	70.96
IL010	76.02	70.96
IL011	64.37	60.08

PHA	A rate	B rate
IL012	68.54	63.97
IL014	76.95	71.82
IL015	69.71	65.05
IL016	64.32	60.03
IL018	76.02	70.96
IL020	76.02	70.96
IL022	72.28	67.46
IL024	100.65	93.93
IL025	100.65	93.93
IL026	100.65	93.93
IL028	72.43	67.60
IL030	69.71	65.05
IL032	76.95	71.82
IL034	70.94	66.21
IL035	76.95	71.82
IL037	64.32	60.03
IL038	64.32	60.03
IL039	68.67	64.10
IL040	64.32	60.03
IL043	64.32	60.03
IL050	64.37	60.08
IL051	70.69	65.98
IL052	64.32	60.03
IL053	64.37	60.08
IL054	100.65	93.93
IL056	100.65	93.93
IL057	64.32	60.03
IL059	64.32	60.03
IL061	65.08	60.74
IL074	69.71	65.05
IL076	64.32	60.03
IL079	64.32	60.03
IL082	64.32	60.03
IL083	72.28	67.46
IL084	68.23	63.68
IL085	65.67	61.30
IL086	68.23	63.68
IL087	64.32	60.03
IL088	64.32	60.03
IL089	79.77	74.45
IL090	100.65	93.93
IL091	64.32	60.03
IL092	100.65	93.93
IL095	75.44	70.41
IL096	64.32	60.03
IL101	100.65	93.93
IL103	100.65	93.93
IL104	79.48	74.18
IL107	100.65	93.93
IL116	100.65	93.93
IL117	70.69	65.98
IL120	64.32	60.03
IL122	72.28	67.46
IL123	64.32	60.03
IL124	79.48	74.18
IL126	64.37	60.08
IL130	100.65	93.93
IL131	76.02	70.96
IL136	100.65	93.93
IL137	101.52	94.74
IL901	100.65	93.93
IN002	55.79	52.07
IN003	61.62	57.52
IN004	57.40	53.57
IN005	57.40	53.57
IN006	68.13	63.59
IN007	59.94	55.95
IN009	55.79	52.07
IN010	75.23	70.22
IN011	75.23	70.22
IN012	64.25	59.97
IN015	60.65	56.61
IN016	59.56	55.59
IN017	68.13	63.59
IN018	55.79	52.07
IN019	59.42	55.45
IN020	60.65	56.61
IN021	57.40	53.57
IN022	61.07	57.01
IN023	64.25	59.97
IN025	64.25	59.97
IN026	59.55	55.58
IN029	75.23	70.22
IN031	55.79	52.07
IN032	56.79	53.00
IN035	57.40	53.57
IN037	59.56	55.59
IN041	55.79	52.07
IN043	55.79	52.07
IN047	55.79	52.07
IN048	55.79	52.07
IN050	55.79	52.07
IN055	56.79	53.00
IN056	58.40	54.50
IN058	62.17	58.04
IN060	59.55	55.58
IN062	59.89	55.91
IN067	55.79	52.07
IN071	65.80	61.40
IN073	55.79	52.07
IN078	58.40	54.50
IN079	68.13	63.59
IN080	68.13	63.59
IN086	55.79	52.07
IN091	55.79	52.07
IN092	55.79	52.07
IN094	57.54	53.70
IN100	60.65	56.61
IN901	68.13	63.59
KS001	67.77	63.24
KS002	64.34	60.06
KS004	69.32	64.69
KS006	60.45	56.42
KS017	60.45	56.42
KS038	60.45	56.42
KS041	60.45	56.42
KS043	67.77	63.24
KS053	71.11	66.37
KS062	60.45	56.42
KS063	61.09	57.01
KS068	67.77	63.24
KS073	69.32	64.69
KS091	60.45	56.42
KS149	60.45	56.42
KS159	60.45	56.42
KS161	60.45	56.42
KS162	67.77	63.24
KS165	60.45	56.42
KS166	60.45	56.42
KS167	61.09	57.01
KS168	64.34	60.06
KS170	60.45	56.42
KY001	64.25	59.97
KY003	57.43	53.60
KY004	71.16	66.42
KY007	56.37	52.62
KY008	56.37	52.62
KY009	64.25	59.97
KY011	71.40	66.64
KY012	59.56	55.59
KY015	73.07	68.19
KY017	56.37	52.62
KY021	56.37	52.62
KY022	56.37	52.62
KY026	56.37	52.62
KY027	56.37	52.62
KY035	56.37	52.62
KY040	56.37	52.62
KY047	56.37	52.62
KY053	56.37	52.62
KY056	56.37	52.62
KY061	71.16	66.42
KY071	62.67	58.49
KY086	56.37	52.62
KY107	56.37	52.62
KY121	56.37	52.62
KY132	62.43	58.27
KY133	73.07	68.19
KY135	73.07	68.19
KY136	73.07	68.19
KY137	56.37	52.62
KY138	56.37	52.62
KY140	71.16	66.42
KY141	56.37	52.62
KY142	65.11	60.77
KY157	56.37	52.62
KY160	56.37	52.62
KY161	65.11	60.77
KY163	56.37	52.62
KY169	56.37	52.62
KY171	64.25	59.97
KY901	71.16	66.42
LA001	74.89	69.89
LA002	73.31	68.43
LA003	80.86	75.47
LA004	69.98	65.31
LA005	69.98	65.31
LA006	69.98	65.31
LA009	80.86	75.47
LA012	74.89	69.89
LA013	74.89	69.89
LA023	69.98	65.31
LA024	69.41	64.79
LA029	69.98	65.31
LA031	69.41	64.79
LA032	69.98	65.31
LA033	69.41	64.79
LA036	69.41	64.79
LA037	74.71	69.74
LA046	69.98	65.31
LA057	69.98	65.31
LA063	69.98	65.31
LA067	69.41	64.79
LA074	69.41	64.79
LA086	69.41	64.79
LA094	74.89	69.89
LA097	69.41	64.79
LA101	80.86	75.47
LA103	74.89	69.89
LA104	69.98	65.31
LA111	69.41	64.79
LA114	69.41	64.79
LA115	69.41	64.79
LA120	69.98	65.31
LA122	69.98	65.31
LA125	69.41	64.79
LA128	69.41	64.79
LA129	69.98	65.31
LA132	69.41	64.79
LA159	69.41	64.79
LA163	69.41	64.79
LA165	69.98	65.31
LA166	69.41	64.79
LA169	69.41	64.79
LA171	69.98	65.31
LA172	69.98	65.31
LA173	69.98	65.31
LA174	69.98	65.31
LA178	69.98	65.31
LA181	74.89	69.89
LA182	69.41	64.79
LA184	73.31	68.43

PHA	A rate	B rate
LA186	69.98	65.31
LA187	74.89	69.89
LA188	69.41	64.79
LA189	69.98	65.31
LA190	73.31	68.43
LA192	69.41	64.79
LA194	71.71	66.93
LA195	69.41	64.79
LA196	69.98	65.31
LA199	80.86	75.47
LA202	80.86	75.47
LA204	80.86	75.47
LA205	80.86	75.47
LA206	69.98	65.31
LA207	69.98	65.31
LA211	71.71	66.93
LA212	69.41	64.79
LA213	74.71	69.74
LA214	69.98	65.31
LA215	69.41	64.79
LA220	69.41	64.79
LA222	69.41	64.79
LA229	69.41	64.79
LA230	73.31	68.43
LA232	69.41	64.79
LA233	69.41	64.79
LA238	74.89	69.89
LA241	69.41	64.79
LA242	69.41	64.79
LA246	69.41	64.79
LA247	69.41	64.79
LA248	69.41	64.79
LA253	71.71	66.93
LA257	69.41	64.79
LA258	69.41	64.79
LA266	69.98	65.31
LA888	73.31	68.43
LA889	74.89	69.89
LA903	74.89	69.89
MA001	125.22	116.88
MA002	135.35	126.32
MA003	135.35	126.32
MA005	125.22	116.88
MA006	121.78	113.67
MA007	125.22	116.88
MA008	125.22	116.88
MA010	125.22	116.88
MA012	125.22	116.88
MA013	135.35	126.32
MA014	135.35	126.32
MA015	135.35	126.32
MA016	135.35	126.32
MA017	135.35	126.32
MA018	121.78	113.67
MA019	135.35	126.32
MA020	135.35	126.32
MA022	135.35	126.32
MA023	135.35	126.32
MA024	125.22	116.88
MA025	135.35	126.32
MA026	125.22	116.88
MA027	135.35	126.32
MA028	135.35	126.32
MA029	125.22	116.88
MA031	135.35	126.32
MA032	135.35	126.32
MA033	135.35	126.32
MA034	125.22	116.88
MA035	125.22	116.88
MA036	135.35	126.32
MA037	125.22	116.88
MA039	125.22	116.88
MA040	135.35	126.32
MA041	125.22	116.88
MA042	135.35	126.32
MA043	125.22	116.88
MA044	135.35	126.32
MA045	135.35	126.32
MA046	135.66	126.63
MA047	135.66	126.63
MA048	135.35	126.32
MA050	125.22	116.88
MA051	125.22	116.88
MA053	135.35	126.32
MA054	135.35	126.32
MA055	135.35	126.32
MA056	135.35	126.32
MA057	135.35	126.32
MA059	135.35	126.32
MA060	125.22	116.88
MA061	135.35	126.32
MA063	135.35	126.32
MA065	135.35	126.32
MA066	125.22	116.88
MA067	135.35	126.32
MA069	135.35	126.32
MA070	135.35	126.32
MA072	135.35	126.32
MA073	135.35	126.32
MA074	135.35	126.32
MA075	135.35	126.32
MA076	125.22	116.88
MA077	125.22	116.88
MA078	125.22	116.88
MA079	135.35	126.32
MA080	125.22	116.88
MA081	125.22	116.88
MA082	125.22	116.88
MA084	125.22	116.88
MA085	125.22	116.88
MA086	125.22	116.88
MA087	125.22	116.88
MA088	125.22	116.88
MA089	135.35	126.32
MA090	135.35	126.32
MA091	135.35	126.32
MA092	135.35	126.32
MA093	135.35	126.32
MA094	123.75	115.51
MA095	135.66	126.63
MA096	123.75	115.51
MA098	135.35	126.32
MA099	135.35	126.32
MA100	125.22	116.88
MA101	135.35	126.32
MA105	125.22	116.88
MA106	125.22	116.88
MA107	125.22	116.88
MA108	125.22	116.88
MA109	135.35	126.32
MA110	135.66	126.63
MA111	135.35	126.32
MA112	135.35	126.32
MA116	135.35	126.32
MA117	135.35	126.32
MA118	135.35	126.32
MA119	135.35	126.32
MA121	135.35	126.32
MA122	135.35	126.32
MA123	125.22	116.88
MA125	135.35	126.32
MA127	125.22	116.88
MA133	135.35	126.32
MA134	135.35	126.32
MA135	135.35	126.32
MA138	135.66	126.63
MA139	125.22	116.88
MA140	135.35	126.32
MA147	135.35	126.32
MA154	135.35	126.32
MA155	135.35	126.32
MA165	135.35	126.32
MA170	121.78	113.67
MA172	125.22	116.88
MA174	135.35	126.32
MA180	135.66	126.63
MA181	135.66	126.63
MA188	125.22	116.88
MA880	135.35	126.32
MA881	135.35	126.32
MA882	125.22	116.88
MA883	135.35	126.32
MA901	135.35	126.32
MD001	89.44	83.47
MD002	89.44	83.47
MD003	119.93	111.95
MD004	119.93	111.95
MD006	70.16	65.47
MD007	119.93	111.95
MD014	80.38	75.02
MD015	119.93	111.95
MD016	95.93	89.53
MD018	89.44	83.47
MD019	80.14	74.79
MD021	101.45	94.69
MD022	119.93	111.95
MD023	89.44	83.47
MD024	119.93	111.95
MD025	89.44	83.47
MD027	89.44	83.47
MD028	70.16	65.47
MD029	95.93	89.53
MD032	89.44	83.47
MD033	89.44	83.47
MD034	89.44	83.47
MD901	119.93	111.95
ME001	68.87	64.28
ME002	68.87	64.28
ME003	109.42	102.14
ME004	68.87	64.28
ME005	78.30	73.07
ME006	83.67	78.08
ME007	78.30	73.07
ME008	72.41	67.57
ME009	79.48	74.19
ME011	96.27	89.84
ME015	109.42	102.14
ME018	79.48	74.19
ME019	87.71	81.84
ME020	109.42	102.14
ME021	79.48	74.19
ME025	68.87	64.28
ME027	70.69	65.99
ME028	96.27	89.84
ME030	72.41	67.57
ME901	67.61	63.09
MI001	69.16	64.55
MI005	69.16	64.55
MI006	59.14	55.20
MI008	69.16	64.55
MI009	59.53	55.56
MI010	60.28	56.27
MI019	57.84	53.98
MI020	57.84	53.98
MI027	69.16	64.55
MI030	57.84	53.98
MI031	65.28	60.93
MI032	60.28	56.27
MI035	62.33	58.18
MI036	57.84	53.98
MI037	69.16	64.55
MI038	59.77	55.79

PHA	A rate	B rate
MI039	69.16	64.55
MI040	69.16	64.55
MI044	69.16	64.55
MI045	69.16	64.55
MI047	57.84	53.98
MI048	69.16	64.55
MI049	57.84	53.98
MI050	57.84	53.98
MI051	69.16	64.55
MI052	69.16	64.55
MI055	69.16	64.55
MI058	66.31	61.89
MI059	69.16	64.55
MI060	62.04	57.89
MI061	62.43	58.27
MI063	57.84	53.98
MI064	82.40	76.91
MI066	65.28	60.93
MI070	62.04	57.89
MI073	65.28	60.93
MI074	62.43	58.27
MI080	64.20	59.93
MI084	62.04	57.89
MI087	62.04	57.89
MI089	69.16	64.55
MI093	65.28	60.93
MI094	57.84	53.98
MI096	69.16	64.55
MI097	69.16	64.55
MI100	69.16	64.55
MI112	57.84	53.98
MI115	65.28	60.93
MI117	57.84	53.98
MI119	57.84	53.98
MI120	60.28	56.27
MI121	62.43	58.27
MI132	57.84	53.98
MI139	69.16	64.55
MI157	69.16	64.55
MI167	66.31	61.89
MI168	66.31	61.89
MI186	57.84	53.98
MI194	66.31	61.89
MI198	65.28	60.93
MI880	66.31	61.89
MI901	69.16	64.55
MN001	95.35	88.99
MN002	95.35	88.99
MN003	70.53	65.83
MN007	70.53	65.83
MN008	65.30	60.95
MN009	65.30	60.95
MN018	65.30	60.95
MN021	78.59	73.35
MN032	65.30	60.95
MN034	65.30	60.95
MN037	65.30	60.95
MN038	72.65	67.80
MN049	65.30	60.95
MN063	70.83	66.11
MN073	70.53	65.83
MN077	71.24	66.50
MN085	65.30	60.95
MN090	65.30	60.95
MN101	95.35	88.99
MN107	65.30	60.95
MN128	65.30	60.95
MN144	95.35	88.99
MN147	95.35	88.99
MN151	78.94	73.70
MN152	95.35	88.99
MN153	65.30	60.95
MN154	65.30	60.95
MN158	78.59	73.35
MN161	68.51	63.94
MN163	95.35	88.99
MN164	78.59	73.35
MN166	65.30	60.95
MN167	70.83	66.11
MN168	68.51	63.94
MN169	65.30	60.95
MN170	95.35	88.99
MN171	67.14	62.65
MN172	72.65	67.80
MN173	65.30	60.95
MN174	65.30	60.95
MN176	65.30	60.95
MN177	65.30	60.95
MN178	68.51	63.94
MN179	65.30	60.95
MN180	65.30	60.95
MN182	65.30	60.95
MN184	95.35	88.99
MN188	65.30	60.95
MN190	65.30	60.95
MN191	65.30	60.95
MN192	65.30	60.95
MN193	73.38	68.49
MN197	66.22	61.80
MN200	65.30	60.95
MN203	68.51	63.94
MN212	95.35	88.99
MN216	95.35	88.99
MN219	70.83	66.11
MN220	71.24	66.50
MN801	95.35	88.99
MN802	95.35	88.99
MO001	69.71	65.05
MO002	67.77	63.24
MO003	66.83	62.37
MO004	69.71	65.05
MO006	69.71	65.05
MO007	66.83	62.37
MO008	66.73	62.28
MO009	66.83	62.37
MO010	66.73	62.28
MO014	66.83	62.37
MO016	66.73	62.28
MO017	67.77	63.24
MO030	67.77	63.24
MO037	66.73	62.28
MO040	66.73	62.28
MO053	67.77	63.24
MO058	66.83	62.37
MO064	66.73	62.28
MO065	66.73	62.28
MO072	66.73	62.28
MO074	66.73	62.28
MO107	66.73	62.28
MO129	66.73	62.28
MO133	66.73	62.28
MO145	66.73	62.28
MO149	66.73	62.28
MO188	66.83	62.37
MO190	66.73	62.28
MO193	67.77	63.24
MO196	67.77	63.24
MO197	67.77	63.24
MO198	66.83	62.37
MO199	69.71	65.05
MO200	66.73	62.28
MO203	66.83	62.37
MO204	67.77	63.24
MO205	69.71	65.05
MO206	66.73	62.28
MO207	66.73	62.28
MO209	66.73	62.28
MO210	67.77	63.24
MO212	66.73	62.28
MO213	67.77	63.24
MO215	66.83	62.37
MO216	66.83	62.37
MO217	66.73	62.28
MO227	69.71	65.05
MS004	65.89	61.49
MS005	68.86	64.27
MS006	65.89	61.49
MS016	70.49	65.79
MS019	65.89	61.49
MS030	65.89	61.49
MS040	68.86	64.27
MS057	65.89	61.49
MS058	81.26	75.84
MS095	65.89	61.49
MS103	81.26	75.84
MS107	65.89	61.49
MS128	65.89	61.49
MS301	68.86	64.27
MT001	91.81	85.69
MT002	81.28	75.87
MT003	75.77	70.71
MT004	88.10	82.23
MT006	71.38	66.63
MT015	77.33	72.17
MT033	82.64	77.12
MT036	77.33	72.17
MT901	91.81	85.69
NC001	69.85	65.19
NC002	83.45	77.88
NC003	76.53	71.42
NC004	66.17	61.76
NC006	72.29	67.48
NC007	69.85	65.19
NC008	76.53	71.42
NC009	71.00	66.26
NC011	72.29	67.48
NC012	72.29	67.48
NC013	83.45	77.88
NC014	66.17	61.76
NC015	69.85	65.19
NC018	66.17	61.76
NC019	69.85	65.19
NC020	66.17	61.76
NC021	83.45	77.88
NC022	69.85	65.19
NC025	66.17	61.76
NC032	66.17	61.76
NC035	66.79	62.33
NC039	68.76	64.19
NC050	69.56	64.92
NC056	73.59	68.70
NC057	76.53	71.42
NC059	72.29	67.48
NC065	76.53	71.42
NC070	72.80	67.94
NC071	68.76	64.19
NC072	72.49	67.67
NC075	66.17	61.76
NC077	66.17	61.76
NC081	72.29	67.48
NC087	69.85	65.19
NC089	66.17	61.76
NC098	69.85	65.19
NC102	72.80	67.94
NC104	83.45	77.88
NC118	66.17	61.76
NC120	83.45	77.88
NC134	72.80	67.94
NC137	69.85	65.19
NC138	66.17	61.76
NC139	66.17	61.76
NC140	69.85	65.19

PHA	A rate	B rate
NC141	66.17	61.76
NC144	69.85	65.19
NC145	66.17	61.76
NC146	66.17	61.76
NC147	69.85	65.19
NC149	66.17	61.76
NC150	66.17	61.76
NC151	66.58	62.14
NC152	69.85	65.19
NC155	66.17	61.76
NC159	73.59	68.70
NC160	66.17	61.76
NC161	66.17	61.76
NC163	69.56	64.92
NC164	83.45	77.88
NC165	66.17	61.76
NC166	72.29	67.48
NC167	67.40	62.91
NC173	69.85	65.19
NC175	69.85	65.19
NC901	66.17	61.76
ND001	78.59	73.35
ND002	78.59	73.35
ND003	78.59	73.35
ND009	78.59	73.35
ND010	78.59	73.35
ND011	78.59	73.35
ND012	78.59	73.35
ND013	78.59	73.35
ND014	78.59	73.35
ND015	78.59	73.35
ND016	78.59	73.35
ND017	78.59	73.35
ND019	78.59	73.35
ND021	78.59	73.35
ND022	78.59	73.35
ND025	78.59	73.35
ND026	78.59	73.35
ND030	78.59	73.35
ND031	78.59	73.35
ND035	78.59	73.35
ND036	78.59	73.35
ND037	78.59	73.35
ND038	78.59	73.35
ND039	78.59	73.35
ND044	78.59	73.35
ND049	78.59	73.35
ND052	78.59	73.35
ND054	78.59	73.35
ND055	78.59	73.35
ND070	78.59	73.35
ND901	78.59	73.35
NE001	73.28	68.40
NE002	72.92	68.05
NE003	72.92	68.05
NE004	72.45	67.62
NE010	72.45	67.62
NE041	72.45	67.62
NE078	72.45	67.62
NE083	72.45	67.62
NE094	72.45	67.62
NE100	72.45	67.62
NE104	72.45	67.62
NE114	72.45	67.62
NE120	72.45	67.62
NE123	72.45	67.62
NE141	72.45	67.62
NE150	72.45	67.62
NE153	73.28	68.40
NE157	72.45	67.62
NE174	73.28	68.40
NE175	72.49	67.66
NE179	72.45	67.62
NE181	72.45	67.62
NE182	72.45	67.62
NH001	96.70	90.25
NH002	102.74	95.88
NH003	100.13	93.46
NH004	100.13	93.46
NH005	110.38	103.01
NH006	100.13	93.46
NH007	86.94	81.14
NH008	100.13	93.46
NH009	89.75	83.76
NH010	103.15	96.27
NH011	79.12	73.85
NH012	84.29	78.67
NH013	100.13	93.46
NH014	100.13	93.46
NH015	79.12	73.85
NH016	79.12	73.85
NH022	125.22	116.88
NH888	102.74	95.88
NH901	102.74	95.88
NJ002	113.83	106.22
NJ003	113.83	106.22
NJ004	97.15	90.67
NJ006	116.57	108.80
NJ007	114.11	106.50
NJ008	114.11	106.50
NJ009	97.15	90.67
NJ010	95.93	89.53
NJ011	116.57	108.80
NJ012	97.15	90.67
NJ013	116.57	108.80
NJ014	96.25	89.85
NJ015	97.15	90.67
NJ021	116.57	108.80
NJ022	116.57	108.80
NJ023	113.83	106.22
NJ025	113.83	106.22
NJ026	97.15	90.67
NJ030	97.15	90.67
NJ032	113.83	106.22
NJ033	116.57	108.80
NJ035	116.57	108.80
NJ036	97.15	90.67
NJ037	113.83	106.22
NJ039	113.83	106.22
NJ042	116.57	108.80
NJ043	116.57	108.80
NJ044	116.57	108.80
NJ046	114.11	106.50
NJ047	116.57	108.80
NJ048	114.11	106.50
NJ049	92.53	86.36
NJ050	113.83	106.22
NJ051	95.93	89.53
NJ052	113.83	106.22
NJ054	114.11	106.50
NJ055	116.57	108.80
NJ056	114.11	106.50
NJ058	95.93	89.53
NJ059	96.25	89.85
NJ060	114.11	106.50
NJ061	92.53	86.36
NJ063	92.53	86.36
NJ065	114.11	106.50
NJ066	113.83	106.22
NJ067	116.57	108.80
NJ068	113.83	106.22
NJ070	116.57	108.80
NJ071	116.57	108.80
NJ073	95.93	89.53
NJ074	95.93	89.53
NJ075	116.57	108.80
NJ077	97.15	90.67
NJ081	114.11	106.50
NJ083	97.15	90.67
NJ084	116.57	108.80
NJ086	113.83	106.22
NJ088	113.83	106.22
NJ089	116.57	108.80
NJ090	116.57	108.80
NJ092	113.83	106.22
NJ095	114.11	106.50
NJ097	116.57	108.80
NJ099	113.83	106.22
NJ102	113.83	106.22
NJ105	113.83	106.22
NJ106	116.57	108.80
NJ108	113.83	106.22
NJ109	113.83	106.22
NJ110	116.57	108.80
NJ112	116.57	108.80
NJ113	113.83	106.22
NJ114	116.57	108.80
NJ118	95.93	89.53
NJ204	95.93	89.53
NJ212	111.83	104.38
NJ214	114.11	106.50
NJ880	114.11	106.50
NJ881	116.57	108.80
NJ882	113.83	106.22
NJ912	113.83	106.22
NM001	84.81	79.16
NM002	64.88	60.56
NM003	67.31	62.82
NM006	83.84	78.24
NM009	100.37	93.67
NM020	65.65	61.27
NM033	64.88	60.56
NM039	64.88	60.56
NM050	100.37	93.67
NM057	84.81	79.16
NM061	64.88	60.56
NM063	65.65	61.27
NM066	83.47	77.89
NM067	64.88	60.56
NM077	84.81	79.16
NM088	69.19	64.58
NV001	85.95	80.22
NV018	96.55	90.12
NV905	85.95	80.22
NY001	84.60	78.97
NY002	79.08	73.82
NY003	131.70	122.93
NY005	114.48	106.84
NY006	77.46	72.30
NY009	91.94	85.81
NY012	91.94	85.81
NY015	91.94	85.81
NY016	80.23	74.88
NY017	64.64	60.33
NY018	68.53	63.96
NY019	77.46	72.30
NY020	91.94	85.81
NY021	74.63	69.66
NY022	91.94	85.81
NY023	131.70	122.93
NY025	91.94	85.81
NY027	84.60	78.97
NY028	91.94	85.81
NY033	91.94	85.81
NY034	77.46	72.30
NY035	131.70	122.93
NY038	131.70	122.93
NY041	96.79	90.34
NY042	131.70	122.93
NY044	96.79	90.34
NY045	103.55	96.64
NY048	61.31	57.23

PHA	A rate	B rate
NY049	117.67	109.83
NY050	131.70	122.93
NY051	117.67	109.83
NY054	90.43	84.41
NY057	131.70	122.93
NY059	77.46	72.30
NY060	78.53	73.30
NY061	70.78	66.07
NY062	117.67	109.83
NY065	71.71	66.94
NY066	72.26	67.46
NY067	68.40	63.83
NY068	67.01	62.54
NY070	79.08	73.82
NY071	80.13	74.78
NY077	131.70	122.93
NY079	87.05	81.25
NY084	114.48	106.84
NY085	131.70	122.93
NY086	131.70	122.93
NY087	65.90	61.50
NY088	131.70	122.93
NY089	96.79	90.34
NY091	79.08	73.82
NY094	131.70	122.93
NY098	77.46	72.30
NY102	84.60	78.97
NY103	103.55	96.64
NY107	84.60	78.97
NY109	77.46	72.30
NY110	114.48	106.84
NY113	131.70	122.93
NY114	114.48	106.84
NY117	131.70	122.93
NY121	131.70	122.93
NY123	131.70	122.93
NY125	117.67	109.83
NY127	131.70	122.93
NY128	131.70	122.93
NY130	131.70	122.93
NY132	131.70	122.93
NY134	117.67	109.83
NY137	117.67	109.83
NY138	114.48	106.84
NY141	131.70	122.93
NY146	131.70	122.93
NY147	131.70	122.93
NY148	114.48	106.84
NY149	131.70	122.93
NY152	131.70	122.93
NY154	131.70	122.93
NY158	117.67	109.83
NY159	131.70	122.93
NY160	114.48	106.84
NY165	131.70	122.93
NY402	81.70	76.24
NY403	61.04	56.97
NY404	79.08	73.82
NY405	79.08	73.82
NY406	96.79	90.34
NY408	91.94	85.81
NY409	79.08	73.82
NY413	78.53	73.30
NY416	91.94	85.81
NY417	77.46	72.30
NY421	91.94	85.81
NY422	91.94	85.81
NY424	91.94	85.81
NY427	91.94	85.81
NY428	91.94	85.81
NY430	91.94	85.81
NY431	91.94	85.81
NY433	61.31	57.23
NY443	77.46	72.30
NY447	91.94	85.81
NY449	79.08	73.82
NY501	91.94	85.81
NY503	91.94	85.81
NY504	84.60	78.97
NY505	80.23	74.88
NY512	91.94	85.81
NY513	91.94	85.81
NY516	91.94	85.81
NY519	91.94	85.81
NY521	84.60	78.97
NY527	84.60	78.97
NY529	103.55	96.64
NY530	78.53	73.30
NY532	91.94	85.81
NY534	77.46	72.30
NY535	91.94	85.81
NY538	91.94	85.81
NY541	67.01	62.54
NY552	77.46	72.30
NY557	91.94	85.81
NY561	91.94	85.81
NY562	91.94	85.81
NY564	91.94	85.81
NY630	91.94	85.81
NY888	131.70	122.93
NY889	64.64	60.33
NY891	131.70	122.93
NY895	131.70	122.93
NY904	114.48	106.84
NY912	79.08	73.82
OH001	71.57	66.79
OH002	65.00	60.66
OH003	75.46	70.42
OH004	73.07	68.19
OH005	66.65	62.21
OH006	75.00	70.00
OH007	74.22	69.28
OH008	65.00	60.66
OH009	62.74	58.56
OH010	62.74	58.56
OH012	75.46	70.42
OH014	65.44	61.07
OH015	73.07	68.19
OH016	63.94	59.68
OH018	63.94	59.68
OH019	65.11	60.77
OH020	63.71	59.46
OH021	66.65	62.21
OH022	66.65	62.21
OH024	62.74	58.56
OH025	75.46	70.42
OH026	63.78	59.52
OH027	75.46	70.42
OH028	66.81	62.36
OH029	74.04	69.09
OH030	62.74	58.56
OH031	74.22	69.28
OH032	62.74	58.56
OH033	62.74	58.56
OH034	62.74	58.56
OH035	62.74	58.56
OH036	63.03	58.83
OH037	62.74	58.56
OH038	73.07	68.19
OH039	62.74	58.56
OH040	62.74	58.56
OH041	62.74	58.56
OH042	75.46	70.42
OH043	71.57	66.79
OH044	65.00	60.66
OH045	62.74	58.56
OH046	62.74	58.56
OH047	62.74	58.56
OH049	73.07	68.19
OH050	62.74	58.56
OH053	62.74	58.56
OH054	65.38	61.02
OH056	62.74	58.56
OH058	62.74	58.56
OH059	71.57	66.79
OH060	62.74	58.56
OH061	64.19	59.91
OH062	66.65	62.21
OH063	62.74	58.56
OH066	62.74	58.56
OH067	62.74	58.56
OH069	62.74	58.56
OH070	71.57	66.79
OH071	75.00	70.00
OH072	62.74	58.56
OH073	75.46	70.42
OH074	64.50	60.20
OH075	62.74	58.56
OH076	62.74	58.56
OH077	62.74	58.56
OH078	62.74	58.56
OH079	71.57	66.79
OH080	64.27	59.98
OH081	63.94	59.68
OH082	62.90	58.69
OH083	71.57	66.79
OH085	75.00	70.00
OH086	62.74	58.56
OH882	75.46	70.42
OK002	70.47	65.77
OK005	68.54	63.97
OK006	67.37	62.88
OK024	67.37	62.88
OK027	67.37	62.88
OK032	67.37	62.88
OK033	68.54	63.97
OK044	67.37	62.88
OK062	67.37	62.88
OK067	67.37	62.88
OK073	68.54	63.97
OK095	69.26	64.64
OK096	67.37	62.88
OK099	67.37	62.88
OK111	67.37	62.88
OK118	67.37	62.88
OK139	70.47	65.77
OK142	68.54	63.97
OK146	67.37	62.88
OK148	69.26	64.64
OK901	70.47	65.77
OR001	91.00	84.92
OR002	91.00	84.92
OR003	91.08	85.02
OR005	84.77	79.13
OR006	104.58	97.60
OR007	87.15	81.34
OR008	97.70	91.18
OR011	97.70	91.18
OR014	97.70	91.18
OR015	103.89	96.96
OR016	91.00	84.92
OR017	83.19	77.65
OR019	92.38	86.21
OR020	91.08	85.02
OR022	91.00	84.92
OR026	92.20	86.05
OR027	83.19	77.65
OR028	91.00	84.92
OR031	94.65	88.35
OR032	87.15	81.34
OR034	100.45	93.75
PA001	66.95	62.48

PHA	A rate	B rate
PA002	95.93	89.53
PA003	64.90	60.57
PA004	81.70	76.24
PA005	66.95	62.48
PA006	66.95	62.48
PA007	95.93	89.53
PA008	83.61	78.04
PA009	79.67	74.35
PA010	66.95	62.48
PA011	81.70	76.24
PA012	95.93	89.53
PA013	81.27	75.85
PA014	66.95	62.48
PA015	66.95	62.48
PA016	72.95	68.09
PA017	66.95	62.48
PA018	66.95	62.48
PA019	68.70	64.12
PA020	75.42	70.40
PA021	68.70	64.12
PA022	76.75	71.62
PA023	95.93	89.53
PA024	81.70	76.24
PA026	66.98	62.51
PA027	63.48	59.24
PA028	87.13	81.33
PA029	68.58	64.00
PA030	64.90	60.57
PA031	70.75	66.03
PA032	68.28	63.72
PA033	66.98	62.51
PA034	73.00	68.12
PA035	83.61	78.04
PA036	84.92	79.26
PA037	72.95	68.09
PA038	64.90	60.57
PA039	78.64	73.40
PA040	65.52	61.14
PA041	66.83	62.37
PA042	64.90	60.57
PA043	64.90	60.57
PA044	64.90	60.57
PA045	67.56	63.05
PA046	95.93	89.53
PA047	64.90	60.57
PA048	78.50	73.26
PA050	65.21	60.87
PA051	95.93	89.53
PA052	83.61	78.04
PA053	67.56	63.05
PA054	66.11	61.69
PA055	67.56	63.05
PA056	64.65	60.33
PA057	64.90	60.57
PA058	66.98	62.51
PA059	64.65	60.33
PA060	67.56	63.05
PA061	67.56	63.05
PA063	67.56	63.05
PA064	65.21	60.87
PA065	67.56	63.05
PA067	81.70	76.24
PA068	65.21	60.87
PA069	70.75	66.03
PA071	79.67	74.35
PA073	64.90	60.57
PA074	65.21	60.87
PA075	83.61	78.04
PA076	81.70	76.24
PA077	66.11	61.69
PA078	105.91	98.85
PA079	66.98	62.51
PA080	66.11	61.69
PA081	81.70	76.24
PA082	76.45	71.36
PA083	65.47	61.10
PA085	63.48	59.24
PA086	64.65	60.33
PA087	81.27	75.85
PA088	91.07	84.99
PA090	84.92	79.26
PA091	77.42	72.25
PA092	65.37	61.01
RI001	121.78	113.67
RI002	121.78	113.67
RI003	121.78	113.67
RI004	121.78	113.67
RI005	114.43	106.79
RI006	121.78	113.67
RI007	121.78	113.67
RI008	104.16	97.21
RI009	121.78	113.67
RI010	121.78	113.67
RI011	121.78	113.67
RI012	121.78	113.67
RI014	121.78	113.67
RI015	121.78	113.67
RI016	121.78	113.67
RI017	121.78	113.67
RI018	121.78	113.67
RI019	121.78	113.67
RI020	121.78	113.67
RI022	121.78	113.67
RI024	121.78	113.67
RI026	121.78	113.67
RI027	121.78	113.67
RI028	121.78	113.67
RI029	121.78	113.67
RI901	121.78	113.67
RQ005	79.99	74.65
RQ006	79.99	74.65
RQ007	74.42	69.46
RQ008	79.99	74.65
RQ009	74.42	69.46
RQ010	74.42	69.46
RQ011	79.99	74.65
RQ012	74.42	69.46
RQ013	79.99	74.65
RQ014	79.99	74.65
RQ015	79.99	74.65
RQ016	79.99	74.65
RQ017	74.42	69.46
RQ018	74.42	69.46
RQ019	79.99	74.65
RQ020	81.73	76.28
RQ021	79.99	74.65
RQ022	79.99	74.65
RQ023	79.99	74.65
RQ024	79.99	74.65
RQ025	79.99	74.65
RQ026	74.42	69.46
RQ027	79.99	74.65
RQ028	79.99	74.65
RQ029	74.42	69.46
RQ030	74.42	69.46
RQ031	74.42	69.46
RQ032	79.99	74.65
RQ033	74.42	69.46
RQ034	79.99	74.65
RQ035	74.42	69.46
RQ036	79.99	74.65
RQ037	74.42	69.46
RQ038	79.99	74.65
RQ039	81.73	76.28
RQ040	81.73	76.28
RQ041	74.42	69.46
RQ042	74.42	69.46
RQ043	74.42	69.46
RQ044	79.99	74.65
RQ045	79.99	74.65
RQ046	74.42	69.46
RQ047	79.99	74.65
RQ048	74.42	69.46
RQ049	79.99	74.65
RQ050	79.99	74.65
RQ052	74.42	69.46
RQ053	79.99	74.65
RQ054	79.99	74.65
RQ055	74.42	69.46
RQ056	79.99	74.65
RQ057	74.42	69.46
RQ058	74.42	69.46
RQ059	74.42	69.46
RQ060	74.42	69.46
RQ061	74.42	69.46
RQ062	74.42	69.46
RQ063	79.99	74.65
RQ064	79.99	74.65
RQ065	74.42	69.46
RQ066	74.42	69.46
RQ067	74.42	69.46
RQ068	74.42	69.46
RQ069	74.42	69.46
RQ070	79.99	74.65
RQ071	74.42	69.46
RQ072	79.99	74.65
RQ073	74.42	69.46
RQ074	74.42	69.46
RQ075	79.99	74.65
RQ077	79.99	74.65
RQ080	74.42	69.46
RQ081	79.99	74.65
RQ082	79.99	74.65
RQ083	79.99	74.65
SC001	74.99	69.99
SC002	75.80	70.74
SC003	69.19	64.58
SC004	69.19	64.58
SC005	69.19	64.58
SC007	73.06	68.19
SC008	69.19	64.58
SC015	66.75	62.30
SC016	69.19	64.58
SC018	69.19	64.58
SC019	69.19	64.58
SC020	69.19	64.58
SC021	66.75	62.30
SC022	76.53	71.42
SC023	69.19	64.58
SC024	74.99	69.99
SC025	69.19	64.58
SC026	70.61	65.89
SC027	69.19	64.58
SC028	66.75	62.30
SC029	69.19	64.58
SC030	66.75	62.30
SC031	66.75	62.30
SC032	69.19	64.58
SC033	66.75	62.30
SC034	69.19	64.58
SC035	66.75	62.30
SC036	76.53	71.42
SC037	69.19	64.58
SC046	76.53	71.42
SC056	74.99	69.99
SC057	74.99	69.99
SC059	66.75	62.30
SC911	75.80	70.74
SD010	70.38	65.68
SD011	70.12	65.45
SD014	70.12	65.45
SD016	70.38	65.68

PHA	A rate	B rate
SD021	70.12	65.45
SD026	70.12	65.45
SD034	70.12	65.45
SD035	76.19	71.10
SD036	70.12	65.45
SD037	70.12	65.45
SD039	70.38	65.68
SD043	70.12	65.45
SD045	70.12	65.45
SD047	70.12	65.45
SD048	70.12	65.45
SD055	70.12	65.45
SD056	70.12	65.45
SD057	70.12	65.45
SD058	70.12	65.45
SD059	70.12	65.45
TN001	70.49	65.79
TN002	65.82	61.43
TN003	65.82	61.43
TN004	71.45	66.69
TN005	78.12	72.91
TN006	65.82	61.43
TN007	65.82	61.43
TN012	65.82	61.43
TN013	65.82	61.43
TN020	78.12	72.91
TN024	65.82	61.43
TN026	65.82	61.43
TN035	78.12	72.91
TN038	65.82	61.43
TN042	65.82	61.43
TN054	65.82	61.43
TN062	65.82	61.43
TN065	65.82	61.43
TN066	65.82	61.43
TN076	65.82	61.43
TN079	78.12	72.91
TN088	65.82	61.43
TN113	65.82	61.43
TN117	71.45	66.69
TN903	78.12	72.91
TQ901	122.03	113.90
TX001	87.93	82.08
TX003	74.71	69.72
TX004	84.01	78.41
TX005	79.76	74.45
TX006	77.30	72.16
TX007	68.54	63.97
TX008	78.81	73.55
TX009	90.16	84.16
TX010	67.59	63.08
TX011	67.59	63.08
TX012	79.76	74.45
TX014	67.59	63.08
TX016	64.91	60.58
TX017	79.76	74.45
TX018	67.59	63.08
TX019	64.91	60.58
TX021	64.91	60.58
TX023	77.23	72.08
TX025	68.54	63.97
TX027	90.16	84.16
TX028	67.76	63.23
TX029	67.76	63.23
TX030	67.59	63.08
TX031	87.93	82.08
TX032	79.76	74.45
TX034	77.23	72.08
TX035	65.07	60.72
TX037	77.23	72.08
TX039	64.91	60.58
TX042	64.91	60.58
TX044	64.91	60.58
TX046	67.76	63.23
TX048	64.91	60.58
TX049	64.91	60.58
TX051	67.76	63.23
TX062	67.76	63.23
TX064	67.76	63.23
TX065	68.54	63.97
TX072	64.91	60.58
TX073	67.76	63.23
TX075	64.91	60.58
TX079	67.59	63.08
TX085	93.66	87.40
TX087	87.93	82.08
TX095	90.16	84.16
TX096	64.91	60.58
TX105	64.91	60.58
TX111	69.17	64.56
TX114	64.91	60.58
TX128	90.16	84.16
TX134	64.91	60.58
TX137	67.59	63.08
TX147	64.91	60.58
TX152	64.91	60.58
TX158	67.59	63.08
TX163	78.81	73.55
TX164	78.81	73.55
TX173	68.54	63.97
TX174	78.81	73.55
TX175	64.91	60.58
TX177	67.76	63.23
TX178	64.91	60.58
TX183	64.91	60.58
TX189	64.91	60.58
TX193	77.30	72.16
TX197	67.59	63.08
TX201	64.91	60.58
TX202	67.76	63.23
TX206	68.54	63.97
TX208	67.59	63.08
TX210	67.59	63.08
TX217	64.91	60.58
TX224	67.76	63.23
TX236	67.59	63.08
TX242	64.91	60.58
TX257	67.59	63.08
TX259	87.93	82.08
TX264	87.93	82.08
TX266	87.93	82.08
TX272	64.91	60.58
TX284	64.91	60.58
TX298	64.91	60.58
TX300	64.91	60.58
TX302	78.81	73.55
TX303	77.30	72.16
TX309	64.91	60.58
TX313	78.81	73.55
TX322	87.93	82.08
TX327	67.59	63.08
TX330	64.91	60.58
TX332	64.91	60.58
TX335	64.91	60.58
TX341	75.80	70.75
TX343	77.30	72.16
TX349	84.01	78.41
TX350	77.30	72.16
TX358	64.91	60.58
TX372	64.91	60.58
TX376	64.91	60.58
TX377	87.93	82.08
TX378	65.07	60.72
TX381	64.91	60.58
TX392	90.16	84.16
TX395	67.06	62.59
TX396	64.91	60.58
TX397	64.91	60.58
TX421	64.91	60.58
TX431	84.01	78.41
TX432	74.71	69.72
TX433	84.01	78.41
TX434	90.16	84.16
TX435	90.16	84.16
TX436	90.16	84.16
TX439	74.71	69.72
TX440	79.76	74.45
TX441	79.76	74.45
TX444	67.59	63.08
TX445	67.76	63.23
TX447	67.76	63.23
TX448	67.76	63.23
TX449	64.91	60.58
TX452	77.30	72.16
TX454	64.91	60.58
TX455	86.86	81.07
TX456	77.07	71.93
TX457	72.79	67.94
TX458	67.59	63.08
TX459	75.80	70.75
TX461	69.05	64.46
TX470	67.59	63.08
TX472	67.59	63.08
TX480	87.93	82.08
TX481	67.59	63.08
TX482	67.59	63.08
TX483	79.76	74.45
TX484	86.14	80.39
TX485	64.91	60.58
TX486	65.98	61.57
TX488	64.91	60.58
TX493	90.16	84.16
TX495	84.01	78.41
TX497	67.76	63.23
TX498	69.17	64.56
TX499	67.59	63.08
TX500	64.91	60.58
TX505	79.76	74.45
TX509	68.54	63.97
TX511	64.91	60.58
TX512	64.91	60.58
TX514	67.59	63.08
TX516	64.91	60.58
TX519	64.91	60.58
TX522	90.16	84.16
TX523	69.17	64.56
TX526	90.33	84.31
TX534	86.86	81.07
TX535	64.91	60.58
TX537	64.91	60.58
TX542	67.59	63.08
TX546	67.59	63.08
TX559	90.16	84.16
TX560	79.76	74.45
TX901	79.76	74.45
UT002	77.32	72.16
UT003	77.32	72.16
UT004	77.32	72.16
UT006	80.28	74.92
UT007	77.32	72.16
UT009	77.32	72.16
UT011	77.32	72.16
UT014	91.32	85.22
UT015	91.32	85.22
UT016	91.32	85.22
UT020	77.32	72.16
UT021	79.62	74.33
UT022	77.32	72.16
UT025	77.32	72.16
UT026	77.32	72.16
UT028	91.32	85.22
UT029	91.32	85.22

PHA	A rate	B rate
UT030	77.32	72.16
UT031	80.28	74.92
VA001	81.34	75.92
VA002	65.82	61.43
VA003	81.34	75.92
VA004	119.93	111.95
VA005	73.79	68.86
VA006	81.34	75.92
VA007	73.79	68.86
VA010	62.67	58.50
VA011	64.94	60.60
VA012	81.34	75.92
VA013	65.67	61.29
VA014	65.67	61.29
VA015	58.96	55.03
VA016	82.51	77.00
VA017	81.34	75.92
VA018	58.96	55.03
VA019	119.93	111.95
VA020	73.79	68.86
VA021	58.96	55.03
VA022	59.70	55.71
VA023	59.70	55.71
VA024	58.96	55.03
VA025	81.34	75.92
VA028	119.93	111.95
VA030	58.96	55.03
VA031	65.82	61.43
VA032	65.82	61.43
VA034	58.96	55.03
VA035	119.93	111.95
VA036	82.51	77.00
VA037	59.11	55.16
VA038	58.96	55.03
VA039	81.34	75.92
VA040	58.96	55.03
VA041	81.34	75.92
VA042	65.82	61.43
VA044	59.67	55.69
VA046	119.93	111.95
VA901	73.79	68.86
VQ901	105.65	98.62
VT001	102.01	95.21
VT002	86.92	81.13
VT003	89.91	83.92
VT004	89.02	83.08
VT005	83.34	77.78
VT006	102.01	95.21
VT008	83.34	77.78
VT009	84.24	78.62
VT901	102.01	95.21
WA001	112.57	105.04
WA002	112.57	105.04
WA003	99.42	92.80
WA004	93.15	86.93
WA005	95.58	89.23
WA006	112.57	105.04
WA007	76.64	71.53
WA008	91.00	84.92
WA011	112.57	105.04
WA012	86.84	81.04
WA013	86.44	80.67
WA014	71.83	67.04
WA017	71.83	67.04
WA018	93.15	86.93
WA020	76.64	71.53
WA021	86.84	81.04
WA024	109.44	102.13
WA025	106.86	99.72
WA036	99.42	92.80
WA039	112.57	105.04
WA042	90.29	84.26
WA049	102.72	95.86
WA054	95.58	89.23
WA055	86.47	80.71
WA057	93.87	87.61
WA061	97.70	91.18
WA064	88.91	82.97
WA071	78.72	73.46
WI001	70.53	65.83
WI002	69.05	64.46
WI003	76.86	71.74
WI006	66.07	61.67
WI011	58.70	54.78
WI020	95.35	88.99
WI031	57.77	53.92
WI043	58.15	54.28
WI045	57.75	53.90
WI047	57.77	53.92
WI048	57.75	53.90
WI060	95.35	88.99
WI064	64.08	59.81
WI065	58.15	54.28
WI068	58.70	54.78
WI069	58.70	54.78
WI070	57.75	53.90
WI083	69.05	64.46
WI085	57.75	53.90
WI091	57.77	53.92
WI096	57.75	53.90
WI127	57.75	53.90
WI131	57.75	53.90
WI142	69.05	64.46
WI160	57.75	53.90
WI166	57.75	53.90
WI183	63.09	58.87
WI186	57.89	54.02
WI193	57.77	53.92
WI195	71.41	66.64
WI201	69.05	64.46
WI203	64.08	59.81
WI204	58.70	54.78
WI205	57.75	53.90
WI206	57.75	53.90
WI208	57.75	53.90
WI213	58.15	54.28
WI214	76.86	71.74
WI218	69.05	64.46
WI219	64.08	59.81
WI221	57.75	53.90
WI222	57.75	53.90
WI231	57.75	53.90
WI233	57.75	53.90
WI237	58.83	54.91
WI241	57.75	53.90
WI244	63.40	59.17
WI245	57.75	53.90
WI246	58.41	54.50
WI248	57.77	53.92
WI256	57.75	53.90
WI901	57.77	53.92
WV001	78.98	73.71
WV003	63.71	59.46
WV004	65.11	60.77
WV005	62.50	58.33
WV006	65.83	61.43
WV009	66.52	62.09
WV010	67.43	62.93
WV015	62.50	58.33
WV016	65.44	61.07
WV017	60.70	56.65
WV018	60.70	56.65
WV027	61.97	57.85
WV034	60.70	56.65
WV035	61.97	57.85
WV037	65.11	60.77
WV039	62.50	58.33
WV042	62.50	58.33
WV045	60.70	56.65
WY002	87.27	81.47
WY003	71.11	66.37
WY004	105.15	98.15
WY013	71.11	66.37
AK901	98.76	92.18
AL001	66.91	62.45
AL002	67.96	63.44
AL004	66.03	61.63
AL005	68.81	64.22
AL006	66.03	61.63
AL007	66.03	61.63
AL008	64.77	60.46
AL011	64.77	60.46
AL012	66.03	61.63
AL014	64.77	60.46
AL047	67.98	63.46
AL048	66.03	61.63
AL049	66.03	61.63
AL050	66.03	61.63
AL052	64.77	60.46
AL053	64.77	60.46
AL054	66.03	61.63
AL060	64.77	60.46
AL061	66.03	61.63
AL063	66.91	62.45
AL068	66.03	61.63
AL069	66.91	62.45
AL072	66.91	62.45
AL073	64.94	60.60
AL075	64.77	60.46
AL077	66.03	61.63
AL086	66.91	62.45
AL090	64.77	60.46
AL091	64.77	60.46
AL099	64.77	60.46
AL105	64.77	60.46
AL107	64.77	60.46
AL112	64.77	60.46
AL114	64.77	60.46
AL115	64.77	60.46
AL116	64.77	60.46
AL118	64.77	60.46
AL121	64.77	60.46
AL124	64.94	60.60
AL125	66.91	62.45
AL129	66.03	61.63
AL131	66.03	61.63
AL138	66.03	61.63
AL139	66.03	61.63
AL152	66.03	61.63
AL154	64.77	60.46
AL155	64.77	60.46
AL160	64.77	60.46
AL165	68.95	64.36
AL169	67.96	63.44
AL171	64.77	60.46
AL172	66.03	61.63
AL174	64.77	60.46
AL177	64.77	60.46
AL181	64.77	60.46
AL192	64.77	60.46
AL202	67.96	63.44
AR002	70.26	65.58
AR003	64.40	60.11
AR004	70.26	65.58
AR006	70.26	65.58
AR010	61.94	57.81
AR012	61.94	57.81
AR015	63.99	59.72
AR016	61.94	57.81
AR017	64.40	60.11
AR020	61.94	57.81
AR024	67.53	63.03

PHA	A rate	B rate
AR031	64.40	60.11
AR033	61.94	57.81
AR034	64.40	60.11
AR035	61.94	57.81
AR037	61.94	57.81
AR039	61.94	57.81
AR041	70.26	65.58
AR042	64.40	60.11
AR045	61.94	57.81
AR052	61.94	57.81
AR059	61.94	57.81
AR066	61.94	57.81
AR068	61.94	57.81
AR082	61.94	57.81
AR104	64.40	60.11
AR117	61.94	57.81
AR121	61.94	57.81
AR131	64.40	60.11
AR135	61.94	57.81
AR152	61.94	57.81
AR161	61.94	57.81
AR163	64.40	60.11
AR166	61.94	57.81
AR170	70.26	65.58
AR175	70.26	65.58
AR176	61.94	57.81
AR177	61.94	57.81
AR181	64.40	60.11
AR194	64.40	60.11
AR197	61.94	57.81
AR200	61.94	57.81
AR210	61.94	57.81
AR211	61.94	57.81
AR213	61.94	57.81
AR214	61.94	57.81
AR215	61.94	57.81
AR219	70.26	65.58
AR223	61.94	57.81
AR224	61.94	57.81
AR225	61.94	57.81
AR232	64.40	60.11
AR240	61.94	57.81
AR241	64.75	60.43
AR247	61.94	57.81
AR252	70.26	65.58
AR257	61.94	57.81
AR264	67.53	63.03
AR265	61.94	57.81
AR266	61.94	57.81
AZ001	71.74	66.95
AZ003	71.74	66.95
AZ004	70.92	66.19
AZ005	71.74	66.95
AZ006	78.44	73.22
AZ008	57.11	53.30
AZ009	71.74	66.95
AZ010	71.74	66.95
AZ013	79.70	74.39
AZ021	71.74	66.95
AZ023	60.18	56.16
AZ025	70.92	66.19
AZ028	71.74	66.95
AZ031	71.74	66.95
AZ032	71.74	66.95
AZ033	70.92	66.19
AZ034	58.94	55.01
AZ035	79.70	74.39
AZ037	58.94	55.01
AZ041	78.44	73.22
AZ043	96.06	89.66
AZ045	59.18	55.23
AZ880	71.74	66.95
AZ901	78.44	73.22
CA001	124.34	116.06
CA002	124.34	116.06
CA003	124.34	116.06
CA004	124.34	116.06
CA005	94.43	88.13
CA006	86.64	80.85
CA007	94.43	88.13
CA008	94.75	88.44
CA010	124.34	116.06
CA011	124.34	116.06
CA014	124.34	116.06
CA019	99.19	92.59
CA021	121.41	113.30
CA022	99.19	92.59
CA023	81.40	75.99
CA024	90.60	84.57
CA026	91.24	85.15
CA027	99.19	92.59
CA028	86.64	80.85
CA030	80.79	75.41
CA031	124.34	116.06
CA032	124.34	116.06
CA033	107.12	99.97
CA035	124.34	116.06
CA039	90.15	84.14
CA041	107.94	100.74
CA043	83.26	77.70
CA044	94.43	88.13
CA048	71.45	66.69
CA052	124.34	116.06
CA053	78.19	72.98
CA055	107.94	100.74
CA056	124.34	116.06
CA058	124.34	116.06
CA059	124.34	116.06
CA060	124.34	116.06
CA061	82.57	77.07
CA062	124.34	116.06
CA063	111.17	103.75
CA064	107.63	100.46
CA065	107.94	100.74
CA066	107.94	100.74
CA067	124.34	116.06
CA068	124.34	116.06
CA069	86.64	80.85
CA070	75.57	70.53
CA071	124.34	116.06
CA072	124.34	116.06
CA073	107.94	100.74
CA074	124.34	116.06
CA075	124.34	116.06
CA076	121.41	113.30
CA077	111.17	103.75
CA079	124.34	116.06
CA082	124.34	116.06
CA084	88.99	83.06
CA085	121.27	113.19
CA086	85.06	79.38
CA088	121.27	113.19
CA092	124.34	116.06
CA093	124.34	116.06
CA094	124.34	116.06
CA096	86.64	80.85
CA102	124.34	116.06
CA103	124.34	116.06
CA104	124.34	116.06
CA105	124.34	116.06
CA106	86.64	80.85
CA108	111.17	103.75
CA110	124.34	116.06
CA111	124.34	116.06
CA114	124.34	116.06
CA116	111.17	103.75
CA117	124.34	116.06
CA118	124.34	116.06
CA119	124.34	116.06
CA120	124.34	116.06
CA121	124.34	116.06
CA123	124.34	116.06
CA125	107.94	100.74
CA126	124.34	116.06
CA128	94.43	88.13
CA131	107.94	100.74
CA132	111.17	103.75
CA136	124.34	116.06
CA143	90.15	84.14
CA144	82.57	77.07
CA149	94.43	88.13
CA151	94.43	88.13
CA155	111.17	103.75
CO001	75.37	70.35
CO002	69.62	64.97
CO005	78.46	73.23
CO006	67.16	62.68
CO016	85.53	79.82
CO019	75.37	70.35
CO024	67.16	62.68
CO028	70.31	65.62
CO031	67.16	62.68
CO034	81.04	75.65
CO035	69.88	65.23
CO036	75.37	70.35
CO040	103.71	96.81
CO041	81.04	75.65
CO043	78.46	73.23
CO045	67.16	62.68
CO048	75.37	70.35
CO049	75.37	70.35
CO050	75.37	70.35
CO051	88.17	82.29
CO052	75.37	70.35
CO057	75.37	70.35
CO058	75.37	70.35
CO061	85.53	79.82
CO070	85.53	79.82
CO071	70.31	65.62
CO072	75.37	70.35
CO079	78.46	73.23
CO087	103.71	96.81
CO090	69.88	65.23
CO095	99.17	92.56
CO101	67.16	62.68
CO103	81.04	75.65
CO888	69.62	64.97
CO911	75.37	70.35
CO921	75.37	70.35
CT001	97.21	90.74
CT002	104.20	97.26
CT003	91.63	85.51
CT004	101.00	94.26
CT005	91.63	85.51
CT006	82.46	76.96
CT007	104.20	97.26
CT008	91.63	85.51
CT009	91.63	85.51
CT010	81.77	76.32
CT011	101.00	94.26
CT013	91.63	85.51
CT015	97.21	90.74
CT017	97.21	90.74
CT018	89.95	83.95
CT019	104.20	97.26
CT020	104.20	97.26
CT023	91.63	85.51
CT024	81.77	76.32
CT026	91.63	85.51
CT027	97.21	90.74
CT028	91.63	85.51
CT029	101.00	94.26

PHA	A rate	B rate
CT030	97.21	90.74
CT031	81.77	76.32
CT032	91.63	85.51
CT033	91.63	85.51
CT036	91.63	85.51
CT038	91.63	85.51
CT039	91.63	85.51
CT040	91.63	85.51
CT041	91.63	85.51
CT042	101.00	94.26
CT047	82.46	76.96
CT048	91.63	85.51
CT049	91.63	85.51
CT051	91.63	85.51
CT052	97.21	90.74
CT053	91.63	85.51
CT058	81.77	76.32
CT061	81.77	76.32
CT063	101.00	94.26
CT067	101.00	94.26
CT068	91.63	85.51
CT901	91.63	85.51
DC001	114.69	107.05
DC880	114.69	107.05
DE001	90.84	84.79
DE002	79.68	74.37
DE003	90.84	84.79
DE005	90.84	84.79
DE901	79.68	74.37
FL001	73.57	68.67
FL002	77.67	72.49
FL003	77.67	72.49
FL004	81.13	75.71
FL005	105.40	98.39
FL007	77.87	72.68
FL008	85.25	79.56
FL009	82.31	76.82
FL010	98.69	92.11
FL011	64.65	60.34
FL013	106.69	99.60
FL015	69.13	64.52
FL017	105.40	98.39
FL018	63.15	58.94
FL019	74.89	69.91
FL020	74.89	69.91
FL021	82.31	76.82
FL022	77.87	72.68
FL023	85.25	79.56
FL024	77.87	72.68
FL025	74.89	69.91
FL026	64.65	60.34
FL028	98.69	92.11
FL030	77.87	72.68
FL031	62.05	57.92
FL032	63.66	59.41
FL033	81.13	75.71
FL034	77.67	72.49
FL035	63.15	58.94
FL037	73.57	68.67
FL041	82.75	77.24
FL045	82.75	77.24
FL046	63.15	58.94
FL047	81.66	76.23
FL049	62.05	57.92
FL053	63.66	59.41
FL057	62.05	57.92
FL060	79.52	74.22
FL062	77.67	72.49
FL063	69.80	65.15
FL066	105.40	98.39
FL068	105.40	98.39
FL069	63.15	58.94
FL070	69.80	65.15
FL071	64.65	60.34
FL072	77.87	72.68
FL073	69.13	64.52
FL075	77.67	72.49
FL079	98.69	92.11
FL080	82.31	76.82
FL081	98.69	92.11
FL083	82.31	76.82
FL092	63.66	59.41
FL093	81.13	75.71
FL102	63.15	58.94
FL104	77.67	72.49
FL105	85.25	79.56
FL106	81.13	75.71
FL109	62.05	57.92
FL110	63.15	58.94
FL113	77.87	72.68
FL116	98.69	92.11
FL119	82.31	76.82
FL123	78.29	73.07
FL128	81.66	76.23
FL132	82.44	76.97
FL136	98.69	92.11
FL137	77.67	72.49
FL139	64.65	60.34
FL141	84.98	79.31
FL144	106.69	99.60
FL145	105.40	98.39
FL147	63.15	58.94
FL201	81.13	75.71
FL202	62.05	57.92
FL881	105.40	98.39
FL888	77.67	72.49
GA001	68.81	64.22
GA002	68.81	64.22
GA004	68.81	64.22
GA006	83.89	78.29
GA007	68.81	64.22
GA009	68.81	64.22
GA010	83.89	78.29
GA011	83.89	78.29
GA023	68.81	64.22
GA062	65.31	60.96
GA078	83.89	78.29
GA095	83.89	78.29
GA116	83.89	78.29
GA188	83.89	78.29
GA228	83.89	78.29
GA232	83.89	78.29
GA237	83.89	78.29
GA264	83.89	78.29
GA269	83.89	78.29
GA285	68.81	64.22
GA901	83.89	78.29
GQ901	115.26	107.59
HI002	113.76	106.17
HI003	126.72	118.28
HI004	126.74	118.30
HI005	128.12	119.59
HI901	126.72	118.28
IA002	65.95	61.55
IA004	69.33	64.71
IA015	65.95	61.55
IA018	69.01	64.41
IA020	78.77	73.53
IA022	80.28	74.94
IA023	69.61	64.97
IA024	76.26	71.17
IA030	65.95	61.55
IA038	76.56	71.45
IA042	65.95	61.55
IA045	72.21	67.40
IA047	65.95	61.55
IA049	65.95	61.55
IA050	76.56	71.45
IA054	65.95	61.55
IA056	65.95	61.55
IA057	65.95	61.55
IA084	65.95	61.55
IA087	70.58	65.87
IA098	69.48	64.86
IA100	65.95	61.55
IA107	65.95	61.55
IA108	65.95	61.55
IA113	76.56	71.45
IA114	65.95	61.55
IA117	69.61	64.97
IA119	65.95	61.55
IA120	78.77	73.53
IA122	65.95	61.55
IA124	65.95	61.55
IA125	65.95	61.55
IA126	72.21	67.40
IA127	65.95	61.55
IA128	65.95	61.55
IA129	65.95	61.55
IA130	65.95	61.55
IA131	78.77	73.53
IA132	76.56	71.45
IA136	65.95	61.55
ID005	67.21	62.73
ID013	83.52	77.95
ID016	83.52	77.95
ID021	83.52	77.95
ID901	69.57	64.92
IL002	95.61	89.22
IL003	75.49	70.46
IL004	68.80	64.21
IL006	67.38	62.89
IL009	72.21	67.40
IL010	72.21	67.40
IL011	61.14	57.07
IL012	65.10	60.76
IL014	72.77	67.92
IL015	66.03	61.62
IL016	60.83	56.78
IL018	72.21	67.40
IL020	72.21	67.40
IL022	68.66	64.08
IL024	95.61	89.22
IL025	95.61	89.22
IL026	95.61	89.22
IL028	68.80	64.21
IL030	66.03	61.62
IL032	72.77	67.92
IL034	67.38	62.89
IL035	72.77	67.92
IL036	61.14	57.07
IL037	60.83	56.78
IL038	60.83	56.78
IL039	65.23	60.89
IL040	60.83	56.78
IL042	60.83	56.78
IL043	60.83	56.78
IL050	61.14	57.07
IL051	67.14	62.67
IL052	60.83	56.78
IL053	61.14	57.07
IL054	95.61	89.22
IL056	95.61	89.22
IL057	60.83	56.78
IL059	60.83	56.78
IL061	61.55	57.44
IL074	66.03	61.62
IL076	60.83	56.78
IL079	60.83	56.78
IL082	60.83	56.78
IL083	68.66	64.08
IL084	64.53	60.23

PHA	A rate	B rate
IL085	62.10	57.97
IL086	64.53	60.23
IL087	60.83	56.78
IL088	60.83	56.78
IL089	75.77	70.72
IL090	95.61	89.22
IL091	60.83	56.78
IL092	95.61	89.22
IL095	71.35	66.59
IL096	60.83	56.78
IL101	95.61	89.22
IL103	95.61	89.22
IL104	75.49	70.46
IL107	95.61	89.22
IL116	95.61	89.22
IL117	67.14	62.67
IL120	60.83	56.78
IL122	68.66	64.08
IL123	60.83	56.78
IL124	75.49	70.46
IL126	61.14	57.07
IL130	95.61	89.22
IL131	72.21	67.40
IL136	95.61	89.22
IL137	96.43	89.99
IL901	95.61	89.22
IN002	52.23	48.75
IN003	58.21	54.34
IN004	54.22	50.61
IN005	54.22	50.61
IN006	64.36	60.07
IN007	56.62	52.85
IN009	52.23	48.75
IN010	71.06	66.33
IN011	71.06	66.33
IN012	61.41	57.32
IN015	57.30	53.48
IN016	56.26	52.51
IN017	64.36	60.07
IN018	52.23	48.75
IN019	56.13	52.38
IN020	57.30	53.48
IN021	54.22	50.61
IN022	57.68	53.85
IN023	61.41	57.32
IN025	61.41	57.32
IN026	56.25	52.50
IN029	71.06	66.33
IN031	52.23	48.75
IN032	53.17	49.62
IN035	54.22	50.61
IN037	56.26	52.51
IN041	52.23	48.75
IN043	52.23	48.75
IN047	52.23	48.75
IN048	52.23	48.75
IN050	52.23	48.75
IN055	53.17	49.62
IN056	54.67	51.02
IN058	58.73	54.83
IN060	56.25	52.50
IN062	56.07	52.34
IN067	52.23	48.75
IN071	62.16	58.00
IN073	52.23	48.75
IN077	53.17	49.62
IN078	54.67	51.02
IN079	64.36	60.07
IN080	64.36	60.07
IN084	52.23	48.75
IN086	52.23	48.75
IN091	52.23	48.75
IN092	52.23	48.75
IN094	54.36	50.72
IN100	57.30	53.48
IN901	64.36	60.07
KS001	64.19	59.90
KS002	60.28	56.27
KS004	64.95	60.61
KS006	57.08	53.27
KS017	57.08	53.27
KS038	57.08	53.27
KS041	57.08	53.27
KS043	64.19	59.90
KS053	66.62	62.18
KS062	57.08	53.27
KS063	57.23	53.42
KS068	64.19	59.90
KS073	64.95	60.61
KS091	57.08	53.27
KS149	57.08	53.27
KS159	57.08	53.27
KS161	57.08	53.27
KS162	64.19	59.90
KS165	57.08	53.27
KS166	57.08	53.27
KS167	57.23	53.42
KS168	60.28	56.27
KS170	57.08	53.27
KY001	61.41	57.32
KY003	56.21	52.46
KY004	68.01	63.48
KY007	55.18	51.50
KY008	55.18	51.50
KY009	61.41	57.32
KY011	68.41	63.85
KY012	56.26	52.51
KY015	69.20	64.58
KY017	55.18	51.50
KY021	55.18	51.50
KY022	55.18	51.50
KY026	55.18	51.50
KY027	55.18	51.50
KY035	55.18	51.50
KY040	55.18	51.50
KY047	55.18	51.50
KY053	55.18	51.50
KY056	55.18	51.50
KY061	68.01	63.48
KY071	61.34	57.25
KY086	55.18	51.50
KY107	55.18	51.50
KY121	55.18	51.50
KY132	61.11	57.03
KY133	69.20	64.58
KY135	69.20	64.58
KY136	69.20	64.58
KY137	55.18	51.50
KY138	55.18	51.50
KY140	68.01	63.48
KY141	55.18	51.50
KY142	60.35	56.32
KY150	55.18	51.50
KY157	55.18	51.50
KY160	55.18	51.50
KY161	60.35	56.32
KY163	55.18	51.50
KY169	55.18	51.50
KY171	61.41	57.32
KY901	68.01	63.48
LA001	71.29	66.52
LA002	69.78	65.14
LA003	76.97	71.84
LA004	66.61	62.17
LA005	66.61	62.17
LA006	66.61	62.17
LA009	76.97	71.84
LA012	71.29	66.52
LA013	71.29	66.52
LA023	66.61	62.17
LA024	66.10	61.69
LA029	66.61	62.17
LA031	66.10	61.69
LA032	66.61	62.17
LA033	66.10	61.69
LA036	66.10	61.69
LA037	71.11	66.38
LA046	66.61	62.17
LA057	66.61	62.17
LA063	66.61	62.17
LA067	66.10	61.69
LA074	66.10	61.69
LA086	66.10	61.69
LA094	71.29	66.52
LA097	66.10	61.69
LA101	76.97	71.84
LA103	71.29	66.52
LA104	66.61	62.17
LA111	66.10	61.69
LA114	66.10	61.69
LA115	66.10	61.69
LA120	66.61	62.17
LA122	66.61	62.17
LA125	66.10	61.69
LA128	66.10	61.69
LA129	66.61	62.17
LA132	66.10	61.69
LA159	66.10	61.69
LA163	66.10	61.69
LA165	66.61	62.17
LA166	66.10	61.69
LA168	66.61	62.17
LA169	66.10	61.69
LA171	66.61	62.17
LA172	66.61	62.17
LA173	66.61	62.17
LA174	66.61	62.17
LA178	66.61	62.17
LA179	66.61	62.17
LA181	71.29	66.52
LA182	66.10	61.69
LA184	69.78	65.14
LA186	66.61	62.17
LA187	71.29	66.52
LA188	66.10	61.69
LA189	66.61	62.17
LA190	69.78	65.14
LA192	66.10	61.69
LA194	68.25	63.71
LA195	66.10	61.69
LA196	66.61	62.17
LA199	76.97	71.84
LA202	76.97	71.84
LA204	76.97	71.84
LA205	76.97	71.84
LA206	66.61	62.17
LA207	66.61	62.17
LA211	68.25	63.71
LA212	66.10	61.69
LA213	71.11	66.38
LA214	66.61	62.17
LA215	66.10	61.69
LA219	76.97	71.84
LA220	66.10	61.69
LA222	66.10	61.69
LA229	66.10	61.69
LA230	69.78	65.14
LA232	66.10	61.69
LA233	66.10	61.69
LA238	71.29	66.52
LA241	66.10	61.69
LA242	66.10	61.69

PHA	A rate	B rate
LA246	66.10	61.69
LA247	66.10	61.69
LA248	66.10	61.69
LA253	68.25	63.71
LA257	66.10	61.69
LA258	66.10	61.69
LA266	66.61	62.17
LA888	69.78	65.14
LA889	71.29	66.52
LA903	71.29	66.52
MA001	117.46	109.64
MA002	126.96	118.49
MA003	126.96	118.49
MA005	117.46	109.64
MA006	116.13	108.40
MA007	117.46	109.64
MA008	117.46	109.64
MA010	117.46	109.64
MA012	117.46	109.64
MA013	126.96	118.49
MA014	126.96	118.49
MA015	126.96	118.49
MA016	126.96	118.49
MA017	126.96	118.49
MA018	116.13	108.40
MA019	126.96	118.49
MA020	126.96	118.49
MA022	126.96	118.49
MA023	126.96	118.49
MA024	117.46	109.64
MA025	126.96	118.49
MA026	117.46	109.64
MA027	126.96	118.49
MA028	126.96	118.49
MA029	117.46	109.64
MA031	126.96	118.49
MA032	126.96	118.49
MA033	126.96	118.49
MA034	117.46	109.64
MA035	117.46	109.64
MA036	126.96	118.49
MA037	117.46	109.64
MA039	117.46	109.64
MA040	126.96	118.49
MA041	117.46	109.64
MA042	126.96	118.49
MA043	117.46	109.64
MA044	126.96	118.49
MA045	126.96	118.49
MA046	127.26	118.78
MA047	127.26	118.78
MA048	126.96	118.49
MA050	117.46	109.64
MA051	117.46	109.64
MA053	126.96	118.49
MA054	126.96	118.49
MA055	126.96	118.49
MA056	126.96	118.49
MA057	126.96	118.49
MA059	126.96	118.49
MA060	117.46	109.64
MA061	126.96	118.49
MA063	126.96	118.49
MA065	126.96	118.49
MA066	117.46	109.64
MA067	126.96	118.49
MA069	126.96	118.49
MA070	126.96	118.49
MA072	126.96	118.49
MA073	126.96	118.49
MA074	126.96	118.49
MA075	126.96	118.49
MA076	117.46	109.64
MA077	117.46	109.64
MA078	117.46	109.64
MA079	126.96	118.49
MA080	117.46	109.64
MA081	117.46	109.64
MA082	117.46	109.64
MA084	117.46	109.64
MA085	117.46	109.64
MA086	117.46	109.64
MA087	117.46	109.64
MA088	117.46	109.64
MA089	126.96	118.49
MA090	126.96	118.49
MA091	126.96	118.49
MA092	126.96	118.49
MA093	126.96	118.49
MA094	116.88	109.10
MA095	127.26	118.78
MA096	116.88	109.10
MA098	126.96	118.49
MA099	126.96	118.49
MA100	117.46	109.64
MA101	126.96	118.49
MA105	117.46	109.64
MA106	117.46	109.64
MA107	117.46	109.64
MA108	117.46	109.64
MA109	126.96	118.49
MA110	127.26	118.78
MA111	126.96	118.49
MA112	126.96	118.49
MA116	126.96	118.49
MA117	126.96	118.49
MA118	126.96	118.49
MA119	126.96	118.49
MA121	126.96	118.49
MA122	126.96	118.49
MA123	117.46	109.64
MA125	126.96	118.49
MA127	117.46	109.64
MA133	126.96	118.49
MA134	126.96	118.49
MA135	126.96	118.49
MA138	127.26	118.78
MA139	117.46	109.64
MA140	126.96	118.49
MA147	126.96	118.49
MA154	126.96	118.49
MA155	126.96	118.49
MA165	126.96	118.49
MA170	116.13	108.40
MA172	117.46	109.64
MA174	126.96	118.49
MA180	127.26	118.78
MA181	127.26	118.78
MA188	117.46	109.64
MA880	126.96	118.49
MA881	126.96	118.49
MA882	117.46	109.64
MA883	126.96	118.49
MA901	126.96	118.49
MD001	84.56	78.92
MD002	84.56	78.92
MD003	114.69	107.05
MD004	114.69	107.05
MD006	66.34	61.90
MD007	114.69	107.05
MD009	63.94	59.68
MD014	76.00	70.94
MD015	114.69	107.05
MD016	90.84	84.79
MD018	84.56	78.92
MD019	76.22	71.13
MD021	95.93	89.53
MD022	114.69	107.05
MD023	84.56	78.92
MD024	114.69	107.05
MD025	84.56	78.92
MD027	84.56	78.92
MD028	66.34	61.90
MD029	90.84	84.79
MD032	84.56	78.92
MD033	84.56	78.92
MD034	84.56	78.92
MD901	114.69	107.05
ME001	64.81	60.49
ME002	64.81	60.49
ME003	103.66	96.76
ME004	64.81	60.49
ME005	74.18	69.22
ME006	79.27	73.97
ME007	74.18	69.22
ME008	68.14	63.59
ME009	75.29	70.28
ME011	91.20	85.11
ME015	103.66	96.76
ME018	75.29	70.28
ME019	83.08	77.53
ME020	103.66	96.76
ME021	75.29	70.28
ME025	64.81	60.49
ME027	66.53	62.10
ME028	91.20	85.11
ME030	68.14	63.59
ME901	63.62	59.37
MI001	66.73	62.29
MI003	66.73	62.29
MI005	66.73	62.29
MI006	57.07	53.26
MI008	66.73	62.29
MI009	57.44	53.61
MI010	58.17	54.30
MI019	54.78	51.13
MI020	54.78	51.13
MI023	55.08	51.41
MI027	66.73	62.29
MI030	54.78	51.13
MI031	62.99	58.79
MI032	58.17	54.30
MI035	60.15	56.14
MI036	54.78	51.13
MI037	66.73	62.29
MI038	57.67	53.84
MI039	66.73	62.29
MI040	66.73	62.29
MI044	66.73	62.29
MI045	66.73	62.29
MI047	54.78	51.13
MI048	66.73	62.29
MI049	54.78	51.13
MI050	54.78	51.13
MI051	66.73	62.29
MI052	66.73	62.29
MI055	66.73	62.29
MI058	63.98	59.72
MI059	66.73	62.29
MI060	58.76	54.83
MI061	59.13	55.19
MI063	54.78	51.13
MI064	79.51	74.21
MI066	62.99	58.79
MI070	58.76	54.83
MI073	62.99	58.79
MI074	59.13	55.19
MI080	60.81	56.76
MI084	58.76	54.83
MI087	58.76	54.83
MI089	66.73	62.29
MI093	62.99	58.79

PHA	A rate	B rate
MI094	54.78	51.13
MI096	66.73	62.29
MI097	66.73	62.29
MI100	66.73	62.29
MI112	54.78	51.13
MI115	62.99	58.79
MI117	54.78	51.13
MI119	54.78	51.13
MI120	58.17	54.30
MI121	59.13	55.19
MI132	54.78	51.13
MI139	66.73	62.29
MI157	66.73	62.29
MI167	63.98	59.72
MI168	63.98	59.72
MI178	54.78	51.13
MI186	55.08	51.41
MI194	63.98	59.72
MI198	62.99	58.79
MI880	63.98	59.72
MI901	66.73	62.29
MN001	89.79	83.81
MN002	89.79	83.81
MN003	66.42	61.99
MN006	62.11	57.97
MN007	66.42	61.99
MN008	61.26	57.17
MN009	61.26	57.17
MN018	61.26	57.17
MN021	75.15	70.14
MN032	61.26	57.17
MN034	61.26	57.17
MN037	61.26	57.17
MN038	68.41	63.85
MN049	61.26	57.17
MN063	66.70	62.26
MN067	89.79	83.81
MN073	66.42	61.99
MN077	66.83	62.38
MN085	61.26	57.17
MN090	61.26	57.17
MN101	61.26	57.17
MN107	61.26	57.17
MN128	61.26	57.17
MN144	89.79	83.81
MN147	89.79	83.81
MN151	74.34	69.40
MN152	89.79	83.81
MN153	61.26	57.17
MN154	61.26	57.17
MN158	75.15	70.14
MN161	64.27	59.98
MN163	89.79	83.81
MN164	75.15	70.14
MN166	61.26	57.17
MN167	66.70	62.26
MN168	64.27	59.98
MN169	61.26	57.17
MN170	89.79	83.81
MN171	63.23	59.00
MN172	68.41	63.85
MN173	61.26	57.17
MN174	61.26	57.17
MN176	61.26	57.17
MN177	61.26	57.17
MN178	64.27	59.98
MN179	61.26	57.17
MN180	61.26	57.17
MN182	61.26	57.17
MN184	89.79	83.81
MN188	61.26	57.17
MN190	61.26	57.17
MN191	61.26	57.17
MN192	61.26	57.17
MN193	68.83	64.25
MN197	61.26	57.17
MN200	61.26	57.17
MN203	64.27	59.98
MN212	89.79	83.81
MN216	89.79	83.81
MN219	66.70	62.26
MN220	66.83	62.38
MN801	89.79	83.81
MN802	89.79	83.81
MO001	66.03	61.62
MO002	64.19	59.90
MO003	63.30	59.08
MO004	66.03	61.62
MO006	66.03	61.62
MO007	63.30	59.08
MO008	63.30	59.08
MO009	63.30	59.08
MO010	63.30	59.08
MO014	63.30	59.08
MO016	63.30	59.08
MO017	64.19	59.90
MO030	64.19	59.90
MO037	63.30	59.08
MO040	63.30	59.08
MO053	64.19	59.90
MO058	63.30	59.08
MO064	63.30	59.08
MO065	63.30	59.08
MO072	63.30	59.08
MO074	63.30	59.08
MO107	63.30	59.08
MO129	63.30	59.08
MO133	63.30	59.08
MO145	63.30	59.08
MO149	63.30	59.08
MO188	63.30	59.08
MO190	63.30	59.08
MO193	64.19	59.90
MO196	64.19	59.90
MO197	64.19	59.90
MO198	63.30	59.08
MO199	66.03	61.62
MO200	63.30	59.08
MO203	63.30	59.08
MO204	64.19	59.90
MO205	66.03	61.62
MO206	63.30	59.08
MO207	63.30	59.08
MO209	63.30	59.08
MO210	64.19	59.90
MO212	63.30	59.08
MO213	64.19	59.90
MO215	63.30	59.08
MO216	63.30	59.08
MO217	63.30	59.08
MO227	66.03	61.62
MS004	63.36	59.14
MS005	66.43	62.01
MS006	63.36	59.14
MS016	67.53	63.03
MS019	63.36	59.14
MS030	63.36	59.14
MS040	66.43	62.01
MS057	63.36	59.14
MS058	78.40	73.16
MS095	63.36	59.14
MS103	78.40	73.16
MS107	63.36	59.14
MS128	63.36	59.14
MS301	66.43	62.01
MT001	86.92	81.13
MT002	76.95	71.83
MT003	71.63	66.85
MT004	83.29	77.73
MT006	67.48	62.99
MT015	73.11	68.22
MT033	78.24	73.01
MT036	73.11	68.22
MT901	86.92	81.13
NC001	65.65	61.27
NC002	78.43	73.19
NC003	71.93	67.12
NC004	62.57	58.40
NC006	67.94	63.42
NC007	65.65	61.27
NC008	71.93	67.12
NC009	66.73	62.27
NC011	67.94	63.42
NC012	67.94	63.42
NC013	78.43	73.19
NC014	62.57	58.40
NC015	65.65	61.27
NC018	62.57	58.40
NC019	65.65	61.27
NC020	62.57	58.40
NC021	78.43	73.19
NC022	65.65	61.27
NC025	62.57	58.40
NC032	62.57	58.40
NC035	63.16	58.95
NC039	64.63	60.33
NC050	65.78	61.39
NC056	69.17	64.56
NC057	71.93	67.12
NC059	67.94	63.42
NC065	71.93	67.12
NC070	68.42	63.85
NC071	64.63	60.33
NC072	68.13	63.60
NC075	62.57	58.40
NC077	62.57	58.40
NC081	67.94	63.42
NC087	65.65	61.27
NC089	62.57	58.40
NC098	65.65	61.27
NC102	68.42	63.85
NC104	78.43	73.19
NC118	62.57	58.40
NC120	78.43	73.19
NC134	68.42	63.85
NC137	65.65	61.27
NC138	62.57	58.40
NC139	62.57	58.40
NC140	65.65	61.27
NC141	62.57	58.40
NC144	65.65	61.27
NC145	62.57	58.40
NC146	62.57	58.40
NC147	65.65	61.27
NC149	62.57	58.40
NC150	62.57	58.40
NC151	62.57	58.40
NC152	65.65	61.27
NC155	62.57	58.40
NC159	69.17	64.56
NC160	62.57	58.40
NC161	62.57	58.40
NC163	65.78	61.39
NC164	78.43	73.19
NC165	62.57	58.40
NC166	62.57	58.40
NC167	63.74	59.49
NC173	65.65	61.27
NC175	65.65	61.27
NC901	62.57	58.40
ND001	75.15	70.14
ND002	75.04	70.03

PHA	A rate	B rate
ND003	75.04	70.03
ND009	75.04	70.03
ND010	75.15	70.14
ND011	75.04	70.03
ND012	75.15	70.14
ND013	75.04	70.03
ND014	75.15	70.14
ND015	75.04	70.03
ND016	75.04	70.03
ND017	75.04	70.03
ND019	75.04	70.03
ND021	75.15	70.14
ND022	75.04	70.03
ND025	75.04	70.03
ND026	75.04	70.03
ND030	75.04	70.03
ND031	75.04	70.03
ND035	75.04	70.03
ND036	75.04	70.03
ND037	75.04	70.03
ND038	75.04	70.03
ND039	75.04	70.03
ND044	75.04	70.03
ND049	75.04	70.03
ND052	75.04	70.03
ND054	75.04	70.03
ND055	75.04	70.03
ND070	75.04	70.03
ND901	75.04	70.03
NE001	69.61	64.97
NE002	68.92	64.33
NE003	68.92	64.33
NE004	68.92	64.33
NE010	68.92	64.33
NE041	68.92	64.33
NE078	68.92	64.33
NE083	68.92	64.33
NE094	68.92	64.33
NE100	68.92	64.33
NE104	68.92	64.33
NE114	68.92	64.33
NE120	68.92	64.33
NE123	68.92	64.33
NE141	68.92	64.33
NE143	68.92	64.33
NE150	68.92	64.33
NE153	69.61	64.97
NE157	68.92	64.33
NE174	69.61	64.97
NE175	69.01	64.41
NE179	68.92	64.33
NE180	68.92	64.33
NE181	68.92	64.33
NE182	68.92	64.33
NH001	92.84	86.64
NH002	98.63	92.05
NH003	96.13	89.73
NH004	96.13	89.73
NH005	105.72	98.66
NH006	96.13	89.73
NH007	83.27	77.72
NH008	96.13	89.73
NH009	85.96	80.22
NH010	98.80	92.21
NH011	75.78	70.74
NH012	80.73	75.35
NH013	96.13	89.73
NH014	96.13	89.73
NH015	75.78	70.74
NH016	75.78	70.74
NH022	117.46	109.64
NH888	98.63	92.05
NH901	92.84	86.64
NJ002	109.48	102.16
NJ003	109.48	102.16
NJ004	93.44	87.21
NJ006	112.11	104.65
NJ007	109.75	102.44
NJ008	109.75	102.44
NJ009	93.44	87.21
NJ010	90.84	84.79
NJ011	112.11	104.65
NJ012	93.44	87.21
NJ013	112.11	104.65
NJ014	92.57	86.42
NJ015	93.44	87.21
NJ021	112.11	104.65
NJ022	112.11	104.65
NJ023	109.48	102.16
NJ025	109.48	102.16
NJ026	93.44	87.21
NJ030	93.44	87.21
NJ032	109.48	102.16
NJ033	112.11	104.65
NJ035	112.11	104.65
NJ036	93.44	87.21
NJ037	109.48	102.16
NJ039	109.48	102.16
NJ042	112.11	104.65
NJ043	112.11	104.65
NJ044	112.11	104.65
NJ046	109.75	102.44
NJ047	112.11	104.65
NJ048	109.75	102.44
NJ049	89.00	83.06
NJ050	109.48	102.16
NJ051	90.84	84.79
NJ052	109.48	102.16
NJ054	109.75	102.44
NJ055	112.11	104.65
NJ056	109.75	102.44
NJ058	90.84	84.79
NJ059	92.57	86.42
NJ060	109.75	102.44
NJ061	89.00	83.06
NJ063	89.00	83.06
NJ065	109.75	102.44
NJ066	109.48	102.16
NJ067	112.11	104.65
NJ068	109.48	102.16
NJ070	112.11	104.65
NJ071	112.11	104.65
NJ073	90.84	84.79
NJ074	90.84	84.79
NJ075	112.11	104.65
NJ077	93.44	87.21
NJ081	109.75	102.44
NJ083	93.44	87.21
NJ084	112.11	104.65
NJ086	109.48	102.16
NJ088	109.48	102.16
NJ089	112.11	104.65
NJ090	112.11	104.65
NJ092	109.48	102.16
NJ095	109.75	102.44
NJ097	112.11	104.65
NJ099	109.48	102.16
NJ102	109.48	102.16
NJ105	109.48	102.16
NJ106	112.11	104.65
NJ108	109.48	102.16
NJ109	109.48	102.16
NJ110	112.11	104.65
NJ112	112.11	104.65
NJ113	109.48	102.16
NJ114	112.11	104.65
NJ118	90.84	84.79
NJ204	90.84	84.79
NJ212	107.56	100.39
NJ214	109.75	102.44
NJ880	109.75	102.44
NJ881	112.11	104.65
NJ882	109.48	102.16
NJ902	90.84	84.79
NJ912	109.48	102.16
NM001	78.21	73.00
NM002	60.44	56.41
NM003	62.07	57.93
NM006	78.11	72.89
NM009	92.55	86.37
NM020	61.16	57.07
NM033	60.44	56.41
NM039	60.44	56.41
NM050	92.55	86.37
NM057	78.21	73.00
NM061	60.44	56.41
NM063	61.16	57.07
NM066	76.97	71.83
NM067	60.44	56.41
NM077	78.21	73.00
NM088	64.45	60.16
NV001	82.23	76.75
NV018	92.37	86.22
NV905	82.23	76.75
NY001	73.89	68.97
NY002	69.06	64.47
NY003	115.02	107.36
NY005	99.98	93.31
NY006	67.65	63.15
NY009	80.30	74.95
NY012	80.30	74.95
NY015	80.30	74.95
NY016	70.07	65.40
NY017	61.14	57.06
NY018	64.81	60.49
NY019	67.65	63.15
NY020	80.30	74.95
NY021	70.58	65.88
NY022	80.30	74.95
NY023	115.02	107.36
NY025	80.30	74.95
NY027	73.89	68.97
NY028	80.30	74.95
NY033	80.30	74.95
NY034	67.65	63.15
NY035	115.02	107.36
NY038	115.02	107.36
NY041	84.53	78.90
NY042	115.02	107.36
NY044	84.53	78.90
NY045	90.43	84.40
NY048	57.99	54.12
NY049	102.76	95.92
NY050	115.02	107.36
NY051	102.76	95.92
NY054	78.97	73.72
NY057	115.02	107.36
NY059	67.65	63.15
NY060	74.27	69.32
NY061	66.95	62.48
NY062	102.76	95.92
NY065	67.82	63.31
NY066	68.34	63.80
NY067	64.69	60.37
NY068	63.38	59.14
NY070	69.06	64.47
NY071	75.78	70.72
NY073	76.02	70.96
NY077	115.02	107.36
NY079	76.02	70.96
NY084	99.98	93.31
NY085	115.02	107.36

PHA	A rate	B rate
NY086	115.02	107.36
NY087	62.33	58.16
NY088	115.02	107.36
NY089	84.53	78.90
NY091	69.06	64.47
NY094	115.02	107.36
NY098	67.65	63.15
NY102	73.89	68.97
NY103	90.43	84.40
NY107	73.89	68.97
NY109	67.65	63.15
NY110	99.98	93.31
NY111	115.02	107.36
NY113	115.02	107.36
NY114	99.98	93.31
NY117	115.02	107.36
NY120	115.02	107.36
NY121	115.02	107.36
NY123	115.02	107.36
NY125	102.76	95.92
NY127	115.02	107.36
NY128	115.02	107.36
NY130	115.02	107.36
NY132	115.02	107.36
NY134	102.76	95.92
NY137	102.76	95.92
NY138	99.98	93.31
NY141	115.02	107.36
NY146	115.02	107.36
NY147	115.02	107.36
NY148	99.98	93.31
NY149	115.02	107.36
NY151	115.02	107.36
NY152	115.02	107.36
NY154	115.02	107.36
NY158	102.76	95.92
NY159	115.02	107.36
NY160	99.98	93.31
NY165	115.02	107.36
NY402	71.35	66.59
NY403	57.73	53.88
NY404	69.06	64.47
NY405	69.06	64.47
NY406	84.53	78.90
NY408	80.30	74.95
NY409	69.06	64.47
NY413	74.27	69.32
NY416	80.30	74.95
NY417	67.65	63.15
NY421	80.30	74.95
NY422	80.30	74.95
NY424	80.30	74.95
NY427	80.30	74.95
NY428	80.30	74.95
NY430	80.30	74.95
NY431	80.30	74.95
NY433	57.99	54.12
NY443	67.65	63.15
NY447	80.30	74.95
NY449	69.06	64.47
NY501	80.30	74.95
NY503	80.30	74.95
NY504	73.89	68.97
NY505	70.07	65.40
NY512	80.30	74.95
NY513	80.30	74.95
NY516	80.30	74.95
NY519	80.30	74.95
NY521	73.89	68.97
NY522	62.33	58.16
NY527	73.89	68.97
NY529	90.43	84.40
NY530	74.27	69.32
NY532	80.30	74.95
NY534	67.65	63.15
NY535	80.30	74.95
NY538	80.30	74.95
NY541	63.38	59.14
NY552	67.65	63.15
NY557	80.30	74.95
NY561	80.30	74.95
NY562	80.30	74.95
NY564	80.30	74.95
NY630	80.30	74.95
NY888	115.02	107.36
NY889	61.14	57.06
NY891	115.02	107.36
NY892	115.02	107.36
NY895	115.02	107.36
NY904	115.02	107.36
NY912	69.06	64.47
OH001	67.79	63.26
OH002	61.56	57.45
OH003	71.46	66.69
OH004	69.20	64.58
OH005	63.13	58.92
OH006	71.03	66.29
OH007	70.29	65.62
OH008	61.56	57.45
OH009	59.05	55.11
OH010	59.05	55.11
OH012	71.46	66.69
OH014	61.97	57.84
OH015	69.20	64.58
OH016	60.56	56.52
OH018	60.56	56.52
OH019	60.35	56.32
OH020	59.05	55.11
OH021	63.13	58.92
OH022	63.13	58.92
OH024	59.05	55.11
OH025	71.46	66.69
OH026	60.02	56.01
OH027	71.46	66.69
OH028	62.88	58.68
OH029	69.68	65.02
OH030	59.05	55.11
OH031	70.29	65.62
OH032	59.26	55.31
OH033	59.05	55.11
OH034	59.26	55.31
OH035	59.05	55.11
OH036	59.32	55.37
OH037	59.05	55.11
OH038	69.20	64.58
OH039	59.05	55.11
OH040	59.05	55.11
OH041	59.05	55.11
OH042	71.46	66.69
OH043	67.79	63.26
OH044	61.56	57.45
OH045	59.05	55.11
OH046	59.05	55.11
OH047	59.05	55.11
OH049	69.20	64.58
OH050	59.05	55.11
OH053	59.05	55.11
OH054	61.53	57.43
OH056	59.05	55.11
OH058	59.05	55.11
OH059	67.79	63.26
OH060	59.05	55.11
OH061	60.41	56.38
OH062	63.13	58.92
OH063	59.05	55.11
OH066	59.05	55.11
OH067	59.05	55.11
OH069	59.05	55.11
OH070	67.79	63.26
OH071	71.03	66.29
OH072	59.05	55.11
OH073	71.46	66.69
OH074	60.70	56.65
OH075	59.05	55.11
OH076	59.05	55.11
OH077	59.05	55.11
OH078	59.05	55.11
OH079	67.79	63.26
OH080	60.49	56.45
OH081	60.56	56.52
OH082	59.19	55.24
OH083	67.79	63.26
OH085	71.03	66.29
OH086	59.05	55.11
OH882	71.46	66.69
OK002	63.67	59.43
OK005	61.94	57.81
OK006	61.62	57.52
OK024	61.62	57.52
OK027	61.62	57.52
OK032	61.62	57.52
OK033	61.94	57.81
OK044	61.62	57.52
OK062	61.62	57.52
OK067	61.62	57.52
OK073	61.94	57.81
OK095	63.35	59.13
OK096	61.62	57.52
OK099	61.62	57.52
OK111	61.62	57.52
OK118	61.62	57.52
OK139	63.67	59.43
OK142	61.94	57.81
OK146	61.62	57.52
OK148	63.35	59.13
OK901	63.67	59.43
OR001	83.78	78.19
OR002	83.78	78.19
OR003	84.99	79.33
OR005	79.10	73.83
OR006	96.28	89.86
OR007	81.32	75.89
OR008	89.95	83.95
OR011	89.95	83.95
OR014	89.95	83.95
OR015	95.65	89.27
OR016	83.78	78.19
OR017	77.62	72.46
OR019	85.05	79.37
OR020	84.99	79.33
OR022	83.78	78.19
OR026	86.03	80.29
OR027	77.62	72.46
OR028	83.78	78.19
OR031	87.14	81.34
OR032	81.32	75.89
OR034	92.48	86.32
PA001	63.40	59.17
PA002	90.84	84.79
PA003	61.46	57.36
PA004	77.37	72.20
PA005	63.40	59.17
PA006	63.40	59.17
PA007	90.84	84.79
PA008	79.18	73.90
PA009	75.45	70.41
PA010	63.40	59.17
PA011	77.37	72.20
PA012	90.84	84.79
PA013	76.96	71.83
PA014	63.40	59.17
PA015	63.40	59.17

PHA	A rate	B rate
PA016	69.71	65.06
PA017	63.40	59.17
PA018	63.40	59.17
PA019	65.06	60.72
PA020	71.42	66.66
PA021	65.06	60.72
PA022	72.68	67.83
PA023	90.84	84.79
PA024	77.37	72.20
PA026	64.00	59.73
PA027	60.66	56.61
PA028	82.51	77.02
PA029	65.53	61.16
PA030	61.46	57.36
PA031	67.00	62.53
PA032	64.66	60.34
PA033	64.00	59.73
PA034	69.13	64.51
PA035	79.18	73.90
PA036	80.41	75.06
PA037	69.71	65.06
PA038	61.46	57.36
PA039	74.47	69.51
PA041	63.86	59.60
PA042	61.46	57.36
PA043	61.46	57.36
PA044	61.46	57.36
PA045	64.56	60.25
PA046	90.84	84.79
PA047	61.46	57.36
PA048	75.01	70.01
PA050	62.31	58.17
PA051	90.84	84.79
PA052	79.18	73.90
PA053	64.56	60.25
PA054	63.17	58.95
PA055	64.56	60.25
PA056	61.77	57.65
PA057	61.46	57.36
PA058	64.00	59.73
PA059	61.77	57.65
PA060	64.56	60.25
PA061	64.56	60.25
PA063	64.56	60.25
PA064	62.31	58.17
PA065	64.56	60.25
PA067	77.37	72.20
PA068	62.31	58.17
PA069	67.00	62.53
PA071	75.45	70.41
PA073	61.46	57.36
PA074	62.31	58.17
PA075	79.18	73.90
PA076	77.37	72.20
PA077	63.17	58.95
PA078	100.29	93.61
PA079	64.00	59.73
PA080	63.17	58.95
PA081	77.37	72.20
PA082	73.06	68.19
PA083	61.99	57.86
PA085	60.66	56.61
PA086	61.77	57.65
PA087	76.96	71.83
PA088	86.25	80.49
PA090	80.41	75.06
PA091	73.31	68.42
PA092	62.46	58.30
RI001	116.13	108.40
RI002	116.13	108.40
RI003	116.13	108.40
RI004	116.13	108.40
RI005	110.95	103.54
RI006	116.13	108.40
RI007	116.13	108.40
RI008	100.98	94.25
RI009	116.13	108.40
RI010	116.13	108.40
RI011	116.13	108.40
RI012	116.13	108.40
RI014	116.13	108.40
RI015	116.13	108.40
RI016	116.13	108.40
RI017	116.13	108.40
RI018	116.13	108.40
RI019	116.13	108.40
RI020	116.13	108.40
RI022	116.13	108.40
RI024	116.13	108.40
RI026	116.13	108.40
RI027	116.13	108.40
RI028	116.13	108.40
RI029	116.13	108.40
RI901	116.13	108.40
RQ006	79.99	74.65
RQ007	74.42	69.46
RQ008	79.99	74.65
RQ009	74.42	69.46
RQ010	74.42	69.46
RQ011	79.99	74.65
RQ012	74.42	69.46
RQ013	79.99	74.65
RQ014	79.99	74.65
RQ015	79.99	74.65
RQ016	79.99	74.65
RQ017	74.42	69.46
RQ018	74.42	69.46
RQ019	79.99	74.65
RQ020	81.73	76.28
RQ021	79.99	74.65
RQ022	79.99	74.65
RQ023	79.99	74.65
RQ024	79.99	74.65
RQ025	79.99	74.65
RQ026	74.42	69.46
RQ027	79.99	74.65
RQ028	79.99	74.65
RQ029	74.42	69.46
RQ030	74.42	69.46
RQ031	74.42	69.46
RQ032	79.99	74.65
RQ033	74.42	69.46
RQ034	79.99	74.65
RQ035	74.42	69.46
RQ036	79.99	74.65
RQ037	74.42	69.46
RQ038	79.99	74.65
RQ039	81.73	76.28
RQ040	81.73	76.28
RQ041	74.42	69.46
RQ042	74.42	69.46
RQ043	74.42	69.46
RQ044	79.99	74.65
RQ045	79.99	74.65
RQ046	74.42	69.46
RQ047	79.99	74.65
RQ048	74.42	69.46
RQ049	79.99	74.65
RQ050	79.99	74.65
RQ052	74.42	69.46
RQ053	79.99	74.65
RQ054	79.99	74.65
RQ055	74.42	69.46
RQ056	79.99	74.65
RQ057	74.42	69.46
RQ058	74.42	69.46
RQ059	74.42	69.46
RQ060	74.42	69.46
RQ061	74.42	69.46
RQ062	74.42	69.46
RQ063	79.99	74.65
RQ064	79.99	74.65
RQ065	74.42	69.46
RQ066	74.42	69.46
RQ067	74.42	69.46
RQ068	74.42	69.46
RQ069	74.42	69.46
RQ070	79.99	74.65
RQ071	74.42	69.46
RQ072	79.99	74.65
RQ073	74.42	69.46
RQ074	74.42	69.46
RQ075	79.99	74.65
RQ077	79.99	74.65
RQ080	74.42	69.46
RQ081	79.99	74.65
RQ082	79.99	74.65
RQ083	79.99	74.65
RQ901	79.99	74.65
RQ911	79.99	74.65
SC001	70.95	66.22
SC002	71.72	66.94
SC003	65.47	61.10
SC004	65.47	61.10
SC005	65.47	61.10
SC007	68.81	64.22
SC008	65.47	61.10
SC015	63.41	59.18
SC016	65.47	61.10
SC018	65.47	61.10
SC019	65.47	61.10
SC020	65.47	61.10
SC021	63.41	59.18
SC022	71.93	67.12
SC023	65.47	61.10
SC024	70.95	66.22
SC025	65.47	61.10
SC026	66.82	62.35
SC027	65.47	61.10
SC028	63.41	59.18
SC029	65.47	61.10
SC030	63.41	59.18
SC031	63.41	59.18
SC032	65.47	61.10
SC033	63.41	59.18
SC034	65.47	61.10
SC035	63.41	59.18
SC036	71.93	67.12
SC037	65.47	61.10
SC046	71.93	67.12
SC056	70.95	66.22
SC057	70.95	66.22
SC059	63.41	59.18
SC911	71.72	66.94
SD010	69.03	64.42
SD011	67.22	62.74
SD014	67.22	62.74
SD016	69.03	64.42
SD021	67.22	62.74
SD026	67.22	62.74
SD034	67.22	62.74
SD035	73.04	68.16
SD036	67.22	62.74
SD037	67.22	62.74
SD039	69.03	64.42
SD043	67.22	62.74
SD045	67.22	62.74
SD047	67.22	62.74
SD048	67.22	62.74
SD055	67.22	62.74
SD056	67.22	62.74
SD057	67.22	62.74

PHA	A rate	B rate
SD058	67.22	62.74
SD059	67.22	62.74
TN001	67.53	63.03
TN002	62.62	58.44
TN003	62.99	58.80
TN004	68.46	63.89
TN005	74.84	69.85
TN006	62.62	58.44
TN007	62.62	58.44
TN012	62.99	58.80
TN013	62.03	57.90
TN020	74.84	69.85
TN024	62.03	57.90
TN026	62.03	57.90
TN035	74.84	69.85
TN038	62.62	58.44
TN042	62.03	57.90
TN054	62.62	58.44
TN062	62.03	57.90
TN065	62.99	58.80
TN066	62.62	58.44
TN076	62.62	58.44
TN079	74.84	69.85
TN088	62.99	58.80
TN113	62.99	58.80
TN117	68.46	63.89
TN903	74.84	69.85
TQ901	115.26	107.59
TX001	83.25	77.71
TX003	70.73	66.00
TX004	79.54	74.24
TX005	75.51	70.49
TX006	73.18	68.32
TX007	64.89	60.56
TX008	74.62	69.63
TX009	85.36	79.68
TX010	63.99	59.72
TX011	63.99	59.72
TX012	75.51	70.49
TX014	63.99	59.72
TX016	60.94	56.88
TX017	75.51	70.49
TX018	63.99	59.72
TX019	60.94	56.88
TX021	60.94	56.88
TX023	73.12	68.24
TX025	64.89	60.56
TX027	85.36	79.68
TX028	64.15	59.86
TX029	64.15	59.86
TX030	63.99	59.72
TX031	83.25	77.71
TX032	75.51	70.49
TX034	73.12	68.24
TX035	61.09	57.01
TX037	73.12	68.24
TX039	60.94	56.88
TX042	60.94	56.88
TX044	60.94	56.88
TX046	64.15	59.86
TX048	60.94	56.88
TX049	60.94	56.88
TX051	64.15	59.86
TX062	64.15	59.86
TX064	64.15	59.86
TX065	64.89	60.56
TX072	60.94	56.88
TX073	64.15	59.86
TX075	60.94	56.88
TX079	63.99	59.72
TX081	60.94	56.88
TX085	88.67	82.75
TX087	83.25	77.71
TX095	85.36	79.68
TX096	60.94	56.88
TX105	60.94	56.88
TX111	65.49	61.12
TX114	60.94	56.88
TX128	85.36	79.68
TX134	60.94	56.88
TX137	63.99	59.72
TX147	60.94	56.88
TX152	60.94	56.88
TX158	63.99	59.72
TX163	74.62	69.63
TX164	74.62	69.63
TX173	64.89	60.56
TX174	74.62	69.63
TX175	60.94	56.88
TX177	64.15	59.86
TX178	60.94	56.88
TX183	60.94	56.88
TX189	60.94	56.88
TX193	73.18	68.32
TX197	63.99	59.72
TX201	60.94	56.88
TX202	64.15	59.86
TX206	64.89	60.56
TX208	63.99	59.72
TX210	63.99	59.72
TX217	60.94	56.88
TX224	64.15	59.86
TX236	63.99	59.72
TX242	60.94	56.88
TX257	63.99	59.72
TX259	83.25	77.71
TX263	60.94	56.88
TX264	83.25	77.71
TX266	83.25	77.71
TX272	60.94	56.88
TX284	60.94	56.88
TX298	60.94	56.88
TX300	60.94	56.88
TX302	74.62	69.63
TX303	73.18	68.32
TX309	60.94	56.88
TX313	74.62	69.63
TX322	83.25	77.71
TX327	63.99	59.72
TX330	60.94	56.88
TX332	60.94	56.88
TX335	60.94	56.88
TX341	71.76	66.98
TX343	73.18	68.32
TX349	79.54	74.24
TX350	73.18	68.32
TX358	60.94	56.88
TX372	60.94	56.88
TX376	60.94	56.88
TX377	83.25	77.71
TX378	61.09	57.01
TX381	60.94	56.88
TX392	85.36	79.68
TX395	62.95	58.76
TX396	60.94	56.88
TX397	60.94	56.88
TX421	60.94	56.88
TX431	79.54	74.24
TX432	70.73	66.00
TX433	79.54	74.24
TX434	85.36	79.68
TX435	85.36	79.68
TX436	85.36	79.68
TX439	70.73	66.00
TX440	75.51	70.49
TX441	75.51	70.49
TX444	63.99	59.72
TX445	64.15	59.86
TX447	64.15	59.86
TX448	64.15	59.86
TX449	60.94	56.88
TX452	73.18	68.32
TX454	60.94	56.88
TX455	82.23	76.75
TX456	72.96	68.10
TX457	68.34	63.79
TX458	63.99	59.72
TX459	71.76	66.98
TX461	64.83	60.52
TX470	63.99	59.72
TX472	63.99	59.72
TX480	83.25	77.71
TX481	63.99	59.72
TX482	63.99	59.72
TX483	75.51	70.49
TX484	81.55	76.11
TX485	60.94	56.88
TX486	61.94	57.81
TX488	60.94	56.88
TX493	85.36	79.68
TX495	79.54	74.24
TX497	64.15	59.86
TX498	65.49	61.12
TX499	63.99	59.72
TX500	60.94	56.88
TX505	75.51	70.49
TX509	64.89	60.56
TX511	60.94	56.88
TX512	60.94	56.88
TX514	63.99	59.72
TX516	60.94	56.88
TX519	60.94	56.88
TX522	85.36	79.68
TX523	65.49	61.12
TX526	85.52	79.82
TX533	85.36	79.68
TX534	82.23	76.75
TX535	60.94	56.88
TX537	60.94	56.88
TX542	63.99	59.72
TX546	63.99	59.72
TX559	85.36	79.68
TX560	75.51	70.49
TX901	75.51	70.49
UT002	69.85	65.20
UT003	69.85	65.20
UT004	69.85	65.20
UT006	74.57	69.59
UT007	69.85	65.20
UT009	69.85	65.20
UT011	69.85	65.20
UT014	84.82	79.16
UT015	84.82	79.16
UT016	84.82	79.16
UT020	69.85	65.20
UT021	71.94	67.15
UT022	69.85	65.20
UT025	69.85	65.20
UT026	69.85	65.20
UT028	84.82	79.16
UT029	84.82	79.16
UT030	69.85	65.20
UT031	74.57	69.59
VA001	77.79	72.60
VA002	62.62	58.44
VA003	77.79	72.60
VA004	114.69	107.05
VA005	70.56	65.85
VA006	77.79	72.60
VA007	70.56	65.85
VA010	59.70	55.72
VA011	62.10	57.95

PHA	A rate	B rate
VA012	77.79	72.60
VA013	62.80	58.61
VA014	62.80	58.61
VA015	56.16	52.42
VA016	78.90	73.64
VA017	77.79	72.60
VA018	56.16	52.42
VA019	114.69	107.05
VA020	70.56	65.85
VA021	56.16	52.42
VA022	57.09	53.27
VA023	57.09	53.27
VA024	56.16	52.42
VA025	77.79	72.60
VA028	114.69	107.05
VA030	56.16	52.42
VA031	62.62	58.44
VA032	62.62	58.44
VA034	56.16	52.42
VA035	114.69	107.05
VA036	78.90	73.64
VA037	56.30	52.54
VA038	56.16	52.42
VA039	77.79	72.60
VA040	56.16	52.42
VA041	77.79	72.60
VA042	62.62	58.44
VA044	57.06	53.26
VA046	114.69	107.05
VA901	70.56	65.85
VQ901	97.78	91.26
VT001	93.98	87.72
VT002	82.48	76.98
VT003	85.32	79.63
VT004	84.47	78.84
VT005	79.08	73.81
VT006	93.98	87.72
VT008	79.08	73.81
VT009	79.93	74.60
VT901	93.98	87.72
WA001	101.38	94.60
WA002	101.38	94.60
WA003	89.54	83.57
WA004	84.56	78.92
WA005	86.08	80.36
WA006	101.38	94.60
WA007	69.02	64.42
WA008	83.78	78.19
WA011	101.38	94.60
WA012	78.20	72.98
WA013	78.47	73.23
WA014	65.20	60.86
WA017	67.21	62.73
WA018	84.56	78.92
WA020	69.02	64.42
WA021	78.20	72.98
WA024	99.35	92.71
WA025	96.24	89.81
WA036	89.54	83.57
WA039	101.38	94.60
WA042	81.31	75.88
WA049	92.51	86.33
WA054	86.08	80.36
WA055	77.87	72.69
WA057	84.54	78.90
WA061	87.99	82.12
WA064	80.07	74.72
WA071	71.46	66.69
WI001	66.42	61.99
WI002	65.72	61.34
WI003	73.14	68.27
WI006	62.88	58.69
WI011	55.85	52.12
WI020	89.79	83.81
WI031	54.95	51.28
WI043	55.34	51.66
WI045	54.95	51.28
WI047	54.95	51.28
WI048	54.95	51.28
WI060	89.79	83.81
WI064	60.98	56.92
WI065	55.34	51.66
WI068	55.85	52.12
WI069	55.85	52.12
WI070	54.95	51.28
WI083	65.72	61.34
WI085	54.95	51.28
WI091	54.95	51.28
WI096	54.95	51.28
WI127	54.95	51.28
WI131	54.95	51.28
WI142	65.72	61.34
WI160	54.95	51.28
WI166	54.95	51.28
WI183	60.04	56.03
WI186	55.09	51.41
WI193	54.95	51.28
WI195	67.96	63.42
WI201	65.72	61.34
WI203	60.98	56.92
WI204	55.85	52.12
WI205	54.95	51.28
WI206	54.95	51.28
WI208	54.95	51.28
WI213	55.34	51.66
WI214	73.14	68.27
WI218	65.72	61.34
WI219	60.98	56.92
WI221	54.95	51.28
WI222	54.95	51.28
WI231	54.95	51.28
WI233	54.95	51.28
WI237	55.97	52.24
WI241	54.95	51.28
WI242	54.95	51.28
WI244	60.32	56.30
WI245	54.95	51.28
WI246	55.58	51.87
WI248	54.95	51.28
WI256	54.95	51.28
WI901	54.95	51.28
WV001	73.20	68.32
WV003	59.05	55.11
WV004	60.35	56.32
WV005	57.93	54.07
WV006	61.01	56.94
WV009	61.66	57.55
WV010	63.75	59.50
WV015	57.93	54.07
WV016	61.97	57.84
WV017	57.70	53.86
WV018	57.70	53.86
WV027	58.91	54.99
WV034	57.70	53.86
WV035	58.91	54.99
WV037	60.35	56.32
WV039	57.93	54.07
WV042	57.93	54.07
WV045	57.70	53.86
WY002	85.45	79.76
WY003	68.38	63.83
WY004	102.96	96.10
WY013	68.38	63.83

[FR Doc. 2022–23696 Filed 10–31–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2021–0008; FXIA16710900000–FF09A30000–223]

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Nineteenth Regular Meeting; Tentative U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments, the Permanent CITES Committees, and the CITES Secretariat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), will attend the nineteenth regular meeting of the Conference of the Parties to CITES (CoP19) in Panama City, Panama, November 14–25, 2022. This notice announces the availability of tentative U.S. negotiating positions on proposed resolutions, decisions, and amendments to the CITES Appendices (species proposals), as well as other agenda items that have been submitted by other Parties, the permanent CITES committees, and the CITES Secretariat for consideration at CoP19. With this notice, we announce that prior to CoP19 we will make available a summary of our proposed negotiating positions and the reasons for our proposed positions.

DATES: The nineteenth regular meeting of the Conference of the Parties to CITES (CoP19) will be held November 14–25, 2022. Information on tentative U.S. negotiating positions on species proposals, draft resolutions and decisions, and agenda items will be available on our website and the Federal eRulemaking Portal on or before November 13, 2022.

ADDRESSES: Information on tentative U.S. negotiating positions on species proposals, draft resolutions and decisions, and agenda items submitted by other countries, the permanent CITES committees, and the CITES Secretariat for consideration at CoP19 will be available on our website, *https://www.fws.gov/program/cites/conference-parties-cites,* and via the Federal eRulemaking Portal at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2021–0008 (the docket number for this notice).

FOR FURTHER INFORMATION CONTACT: For information pertaining to resolutions,

decisions, and other agenda items, contact Naimah Aziz, Chief, Division of Management Authority; telephone 703–358–2095; email *managementauthority@fws.gov.* For information pertaining to species proposals, contact Rosemarie Gnam, Chief, Division of Scientific Authority; telephone 703–358–1708; email *scientificauthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are or may be affected by trade and are now, or potentially may become, threatened with extinction. These species are included in Appendices to CITES, which can be found on the CITES Secretariat's website at *https://cites.org/eng/app/appendices.php.*

Currently there are 184 Parties to CITES—183 countries and 1 regional economic integration organization, the European Union. The Convention calls for regular biennial meetings of the Conference of the Parties, unless the Conference decides otherwise. At these meetings, the Parties review the implementation of CITES, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in appendices I and II, consider reports presented by the Secretariat and the permanent CITES committees (Standing, Animals, and Plants Committees), and make recommendations to improve the effectiveness of CITES. Any country that is a Party to CITES may propose amendments to appendices I and II, as well as resolutions, decisions, and agenda items for consideration by all the Parties at the meetings.

CoP19 Federal Register Notices

This is our fifth in a series of **Federal Register** notices on the development of U.S. submissions and tentative negotiating positions for CoP19. In this notice, we announce the availability of tentative U.S. negotiating positions on species proposals, draft resolutions and decisions, and agenda items submitted by other Parties, the permanent CITES committees, and the Secretariat for consideration at CoP19. We published our first CoP19-related **Federal Register** notice on March 2, 2021 (86 FR 12199), in which we requested information and recommendations on animal and plant species proposals and proposed resolutions, decisions, and agenda items for the United States to consider submitting for consideration at CoP19. We published our second CoP19-related **Federal Register** notice on March 7, 2022 (87 FR 12719); that notice described proposed resolutions, decisions, and agenda items that the United States might submit for consideration at CoP19 and provided information on how U.S. nongovernmental organizations can attend CoP19 as observers. In our third CoP19-related **Federal Register** notice, published on April 26, 2022 (87 FR 24577), we responded to recommendations received from the public concerning proposed amendments to the CITES Appendices (species proposals) that the United States might submit for consideration at CoP19 and invited public comments and information on these proposals. In our fourth CoP19-related **Federal Register** notice, published on August 22, 2022 (87 FR 51441), we announced the provisional agenda for CoP19, solicited comments on the items on the provisional agenda, and announced a virtual public meeting on September 6, 2022.

A link to the complete list of those **Federal Register** notices, along with information on U.S. preparations for CoP19, can be found at *https://www.fws.gov/program/cites/conference-parties-cites.* The notices and public comments received can be viewed at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2021–0008. Our regulations governing this public process are found in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 23.87. Pursuant to 50 CFR 23.87(a)(3)(iii), with this notice we are announcing that on or before November 13, 2022, we will post on *https://www.regulations.gov* (see Docket No. FWS–HQ–IA–2021–0008) and on our website (*https://www.fws.gov/program/cites/conference-parties-cites*) a summary of our tentative negotiating positions on the items included on the CoP19 agenda and proposed amendments to the Appendices, and the reasons for our tentative positions.

Announcement of Provisional Agenda for CoP19

The provisional agenda for CoP19 can be accessed on the CITES Secretariat's website at *https://cites.org/eng/cop/19/agenda-documents.* The working documents associated with the items on the provisional agenda, including proposed resolutions, proposed decisions, and discussion documents, are also available on that website. The species proposals to be considered at CoP19 are also available on the Secretariat's website and can be accessed at *https://cites.org/eng/cop/19/amendment-proposals.*

Tentative Negotiating Positions

On or before November 13, 2022, we will post on *https://www.regulations.gov* (see Docket No. FWS–HQ–IA–2021–0008) and on our website (*https://www.fws.gov/program/cites/conference-parties-cites*) a summary of our tentative negotiating positions on the items included on the CoP19 agenda and proposed amendments to the Appendices, and the reasons for our tentative positions. Documents submitted by the United States either alone or as a co-proponent for consideration by the Parties at CoP19 can be found on the Secretariat's website at *https://cites.org/eng/meetings/cop.* Those documents are: Documents CoP19 Docs. 29.2.2, 52 (co-sponsored by Canada, Côte d'Ivoire, Kenya, Mexico, Nigeria, and Senegal), 55, 64.2 (co-sponsored by Brazil, Colombia, Costa Rica, and Peru), 66.7 (co-sponsored by Malawi and Senegal), and 69.2 (co-sponsored by Maldives, Monaco, Nigeria, Peru, Senegal, Sri Lanka, Togo, and the United Kingdom). The United States also submitted or co-sponsored the following proposals: Proposals CoP19 Props. 7, 9 (co-sponsored with Malaysia and Singapore), 10, 17, 20, 21, 23, 24, 29 (co-sponsored with Brazil, Colombia, Costa Rica, El Salvador, Mexico, and Panama), 31, 32, 34 (co-sponsored with Argentina, Brazil, Costa Rica, Côte d'Ivoire, Dominican Republic, Ecuador, El Salvador, Gabon, Guinea, Niger, Panama, Peru, and Togo), 42 (co-sponsored with European Union and Seychelles), and 45 (co-sponsored with China, European Union, Ukraine, and United Kingdom). We will not provide any additional explanation of the U.S. negotiating positions for documents and proposals that the United States submitted or co-sponsored. The introduction in the text of each of those documents includes a discussion of the background of the issue and the rationale for submitting the document.

New information that may become available prior to or at CoP19 could lead to modifications of tentative U.S. positions. The U.S. delegation will disclose changes in our negotiating positions and the explanations for those changes during public briefings at CoP19. Species proposals are considered pursuant to 50 CFR 23.89. The United States is concerned about the budgetary implications and workload burden that will be placed upon the Parties, the Committees, and

the Secretariat, and intends to evaluate all proposed resolutions, decisions, and other agenda items for CoP19 in view of these concerns.

Information on CoP19 Results

Information concerning the results of CoP19 will be available after the close of the meeting on the Secretariat's website at *http://www.cites.org,* or upon request from the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**), or on our website (*https://www.fws.gov/program/cites/conference-parties-cites*).

Author

The primary author of this notice is Anne St. John, Division of Management Authority, U.S. Fish and Wildlife Service.

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on October 19, 2022, for publication. On October 26, 2022, Martha Williams authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Madonna Baucum,

Chief, Policy and Regulations Branch, U.S. Fish and Wildlife Service.

[FR Doc. 2022–23668 Filed 10–31–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23DK20UQP3000; OMB Control Number—1028–NEW]

Agency Information Collection Activities; Broad Agency Announcement for Water Monitoring Technologies

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 3, 2023.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Brian Pellerin by email at *bpeller@usgs.gov,* or by telephone at 703–648–6865. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with PRA and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The USGS Water Mission Area (WMA) operates more than 13,000 real-time water monitoring stations across the United States that provide data vital to understanding water availability and water quality. These data are used by other Federal agencies, state and local governments, and water-management groups to effectively manage this precious natural resource. The public also benefits from this network through important flood and drought warnings as well as informing recreational users of current conditions so they can make safe and economical decisions about accessing rivers, lakes, and reservoirs.

The WMA is seeking proposals from industry, academia, nonprofits, and research institutions for the research and development of innovative water-monitoring technologies that could be deployed as part of the Next Generation Water Observing System (NGWOS) effort ongoing within the USGS. The NGWOS Program is an effort to enhance USGS monitoring in space and time to support resource assessments, water management, and ultimately water prediction.

The USGS plans to issue contracts and cooperative agreements in support of this program through a Broad Agency Announcement (BAA), which is a competitive solicitation issued to facilitate the cooperative development of next generation water-monitoring technologies. Single entities or teams from the private sector, academic institutions, Federal agencies, state and local governments, and tribes are eligible to submit proposals. No group of entities is excluded from eligibility. The USGS collects information from applicants about their proposed research activities and team capabilities and then uses that information to determine awards.

Title of Collection: Broad Agency Announcement.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Single entities or teams from the private sector, academic institutions, Federal agencies, state and local governments, and tribes are eligible to submit proposals.

Total Estimated Number of Annual Respondents: 30.

Total Estimated Number of Annual Responses: 30.

Estimated Completion Time per Response: 80 hours.

Total Estimated Number of Annual Burden Hours: 2,400.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: annually.

Total Estimated Annual Nonhour Burden Cost: none.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Brian Pellerin,

Acting Program Manager, NGWOS, USGS.

[FR Doc. 2022–23698 Filed 10–31–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520; OMB Control Number 1029–0049]

Agency Information Collection Activities; Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 1, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0049 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 6, 2022 (87 FR 40270). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This Part implements the requirements in Sections 510(b)(5) and 515(b)(10)(F) of the Surface Coal Mining and Reclamation Act of 1977 (the Act) to protect alluvial valley floors from the adverse effects of surface coal mining operations west of the 100th meridian. Part 822 requires the permittee to install, maintain, and operate a monitoring system to provide specific protection for alluvial valley floors. This information is necessary to determine whether the unique hydrologic conditions of alluvial valley floors are protected according to the Act.

Title of Collection: Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors.

OMB Control Number: 1029–0049.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments and businesses.

Total Estimated Number of Annual Respondents: 3.

Total Estimated Number of Annual Responses: 52.

Estimated Completion Time per Response: Varies 15 hours to 160 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 4,550.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2022–23731 Filed 10–31–22; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 231S180110; S2D2S SS08011000 SX064A000 23XS501520; OMB Control Number 1029–0113]

Agency Information Collection Activities; General Reclamation Requirements

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 1, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0113 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on July 6, 2022 (87 FR 40270). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Part 874 establishes land and water eligibility requirements, reclamation objectives and priorities and reclamation contractor responsibility. The regulations at 30 CFR 874.17 require consultation between the Abandoned Mine Land (AML) agency and the appropriate Title V regulatory authority on the likelihood of removing the coal under a Title V permit and concurrences between the AML agency and the appropriate Title V regulatory authority on the AML project boundary and the amount of coal that would be extracted under the AML reclamation project.

Title of Collection: General Reclamation Requirements.

OMB Control Number: 1029–0113.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 3.

Total Estimated Number of Annual Responses: 3.

Estimated Completion Time per Response: 90 hours.

Total Estimated Number of Annual Burden Hours: 270.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2022–23732 Filed 10–31–22; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–865–867 (Fourth Review)]

Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines 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 November 1, 2022. To be assured of consideration, the deadline for responses is December 1, 2022. Comments on the adequacy of responses may be filed with the Commission by January 17, 2023.

FOR FURTHER INFORMATION CONTACT: Caitlyn Hendricks (202–205–2058), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 23, 2001, the Department of Commerce (''Commerce'') issued antidumping duty orders on imports of stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines (66 FR 11257). Commerce issued a continuation of the antidumping duty orders on stainless steel butt-weld pipe fittings from Italy, Malaysia, and the Philippines following Commerce's and the Commission's first five-year reviews, effective December 11, 2006 (71 FR 71530), second five-year reviews, effective July 20, 2012 (77 FR 42697), and third five-year reviews, effective December 29, 2017 (82 FR 61751). The Commission is now conducting fourth reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Italy, Malaysia, and the Philippines.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, and its expedited second and third five-year review determinations, the Commission defined the *Domestic Like Product* as all stainless steel butt-weld pipe fittings 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 determinations, the Commission defined the *Domestic Industry* as all domestic producers of finished and unfinished butt-weld fittings having an outside diameter (based on nominal pipe size) of less than 14 inches, although one domestic producer was excluded from the *Domestic Industry* under the related parties provision. In its full first five-year review determinations and its expedited second five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of stainless steel butt-weld pipe fittings. In its expedited third five-year review determinations, the Commission defined the *Domestic Industry* as all domestic producers of finished and unfinished butt-weld fittings having an outside diameter (based on nominal pipe size) of less than 14 inches.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be

disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 1, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 17, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–546, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/stainless_steel_butt_weld_pipe_fittings_italy/adequacy.htm* and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2016.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2021, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic*

Like Product accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2021 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping 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 2021 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping 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 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: October 26, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23681 Filed 10–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–696 (Fifth Review)]

Pure Magnesium From China; Scheduling of a Full Five-Year Review.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: October 27, 2022

FOR FURTHER INFORMATION CONTACT: Caitlyn Hendricks-Costello (202–205–2058), 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 review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 6, 2022, the Commission determined that responses to its notice of institution of the subject

five-year review were such that a full review should proceed (87 FR 35997, June 14, 2022); accordingly, a full review is being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's website.

Participation in the review 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 this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on February 21, 2023, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.— The Commission will hold an in-person hearing at the U.S. International Trade Commission building in connection with this review beginning at 9:30 a.m. on March 14, 2023. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 6, 2023. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the review, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3pm the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 8, 2023, if deemed necessary. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on March 13, 2023. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is March 2, 2023. Parties shall also file written testimony in connection with their presentation at the hearing and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is March 23, 2023. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before March 23, 2023. On April 18, 2023, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 20, 2023, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 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.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C.1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 27, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23763 Filed 10–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Bio-Layer Interferometers and Components Thereof, DN 3652;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Sartorius Bioanalytical Instruments, Inc. on October 25, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain bio-layer interferometers and components thereof. The complainant names as respondent: Gator Bio, Inc. of Palo Alto, CA. The complainant requests that the Commission issue a limited exclusion order and a cease and desist order, and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3652'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel [2], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS [3].

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Issued: October 26, 2022.

Katherine M. Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23683 Filed 10–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–480 and 731–TA–1188 (Second Review)]

High Pressure Steel Cylinders From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on high pressure steel cylinders from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted November 1, 2022. To be assured of consideration, the deadline for responses is December 1, 2022. Comments on the adequacy of responses may be filed with the Commission by January 17, 2023.

FOR FURTHER INFORMATION CONTACT: Andres Andrade (202–205–2078), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.— On June 21, 2012, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of high pressure steel cylinders from China (77 FR 37377 and 37384). Following the first five-year reviews by Commerce and the Commission, effective December 5, 2017, Commerce issued a continuation of the antidumping and countervailing duty orders on imports of high pressure steel cylinders from China (82 FR 57427). The Commission is now conducting second reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations and its expedited first five-year review determinations, the Commission defined a single *Domestic Like Product* consisting of high pressure steel cylinders 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 determinations and its expedited first five-year review determinations, the Commission found a single *Domestic Industry* consisting of Norris Cylinder Company, the sole U.S. producer of high pressure steel cylinders.

(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 December 1, 2022. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full reviews. The deadline for filing such comments is January 17, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 22–5–545, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website for this proceeding at *https://www.usitc.gov/investigations/701731/2022/high_pressure_steel_cylinders_china/adequacy.htm* and download and complete the ''NOI worksheet'' Excel form, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in 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 2021, except as noted (report quantity data in units 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 2021 (report quantity data in units 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 2021 (report quantity data in units 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: October 26, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23680 Filed 10–31–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1281]

Certain Video Security Equipment and Systems, Related Software, Components Thereof, and Products Containing Same; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on October 24, 2022, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to certain video security equipment and systems, related software, components thereof, and products containing same imported, sold for importation, and/or sold after importation by respondent Verkada Inc. of San Mateo, California (''Verkada''); and a cease and desist order directed to Verkada. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on October 24, 2022. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on November 23, 2022.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1281'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 26, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23684 Filed 10–31–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2022–0002]

National Advisory Committee on Occupational Safety and Health (NACOSH): Notice of Meetings

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of NACOSH meetings.

SUMMARY: The National Advisory Committee on Occupational Safety and Health (NACOSH) Heat Injury and Illness Prevention Work Group will meet December 13, 2022, by WebEx. The NACOSH full committee will meet on January 10, 2023, by WebEx.

DATES:

NACOSH Work Group meeting: The NACOSH Heat Injury and Illness Prevention Work Group (Heat Work Group) will meet from 2:00 p.m. to 4:00 p.m., ET, December 13, 2022.

NACOSH meeting: NACOSH will meet from 2:00 p.m. to 4:00 p.m., ET, January 10, 2023.

ADDRESSES:

Submission of comments and requests to speak: Submit comments and requests to speak at the NACOSH full committee meeting by January 3, 2023, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2022–0002), using the following method:

Electronically: Comments and request to speak, including attachments, must be submitted electronically at *www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Requests for special accommodations: Submit requests for special accommodations, including translation services for this NACOSH workgroup meeting by December 6, 2022, and the committee meeting by January 3, 2023, to Ms. Christie Garner, Directorate of

Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2246; email: *garner.christie@dol.gov.*

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA–2022–0002). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download documents in the public docket for this NACOSH meeting, go to *www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *www.regulations.gov.* All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Participation in the NACOSH Heat Work Group meeting: Members of the public may attend the NACOSH Heat Work Group meeting. However, any participation by the public will be in listen-only mode. OSHA is not receiving public comments or requests to speak at the Heat Work Group meeting.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about NACOSH: Ms. Lisa Long, Acting Deputy Director, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2409; email: *long.lisa@dol.gov.*

Telecommunication requirements: For additional information about the telecommunication requirements for the meeting, please contact Ms. Christie Garner, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2246; email: *garner.christie@dol.gov.*

For copies of this **Federal Register** *Notice:* Electronic copies of this **Federal Register** notice are available at *www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's web page at *https://www.osha.gov/advisorycommittee/nacosh.*

SUPPLEMENTARY INFORMATION:

I. Background

NACOSH was established by Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise, consult with, and make recommendations to the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), and OSHA's regulations on NACOSH (29 CFR 1912.5 and 29 CFR part 1912a).

The establishment of subcommittees and subgroups, such as the NACOSH Heat Work Group, is contemplated by both the FACA's implementing regulations and OSHA's regulations on NACOSH (see, *e.g.,* 41 CFR 102–3.135; 29 CFR 1912a.13). The Heat Work Group operates in accordance with the FACA and these regulations.

II. Meeting Information

Public attendance at both meetings will be virtual only. Meeting information will be posted in the Docket (Docket No. OSHA–2022–0002) and on the NACOSH web page, *https://www.osha.gov/advisorycommittee/nacosh,* prior to the meetings.

NACOSH Heat Work Group Meeting

The NACOSH Heat Illness and Injury Prevention Work Group (Heat Work Group) will meet from 2:00 p.m. to 4:00 p.m., ET on December 13, 2022. The meeting is open to the public.

NACOSH Meeting

NACOSH will meet from 2:00 p.m. to 4:00 p.m., ET, Tuesday, January 10, 2023. The meeting is open to the public.

Meeting agenda: The tentative agenda for this meeting includes:

- OSHA update,
- NACOSH membership update,
- Report from Heat Work Group, and
- Follow-up discussion on OSHA's Whistleblower Protection Program.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 5 U.S.C. App. 2, 29 CFR parts 1912 and 1912a, and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on October 26, 2022.

James S. Frederick,

Deputy Assistant Secretary for Occupational Safety and Health.

[FR Doc. 2022–23723 Filed 10–31–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

National Artificial Intelligence Research Resource Task Force; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: National Artificial Intelligence Research Resource Task Force (84629).

Date and Time: December 7, 2022; 1:00 p.m. to 2:00 p.m. EDT.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314/Virtual.

To attend the virtual meeting, please send your request for the virtual meeting link to the following email: *cmessam@nsf.gov.*

Type of Meeting: Open.

Contact Person: Brenda Williams, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–8900; email: *bwilliam@nsf.gov.*

Purpose of Meeting: The Task Force shall investigate the feasibility and advisability of establishing and sustaining a National Artificial Intelligence Research Resource; and propose a roadmap detailing how such resource should be established and sustained.

Agenda: In this meeting, the Task Force will vote on the implementation plan and roadmap for the NAIRR, and discuss the next steps after submission of the report to the President and Congress.

Dated: October 27, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–23733 Filed 10–31–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

SES Performance Review Board

AGENCY: National Transportation Safety Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the National

Transportation Safety Board, Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT: Emily T. Carroll, Chief, Human Resources Division, Office of Administration, National Transportation Safety Board, 490 L'Enfant Plaza SW, Washington, DC 20594–0001, (202)314–6233.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, United States Code requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards (PRB). The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor and considers recommendations to the appointing authority regarding the performance of the senior executive.

The following have been designated as members of the 2022 Performance Review Board of the National Transportation Safety Board (NTSB):

Mr. Edward Benthall, Chief Financial Officer, Office of the Chief Financial Officer, National Transportation Safety Board, PRB Chair.

Ms. Barbara Czech, Deputy Director, Office of Research and Engineering, National Transportation Safety Board.

Dr. Robert Molloy, Director, Office of Highway Safety, National Transportation Safety Board.

Mr. Akbar Sultan, Director, Airspace Operations and Safety Program, National Aeronautics and Space Administration.

Ms. Gwendolyn Sykes, Chief Financial Officer, U.S. Secret Service, US Department of Homeland Security.

Mr. David Helson, Deputy Director, Office of Aviation Safety, National Transportation Safety Board (Member to review the evaluations of SES members serving on this PRB and alternate member).

Candi R. Bing,

Federal Register Liaison.

[FR Doc. 2022–23708 Filed 10–31–22; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0184]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by December 1, 2022. A request for a hearing or petitions for leave to intervene must be filed by January 3, 2023. This monthly notice includes all amendments issued, or proposed to be issued, from September 16, 2022, to October 13, 2022. The last monthly notice was published on October 4, 2022.

ADDRESSES: You may submit comments by any of the following methods, however, the NRC encourages electronic comment submission through the Federal rulemaking Website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0184. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–5411, email: *Shirley.Rohrer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0184, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0184.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0184, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment

submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR) ''Notice for public comment; State consultation,'' are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR

2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUEST(S)

Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL	
Docket No(s)	50–237, 50–249.

LICENSE AMENDMENT REQUEST(S)—Continued

Application date	August 18, 2022.
ADAMS Accession No	ML22230C927.
Location in Application of NSHC	Pages 9–11 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendment would revise Technical Specification 5.6.5, ''Core Operating Limits Report [COLR],'' paragraph b, to add two reports that support the General Electric Standard Application for Reactor Fuel analysis methodology to the list of approved methods to be used in determining the core operating limits in the COLR. The amendment would also delete eight Westinghouse topical reports that will no longer be used to support COLR evaluations after the fall outage in 2023. The licensee also plans to utilize Framatome RODEX2A methodology with an additional thermal conductivity degradation penalty in mixed core thermal-mechanical calculations for the ATRIUM 10XM fuel in the core during this transition. The licensee's amendment request also includes the expansion of the PRIME methodology to cover non-GNF fuel.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 101 Constitution Ave NW, Washington, DC 20001.
NRC Project Manager, Telephone Number	Surinder Arora, 301–415–1421.

Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL

Docket No(s)	50–237, 50–249.
Application date	August 25, 2022.
ADAMS Accession No	ML22237A233.
Location in Application of NSHC	Pages 4–5 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendment would revise control rod scram time limits in table 3.1.4–1 of Technical Specification 3.1.4, ''Control Rod Scram Times,'' for Dresden Nuclear Power Station, Units 2 and 3, to regain margin for reactor vessel overpressure.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 101 Constitution Ave NW, Washington, DC 20001.
NRC Project Manager, Telephone Number	Surinder Arora, 301–415–1421.

DTE Electric Company; Fermi, Unit 2; Monroe County, MI

Docket No(s)	50–341.
Application date	August 4, 2022.
ADAMS Accession No	ML22216A151.
Location in Application of NSHC	Pages 11 to 14 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendment would revise the Fermi, Unit 2, technical specifications (TSs) to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–582, Revision 0, ''Reactor Pressure Vessel Water Inventory Control (RPV WIC) Enhancements.'' The TSs related to RPV WIC would be revised to incorporate operating experience and correct errors and omissions in TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Controls.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jon P. Christinidis, DTE Energy, Expert Attorney—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226.
NRC Project Manager, Telephone Number	Surinder Arora, 301–415–1421.

Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2; Pope County, AR

Docket No(s)	50–313, 50–368.
Application date	August 30, 2022, as supplemented by letter dated September 29, 2022.
ADAMS Accession No	ML22242A295, ML22272A205.
Location in Application of NSHC	Pages 5–6 of the enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise the required number of qualified onsite dose assessors for the on-shift Emergency Response Organization (ERO) in the Arkansas Nuclear One Emergency Plan utilizing the minimum staff ERO guidance specified in NUREG–0654/FEMA–REP–1, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' Revision 2.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Anna Vinson Jones, Assistant General Counsel, Entergy Services, Inc.,101 Constitution Avenue NW, Suite 200 East, Washington, DC 20001.
NRC Project Manager, Telephone Number	Thomas Wengert, 301–415–4037.

Nine Mile Point Nuclear Station, LLC and Constellation Energy Generation, LLC; Nine Mile Point Nuclear Station, Unit 1; Oswego County, NY

Docket No(s)	50–220.
Application date	August 12, 2022.
ADAMS Accession No	ML22224A001.
Location in Application of NSHC	Pages 7–8 of Attachment 1.

LICENSE AMENDMENT REQUEST(S)—Continued

Brief Description of Amendment(s)	The proposed license amendment would modify the Applicability and Actions of Nine Mile Point Unit 1 Technical Specification 3.3.1, ''Oxygen Concentration,'' to adopt the inerting/de-inerting requirements of Technical Specification Task Force (TSTF) Traveler TSTF–568, Revision 2, ''Revise the Applicability of BWR TS 3.6.2.5 and TS 3.6.3.2,'' which require inerting the primary containment to less than 4 percent by volume oxygen concentration within 72 hours while in the power operating condition.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 101 Constitution Ave NW, Washington, DC 20001.
NRC Project Manager, Telephone Number	Richard Guzman, 301–415–1030.
PSEG Nuclear LLC; Salem Nuclear Generating Station, Units 1 and 2; Salem County, NJ	
Docket No(s)	50–272, 50–311.
Application date	August 31, 2022.
ADAMS Accession No	ML22249A228.
Location in Application of NSHC	Pages 4–6 of Enclosure.
Brief Description of Amendment(s)	The amendment would relocate Technical Specification (TS) 3/4.4.12 limiting condition for operation, associated Action Statements and Surveillance Requirements for the Reactor Coolant System Head Vents from the TS to the Technical Requirements Manual for the Salem Nuclear Generating Station, Units 1 and 2.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jodi Varon, PSEG Services Corporation, 80 Park Plaza, T–5, Newark, NJ 07102.
NRC Project Manager, Telephone Number	James Kim, 301–415–4125.
Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA	
Docket No(s)	50–321, 50–366.
Application date	August 19, 2022.
ADAMS Accession No	ML22231B055.
Location in Application of NSHC	Pages E1–11 to E1–12 of Enclosure 1.
Brief Description of Amendment(s)	Southern Nuclear Operating Company requests a proposed license amendment to Unit 1 and Unit 2 technical specifications (TS) that would revise TS Table 1.1–1, ''MODES,'' to relax the required number of fully tensioned reactor pressure vessel head closure studs.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	Dawnmathews Kalathiveettil, 301–415–5905.
Union Electric Company; Callaway Plant, Unit 1; Callaway County, MO	
Docket No(s)	50–483.
Application date	August 4, 2022, as supplemented by letter dated September 1, 2022.
ADAMS Accession No	ML22216A239 (package), ML22244A161.
Location in Application of NSHC	Pages 4–6 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendment would modify technical specification (TS) requirements in TS 5.5.9, ''Steam Generator (SG) Program,'' and TS 5.6.10, ''Steam Generator Tube Inspection Report.'' These changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–577, ''Revised Frequencies for Steam Generator Tube Inspections.'' These TSs are revised based on operating history.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jay E. Silberg, Pillsbury Winthrop Shaw Pittman LLP, 1200 17th St. NW, Washington, DC 20036.
NRC Project Manager, Telephone Number	Mahesh Chawla, 301–415–8371.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers

indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the Federal Register citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE(S)

Constellation FitzPatrick, LLC and Constellation Energy Generation, LLC; James A. FitzPatrick Nuclear Power Plant; Oswego County, NY

Docket No(s)	50–333.
Amendment Date	August 23, 2022.
ADAMS Accession No	ML22196A061.
Amendment No(s)	352.
Brief Description of Amendment(s)	The license amendment added a new license condition to the Renewed Facility Operating License to allow the implementation of risk-informed categorization and treatment of structures, systems, and components for nuclear power reactors in accordance with 10 CFR 50.69.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Constellation FitzPatrick, LLC and Constellation Energy Generation, LLC; James A. FitzPatrick Nuclear Power Plant; Oswego County, NY

Docket No(s)	50–333.
Amendment Date	September 1, 2022.
ADAMS Accession No	ML22223A141.
Amendment No(s)	353.
Brief Description of Amendment(s)	The amendment revised the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) technical specification (TS) requirements to permit the use of risk-informed completion times (RICTs) in accordance with Technical Specifications Task Force (TSTF) Traveler TSTF–505, Revision 2, ''Provide Risk—Informed Extended Completion Times—RITSTF Initiative 4b,'' (ADAMS Accession No. ML18183A493). A model safety evaluation was provided by the NRC to the TSTF on November 21, 2018 (ADAMS Accession No. ML18253A085). The amendment revised the TS requirements related to RICTs for Required Actions (Action allowed outage times for FitzPatrick) to provide the option to calculate a longer RICT. The RICT program is added to TS section 5.5, Programs and Manuals. Some of the modified Required Actions in TSTF–505 are not applicable to FitzPatrick. Also, there are some plant-specific Required Actions not included in TSTF–505 that are included in this proposed amendment.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, SC

Docket No(s)	50–395.
Amendment Date	September 22, 2022.
ADAMS Accession No	ML22244A172.
Amendment No(s)	223.
Brief Description of Amendment(s)	The amendment modified the technical specifications (TSs) consistent with Technical Specifications Task Force (TSTF)–491 by removing the specific closure times for the main steam and main feedwater isolation valves from the associated TS surveillance requirements.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Duke Energy Florida, LLC; Crystal River Unit 3 Nuclear Generating Plant; Citrus County, FL

Docket No(s)	50–302.
Amendment Date	September 14, 2022.
ADAMS Accession No	ML22221A156 (package).
Amendment No(s)	261.
Brief Description of Amendment(s)	The amendment removed the technical specification requirements for non-radiological environmental effects that are no longer applicable during decommissioning because Crystal River Unit 3 has permanently ceased operation.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Units 1 and 2; Beaver County, PA

Docket No(s)	50–334, 50–412.
Amendment Date	September 1, 2022.
ADAMS Accession No	ML22222A086.
Amendment No(s)	317 (Unit 1), 208 (Unit 2).

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendment(s)	The amendments revised Technical Specification 3.3.5, ''Loss of Power (LOP) Diesel Generator (DG) Start and Bus Separation Instrumentation,'' to add notes to required actions C.1 and D.1 and revise table 3.3.5–1, ''Loss of Power Diesel Generator Start and Bus Separation Instrumentation.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Beaver Valley Power Station, Units 1 and 2; Beaver County, PA; Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Davis-Besse Nuclear Power Station, Unit No. 1; Ottawa County, OH; Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Perry Nuclear Power Plant, Unit No. 1; Lake County, OH

Docket No(s)	50–334, 50–412, 50–346, 50–440.
Amendment Date	September 16, 2022.
ADAMS Accession No	ML22210A010.
Amendment No(s)	318 (Unit 1), 209 (Unit 2), 303 (Davis-Besse), 198 (Perry).
Brief Description of Amendment(s)	The amendments revised the reactor coolant leakage requirements in the technical specifications for each facility based on Technical Specifications Task Force (TSTF) Traveler TSTF 554, Revision 1, ''Revise Reactor Coolant Leakage Requirements.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2; Berrien County, MI

Docket No(s)	50–315, 50–316.
Amendment Date	October 7, 2022.
ADAMS Accession No	ML22214A001.
Amendment No(s)	361 (Unit 1), 343 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the reactor coolant leakage requirements in the technical specifications based on Technical Specifications Task Force (TSTF) Traveler TSTF 554, Revision 1, ''Revise Reactor Coolant Leakage Requirements.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

NextEra Energy Seabrook, LLC; Seabrook Station, Unit No. 1; Rockingham County, NH

Docket No(s)	50–443.
Amendment Date	September 30, 2022.
ADAMS Accession No	ML22230C924.
Amendment No(s)	170.
Brief Description of Amendment(s)	The amendment revised Technical Specification 3/4.8.3, ''Onsite Power Distribution—Operating,'' Limiting Condition for Operation 3.8.3.1 by increasing the Allowed Outage Time for the 120-volt (V) alternating current (AC) vital instrument panel inverters, deleting a footnote, and adding a new Action for two or more inoperable 120–V AC vital instrument panel inverters of the same electrical train and making related changes.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Susquehanna Nuclear, LLC and Allegheny Electric Cooperative, Inc.; Susquehanna Steam Electric Station, Units 1 and 2; Luzerne County, PA

Docket No(s)	50–387, 50–388.
Amendment Date	August 30, 2022.
ADAMS Accession No	ML22200A062.
Amendment No(s)	282 (Unit 1) and 265 (Unit 2).
Brief Description of Amendment(s)	The amendments revised technical specification (TS) requirements in Renewed Facility Operating License Nos. NPF–14 and NPF–22 to allow risk-informed completion times for actions to be taken when limiting conditions for operation are not met. The amendments also revised TSs to correct formatting; correct typographical, grammatical, and punctuation errors; and to delete expired requirements.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1; Rhea County, TN

Docket No(s)	50–390.
Amendment Date	September 20, 2022.
ADAMS Accession No	ML22187A019.
Amendment No(s)	154.
Brief Description of Amendment(s)	The amendment revised the allowable value for Watts Bar Nuclear Plant, Unit 1, Technical Specification 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation,'' function 6.e(1), ''Auxiliary Feedwater—Trip of all Main Feedwater Pumps—Turbine Driven Main Feedwater Pumps,'' to be consistent with the value for Watts Bar Nuclear Plant, Unit 2.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN	
Docket No(s)	50–390, 50–391.
Amendment Date	September 20, 2022.
ADAMS Accession No	ML22187A181.
Amendment No(s)	153 (Unit 1) and 62 (Unit 2).
Brief Description of Amendment(s)	The amendments revised Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification 3.7.8, ''Essential Raw Cooling Water (ERCW) System,'' to permanently extend the allowed Completion Time to restore one ERCW system train to operable status from 72 hours to 7 days. The amendments also revised the bounding temperature for the ultimate heat sink in Condition A from less than or equal to 71 degrees Fahrenheit to less than or equal to 78 degrees Fahrenheit.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dated: October 20, 2022.

For the Nuclear Regulatory Commission.

Jamie M. Heisserer,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–23247 Filed 10–31–22; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96160; File No. SR–MRX–2022–23]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 11 Related to ISO Functionality

October 26, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 11 related to ISO Functionality.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 3, Section 11 with respect to the ability of Members to submit ISOs in the Exchange's Facilitation Mechanism (''Facilitation ISO''), and Solicited Order Mechanism (''Solicitation ISO''), to codify current System functionality.[3]

As set forth in Options 3, Section 11(b), the Facilitation Mechanism is a process wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. As set forth in Options 3, Section 11(d), the Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent against contra orders it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

An ISO is defined in Options 3, Section 7(b)(5) as a limit order that meets the requirements of Options 5, Section 1(h) and trades at allowable prices on the Exchange without regard to the ABBO. Simultaneously with the routing of the ISO to the Exchange, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO.[4] A Member may submit an ISO to the Exchange only if it has simultaneously routed one or more additional ISOs to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the ISO.

As discussed further below, none of the proposed rule changes will amend current functionality. Rather, these changes are designed to bring greater transparency around certain order types currently available on the Exchange. The Exchange notes that the Facilitation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This functionality is currently offered on the Exchange, so the proposed rule change codifies existing functionality in the Exchange's rules.

[4] ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (a) is disseminated pursuant to the Options Order Protection and Locked/Crossed Market Plan; and (b) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. *See* Options 5, Section 1(o).

ISO and Solicitation ISO[5] are functionally similar to the Exchange's Price Improvement Mechanism[6] ISO (''PIM ISO'') as set forth in Supplementary Material .08 to Options 3, Section 13, as further discussed below.[7]

Facilitation ISO

Today, the Exchange allows the submission of ISOs into its Facilitation Mechanism as Facilitation ISOs. To promote transparency, the Exchange proposes to memorialize Facilitation ISOs as an order type in Supplementary Material .06 to Options 3, Section 11. Specifically, the Exchange proposes:

A Facilitation ISO order (''Facilitation ISO'') is the transmission of two orders for crossing pursuant to paragraph (b) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Facilitation ISO to the Exchange has, simultaneously with the transmission of the Facilitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation auction price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Facilitation ISO provided the order adheres to the current order entry requirements for the Facilitation Mechanism as set forth in Options 3, Section 11(b)(1),[8] but without regard to the ABBO (similar to a regular ISO in Options 3, Section 7(b)(5)). Therefore, Facilitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the Facilitation ISO must be entered at an improved price. The Exchange does not check the Exchange best bid or offer on the opposite side of the Facilitation ISO because the underlying Facilitation Mechanism similarly does not check the opposite side Exchange best bid or offer. As discussed above, the Facilitation Mechanism only requires that the opposite side of the Facilitation order be equal to or better than the ABBO.[9] The Facilitation Mechanism does not check the opposite side Exchange best bid or offer because any interest that is available on the opposite side of the market would allocate against the Facilitation agency order and provide price improvement. As an example of the current underlying Facilitation Mechanism:

Assume the following market:

Exchange BBO: 1 × 2 (also NBBO).

CBOE: 0.75. × 2.25 (next best exchange quote).

Facilitation order is entered to buy 50 contracts @ 2.05.

No Responses are received.

The Facilitation order executes with resting 50 lot quote @ 2. In this instance, the Facilitation order is able to begin crossed with the contra side Exchange BBO because in execution, the resting 50 lot quote @ 2 is able to provide price improvement to the facilitation order.

Given that the Facilitation ISO is accepted so long as it adheres to the order entry requirements of the underlying Facilitation Mechanism, but without regard to the ABBO, the Exchange believes that it is appropriate and logical to align the order entry checks of the Facilitation ISO in the manner discussed above.

The Exchange processes the Facilitation ISO in the same manner that it processes any other Facilitation orders, except that it will initiate a Facilitation auction without protecting prices away. Instead, the Member entering the Facilitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Facilitation ISO to the Exchange. The Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate a Facilitation auction while preventing trade-throughs.

The Exchange notes that the Facilitation ISO is similar to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[10] Similar to the Facilitation ISO, the PIM ISO must meet the order entry requirements for PIM in Options 3, Section 13(b) but does not consider the ABBO.[11] Further, the Exchange processes a PIM ISO order the same way as any other PIM order except the Exchange will initiate a PIM auction without protecting away prices. As with Facilitation ISOs, the Member entering the PIM ISO bears responsibility to clear all better priced interest away

[5] The Exchange notes that it has an ISO trade through surveillance in place that will identify and capture when a Member marks a Facilitation or Solicitation ISO and the order possibly trades through a Protected Bid or Protected Offer price at an away exchange. The Exchange will monitor the NBBO prior to and after the order trades on the Exchange to detect potential trade through violations.

[6] The Price Improvement Mechanism (''PIM'') is a process that allows an Electronic Access Member to provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. *See* Options 3, Section 13(a).

[7] The Exchange also notes that its affiliates, Nasdaq BX (''BX'') and Nasdaq Phlx (''Phlx''), currently allow ISOs to be entered into BX's Price Improvement Mechanism (''PRISM'') and Phlx's Price Improvement XL (''PIXL''), respectively. *See* BX Options 3, Section 13(ii)(K) (describing PRISM ISOs) and Phlx Options 3, Section 13(b)(11) (describing PIXL ISOs). Other options exchanges like Cboe Exchange, Inc. (''Cboe'') and Cboe EDGX Exchange, Inc. (''EDGX'') similarly allow ISOs to be entered into their auction mechanisms. *See* Cboe Rule 5.37(b)(4)(A) and EDGX Rule 21.19(b)(3)(A) (allowing ISOs to be entered into Cboe's and EDGX's Automated Improvement Mechanism (''AIM ISOs'')) and Cboe Rule 5.39(b)(4) and EDGX Rule 21.21(b)(4) (allowing ISOs to be entered into Cboe's and EDGX's Solicitation Auction Mechanism (''SAM ISOs'')). *See also* Securities Exchange Act Release No. 60551 (August 20, 2009), 74 FR 43196 (August 26, 2009) (SR–CBOE–2009–040) (Order Granting Approval of a Proposed Rule Change to Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan, including to adopt AIM ISOs).

[8] Specifically, Options 3, Section 11(b)(1) provides that orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected. The Exchange notes that it is amending this provision in a concurrent rule filing (SR–MRX–2022–18), but that the proposed changes in this filing do not impact SR–MRX–2022–18 and vice versa. *See* Securities Exchange Act Release No. 95982 (October 4, 2022), 87 FR 61391 (October 11, 2022) (SR–MRX–2022–18).

[9] *Id.*

[10] Supplementary Material .08 to Options 3, Section 13 defines PIM ISO as the transmission of two orders for crossing pursuant to this Rule without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order.

[11] Unlike the Facilitation Mechanism, PIM requires an opposite side NBBO check, which would include the Exchange best bid or offer. As discussed above, the Facilitation order entry checks only require that the opposite side of the Facilitation order be equal to or better than the ABBO (*i.e.,* there is no opposite side local book check). For PIM, the order must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market if the Agency Order is for less than 50 option contracts and if the difference between the NBBO is $0.01. If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the PIM order must be entered at a price that is equal to or better than the NBBO on the opposite side. *See* Options 3, Section 13(b)(1) and (2). As such, PIM ISOs additionally require the entering Member to sweep all interest in the Exchange's book priced better than the proposed auction starting price (unlike Facilitation ISO which does not have a similar sweep requirement).

simultaneously with submitting the PIM ISO to the Exchange.

The following example illustrates how Facilitation ISO operates:

Assume:

ABBO: 1 × 1.20.

MRX BBO: 0.90 × 1.30.

Member enters Facilitation ISO with Agency side to buy 50 @ 1.25 and simultaneously routes multiple ISOs to execute against the full displayed size of any Protected Bids priced better than the starting Facilitation auction price.

Facilitation ISO auction period concludes with no responses arriving.

Facilitation ISO executes with contra side 50 @ 1.25 because the away market Best Offer of 1.20 has been cleared by the ISOs clearing the way for the Agency side to trade with the counter-side order at 1.25.

Solicitation ISO

Today, the Exchange allows the submission of ISOs into its Solicited Order Mechanism as Solicitation ISOs. To promote transparency, the Exchange proposes to memorialize Solicitation ISOs as an order type in Supplementary Material .07 to Options 3, Section 11. Specifically, the Exchange proposes:

A Solicitation ISO order (''Solicitation ISO'') is the transmission of two orders for crossing pursuant to paragraph (d) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Solicitation ISO to the Exchange has, simultaneously with the transmission of the Solicitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Solicitation auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Solicitation ISO provided the order adheres to the current order entry requirements for the Solicited Order Mechanism as set forth in Options 3, Section 11(d)(1),[12] but without regard to the ABBO (similar to a regular ISO in Options 3, Section 7(b)(5)). Therefore, Solicitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the Solicitation ISO must be entered at an improved price.

The Exchange processes the Solicitation ISO in the same manner that it processes other orders entered in the Solicited Order Mechanism, except that it will initiate a Solicited Order auction without protecting away prices. Instead, the Member entering the Solicitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Solicitation ISO to the Exchange. Similar to the Facilitation ISO discussed above, the Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate an auction in the Solicited Order Mechanism while preventing trade-throughs. Furthermore, Solicitation ISOs are similar to PIM ISOs in the manner described above for Facilitation ISOs.[13] In addition, other options exchanges currently offer a substantially similar order type as the Exchange's Solicitation ISO.[14]

The following example illustrates how the Solicitation ISO operates:

Assume:

ABBO: 1 × 1.20.

MRX BBO: 0.90 × 1.30.

Member enters Solicitation ISO with Agency side to buy 500 @ 1.25 and simultaneously routes multiple ISOs to execute against the full displayed size of any Protected Bids priced better than the starting Solicitation auction price.

Solicitation ISO auction period concludes with no responses arriving.

Solicitation ISO executes with contra side 500 @ 1.25.

Note that in the case a Solicitation ISO was entered with the Agency side to buy 500 @ 1.35, it would be rejected because it was not at or better than the NBBO on both sides (which is inclusive of an Exchange book check). While the 1.20 away Best Offer was cleared by the simultaneously routed ISOs, the Exchange Best Offer of 1.30 would now be viewed as the National Best Offer for purposes of the Solicitation ISO.

Further note that a Facilitation ISO entered with the Agency side to buy 50 @ 1.35 can start in the same example above because it does not have a contra-side (from the Agency order perspective) Exchange book check to begin. The Facilitation ISO would go on to allocate against the 1.30 offer on the Exchange book upon the conclusion of the auction.

Intermarket Sweep Orders

In light of the changes proposed above to adopt the Facilitation ISO and Solicitation ISO into its Rulebook, the Exchange proposes to make related amendments to the ISO rule in Options 3, Section 7(b)(5) to add that ''ISOs may be entered on the single leg order book or into the Facilitation Mechanism, Solicited Order Mechanism, or Price Improvement Mechanism, pursuant to Supplementary Material .06 and .07 to Options 3, Section 11, and Supplementary Material .08 to Options 3, Section 13.''

The proposed rule text will be similar to BX's current ISO rule in BX Options 3, Section 7(a)(6), except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today. Specifically, BX does not currently offer Facilitation ISOs or Solicitation ISOs. PIM ISOs are currently codified in Supplementary Material .08 to Options 3, Section 13, so the proposed rule text herein is a non-substantive amendment to add a cross-reference to the PIM ISO rule. The proposed language does not amend the current ISO functionality but rather is intended to add more granularity and more closely align the ISO rule with BX's ISO rule.[15]

[12] Specifically, Options 3, Section 11(d)(1) provides that orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected. Similar to the Facilitation Mechanism, the Exchange is amending the entry checks for the Solicited Order Mechanism in SR–MRX–2022–18; however, the proposed changes in this filing do not impact SR–MRX–2022–18 and vice versa. *See supra* note 8.

[13] The Exchange notes that similar to the PIM ISO, but unlike Facilitation ISO, the Solicitation ISO requires entering Members to sweep all interest in the Exchange's book priced better than the proposed auction starting price. The order entry checks for the Solicited Order Mechanism, similar to PIM, requires an opposite side NBBO check, which would include the Exchange best bid or offer. *See supra* notes 11–12.

[14] As noted above, both Cboe and EDGX currently offer a SAM ISO order type, which is defined as the submission of two orders for crossing in a SAM Auction without regard for better-priced Protected Quotes (as defined in Cboe Rule 5.65 and EDGX Rule 27.1) because the Initiating TPH routed an ISO(s) simultaneously with the routing of the SAM ISO to execute against the full displayed size of any Protected Quote that is better than the stop price and has swept all interest in the Book with a price better than the stop price. Any execution(s) resulting from these sweeps accrue to the SAM Agency Order. *See* Cboe Rule 5.39(b)(4) and EDGX Rule 21.21(b)(4). *See also* Securities Exchange Act Release Nos. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR–CBOE–2019–063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change related to the SAM Auction, including to adopt the SAM ISO); and 87060 (September 23, 2019), 84 FR 51211 (September 27, 2019) (SR–CboeEDGX–2019–047) (Order Approving a Proposed Rule Change to Adopt a SAM Auction, including to adopt the SAM ISO).

[15] BX's ISO rule currently has more granularity than MRX's ISO rule, such as requiring ISOs to have a TIF designation of IOC and prohibiting ISOs from being submitted during the opening process. The Exchange is adding identical granularity to its ISO rule in SR–MRX–2022–18. *See supra* note 8.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Facilitation and Solicitation ISOs

The Exchange believes that the proposal to adopt Facilitation ISOs and Solicitation ISOs in Supplementary Material .06 and .07 to Options 3, Section 11 is consistent with the Act. The proposal will codify current functionality, thereby promoting transparency in the Exchange's rules and reducing any potential confusion. As it relates to Solicitation ISOs, the Exchange believes that the proposed rule change promotes fair competition. Specifically, the proposal allows the Exchange to offer Members an order type that is already offered by other options exchanges.[18]

In addition, offering the Facilitation ISO and Solicitation ISO benefits market participants and investors because this functionality provides an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs. As discussed above, the Exchange processes the Facilitation and Solicitation ISO in the same manner as it processes any other order entered into the Facilitation and Solicited Order Mechanism, except the Exchange will initiate a Facilitation auction or Solicited Order auction without protecting away prices (similar to a regular ISO in Options 3, Section 7(b)(5)). Instead, the entering Member, simultaneous with the transmission of the Facilitation ISO or Solicitation ISO to the Exchange, remains responsible for routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation or Solicitation auction price, and for Solicitation ISO, has swept all interest in the Exchange's book priced better than the proposed auction starting price.[19] As discussed above, these order types operate in a similar manner to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[20]

Intermarket Sweep Orders

The Exchange believes that the proposed changes to the definition of ISOs in Options 3, Section 7(b)(5) are consistent with the Act. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted.[21] As such, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges. While the proposed changes to the Exchange's ISO rule generally track BX's ISO rule, the proposed language will refer to certain Exchange functionality that BX does not have today (*i.e.,* Facilitation ISOs or Solicitation ISOs).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Offering Facilitation and Solicitation ISOs does not impose an undue burden on competition because it enables the Exchange to provide market participants with an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs, as discussed above. In addition, all Members may submit a Facilitation ISO or Solicitation ISO. As it relates to the Solicitation ISO, the Exchange believes that the proposed rule change will promote fair competition among options exchanges as it will allow the Exchange to compete with other markets that already allow ISOs in their solicitation auction mechanisms.[22]

The Exchange further believes that the proposed changes to its ISO rule do not impose an undue burden on competition. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted, except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today (*i.e.,* Facilitation and Solicitation ISOs).[23] With the proposed changes, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[24] and subparagraph (f)(6) of Rule 19b–4 thereunder.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2022–23 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.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *See supra* note 14.

[19] *See supra* note 13.

[20] *See supra* notes 11 and 13.

[21] *See supra* note 15.

[22] *See supra* note 14.

[23] *See supra* note 15.

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

All submissions should refer to File Number SR–MRX–2022–23. 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–MRX–2022–23 and should be submitted on or before November 22, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–23675 Filed 10–31–22; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–655, OMB Control No. 3235–0717]

Submission for OMB Review; Comment Request; Extension: Exchange Act Rule 3a71–3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 3a71–3 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

The compliance date for Rule 3a71–3 was in November 2021. The representations contemplated by Rule 3a71–3 will be relied upon by counterparties to determine whether such transaction is a ''transaction conducted through a foreign branch'' of a U.S. bank counterparty, as defined in Rule 3a71–3(a)(3)(i), as well as to verify whether a security-based swap counterparty is a ''U.S. person.'' Counterparties to security-based swap transactions may voluntarily give such representations to one another to reduce operational costs and allow each party to ascertain whether such transaction is subject to certain Title VII requirements. Because any representations provided to counterparties under Rule 3a71–3 will constitute voluntary third-party disclosures, the Commission will not typically receive these disclosures.

The Commission believes that the representations contemplated by Rule 3a71–3 will, in most cases, be made through amendments to the parties' existing trading documentation (*e.g.,* the schedule to a master agreement). The Commission believes that, because trading relationship documentation is established between two counterparties, whether a counterparty is able to represent that it is entering into a ''transaction conducted through a foreign branch'' or that it does not meet the criteria of the ''U.S. person'' definition will not change on a transaction-by-transaction basis and, therefore, such representations will generally be made in the schedule to a master agreement, rather than in individual confirmations. The Commission anticipates that counterparties may elect to develop and incorporate these representations in trading documentation following the effective date of the Commission's security-based swap regulations, rather than incorporating specific language on a transactional basis. The Commission believes that counterparties will be able to adopt, where appropriate, standardized language across all of their security-based swap trading relationships. The Commission believes that this standardized language may be developed by individual respondents or through a combination of trade associations and industry working groups.

a. Representations Regarding a ''Transaction Conducted Through a Foreign Branch''

Pursuant to Rule 3a71–3, parties to security-based swaps are permitted to rely on certain representations from their counterparties when determining whether a transaction falls within the definition of a ''transaction conducted through a foreign branch.'' Based on its understanding of the current state of the security-based swap market, the Commission staff estimates that nine entities will incur burdens under this collection of information, whether solely in connection with the business conduct requirements or also in connection with the application of the *de minimis* exception.

The Commission estimates the one-time third-party disclosure burden associated with developing representations under this collection of information will be, for each U.S. bank counterparty that will make such representations, no more than five hours, and up to $2,000 for the services of outside professionals. Across the nine respondents, this amounts to approximately 45 hours, or 15 hours per year when annualized over three years. This estimate assumes little or no reliance on standardized disclosure language.

The Commission expects that the majority of the burden associated with the new disclosure requirements will be experienced during the first year as language is developed and trading documentation is amended. The Commission further believes that the ongoing third-party disclosure burden associated with this requirement will be 10 hours per U.S. bank counterparty for verifying representations with existing counterparties, for a total of approximately 90 hours across the nine respondents.[1]

The Commission believes that some of the entities that will comply with Rule 3a71–3 will seek outside counsel to help them develop new representations contemplated by Rule 3a71–3. For PRA purposes, the Commission assumes that all nine respondents will seek outside counsel for the first year only and will, on average, consult with outside counsel for a cost of up to $2,000. The Commission also assumes that none of the nine respondents will seek outside legal services for year two or year three.

[1] The Commission staff estimates that this burden will consist of 10 hours of in-house counsel time for each security-based swap market participant that will make such representations. See Business Conduct Adopting Release, at 30097, note 1581.

Thus, the Commission expects the aggregate cost to the nine respondents over the three-year period will be $18,000, or $6,000 per year when annualized over three years. The Commission expects the total labor cost per respondent will be approximately $666.67 when annualized over three years.

b. Representations Regarding U.S.-Person Status

Pursuant to Rule 3a71–3(a)(4)(iv), persons may rely on representations from a counterparty that the counterparty does not satisfy the criteria defining U.S. person set forth in Rule 3a71–3(a)(4)(i), unless such person knows or has reason to know that the representation is not accurate. Commission staff has estimated, based on its understanding of OTC derivatives markets, including the domiciles of counterparties that are active in the market, that approximately 3,000 entities will provide representations that they do not meet the criteria necessary to be U.S. persons.

As with representations regarding whether a transaction is conducted through a foreign branch, the Commission estimates the maximum total third-party disclosure burden associated with developing new representations will be, for each counterparty that will make such representations, no more than five hours and up to $2,000 for the services of outside professionals. Across the 3,000 respondents, this aggregates to a maximum of approximately 15,000 hours, or 5,000 hours per year when annualized over three years. This estimate assumes little or no reliance on standardized disclosure language.

The Commission expects that the majority of the burden associated with the disclosure requirements will be experienced during the first year as language is developed and trading documentation is amended. After the new representations are developed and incorporated into trading documentation, the Commission believes that the annual third-party disclosure burden associated with this requirement will be no more than approximately 10 hours per counterparty for verifying representations with existing counterparties and onboarding new counterparties. Across the 3,000 respondents, this aggregates to a maximum of approximately 30,000 hours.

The Commission believes that some of the entities that comply with Rule 3a71–3 will seek outside counsel to help them develop new representations. For PRA purposes, the Commission assumes that all 3,000 respondents will seek outside legal for the first year only and will, on average, consult with outside counsel for a cost of up to $2,000. The Commission also assumes that none of those 3,000 respondents will seek outside legal services for year two or year three. Thus, the Commission expects that the aggregate cost over those 3,000 respondents over the three-year period will be $6 million, or $2 million per year when annualized over three years. The Commission expects the total labor cost per respondent will be approximately $666.67 when annualized over three years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by December 1, 2022 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*''

Dated: October 26, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–23693 Filed 10–31–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0271]

BB&T Capital Partners, LLC; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under section 309, and the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 04/04–0271 issued to BB&T Capital Partners, LLC, said license is hereby declared null and void.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2022–23667 Filed 10–31–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17616 and #17617; ARIZONA Disaster Number AZ–00086]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Arizona

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arizona (FEMA–4668–DR), dated 09/02/2022.

Incident: Severe Storms.

Incident Period: 07/17/2022 through 07/18/2022.

DATES: Issued on 10/21/2022.

Physical Loan Application Deadline Date: 11/03/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/02/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Arizona, dated 09/02/2022, is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to 11/03/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–23704 Filed 10–31–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 11909]

Request for Public Comment on the African and Diaspora Young Leaders Forum—U.S.-Africa Leaders Summit

ACTION: Notice; request for comment.

SUMMARY: President Biden will host leaders from across the African continent from December 13–15, 2022, in Washington, DC, for the U.S.-Africa Leaders Summit. The Summit will demonstrate the United States' enduring commitment to Africa and will underscore the importance of U.S.-Africa relations and increased cooperation on shared global priorities. An important component of the Summit's three-day agenda is the African and Diaspora Young Leaders Forum, which will be held on December 13. A full agenda with speakers will be announced in the coming weeks. The Department is requesting self-nominations from the public of exceptional young leaders to participate in the event.

DATES: Nominations are due no later than 12 p.m. ET on November 8, 2022.

ADDRESSES: Please email nominations to *diasporaafricasummit@state.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Goodman, 202–341–1833 in the Bureau of African Affairs at the U.S. Department of State at *diasporaafricasummit@state.gov.*

SUPPLEMENTARY INFORMATION: As President Biden outlined in the U.S. Strategy Toward Sub-Saharan Africa, our African diaspora is a source of strength. The African and Diaspora Young Leaders Forum will elevate our diaspora engagement to strengthen the dialogue between U.S. officials and the diaspora in the United States and provide a platform for young African and diaspora leaders to fashion innovative solutions to pressing challenges. The Forum will feature breakout sessions on higher education, the creative industries, and environmental equity, utilizing the theme ''Amplifying Voices: Building Partnerships That Last.''

The African and Diaspora Young Leaders Forum will be held in person on December 13, 2022. The U.S. Department of State is seeking exceptional young leaders to participate in the event. Ideal participants will be Africans and people of African descent living outside of Africa who are between the ages of 21–35 and actively engaged on issues related to higher education, creative industries, or environmental equity. If you are interested in participating, please send an email to the address listed in the **ADDRESSES** section above. Please include: your full name, your email address, your preferred breakout session (higher education, creative industries, or environmental equity), and any supporting documents or information that you wish to submit.

Please note that we will not be able to invite all nominated individuals to the Forum and that attendees will need to pay for their own travel and accommodations. Invited individuals will be contacted directly.

All interested parties will receive consideration without regard to race, color, sex, age, national origin, religion, disability, veteran status, sexual orientation, marital status, citizenship, or any other protected status.

Privacy Act Statement

Authorities: The information solicited in this notice is sought pursuant to 5 U.S.C. 301 and 22 U.S.C. 2651a.

Purpose: The information solicited in this notice will be used to facilitate civil society participation in the 2022 African and Diaspora Young Leaders Forum in Washington, DC. The information furnished may also be used to contact applicants for additional outreach opportunities or to request additional information for this application.

Routine Uses: The information you provide in response to this notice may be shared with other federal agencies and the White House. More information on the Routine Uses for the system can be found in the System of Records Notice State-SORN 79, Digital Communications and Outreach.

Disclosure: Providing this information is voluntary. Failure to provide the information requested may result in your inability to participate in the 2022 African and Diaspora Young Leaders Forum in Washington, DC.

Eric Watnik,

Director, The Bureau of African Affairs Office of Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 2022–23660 Filed 10–31–22; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2022–0844]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Air Carrier Contract Maintenance Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 15, 2022. The collection involves information collected which will be used by air carriers and by the FAA to adequately target its inspection resources for surveillance, and make accurate risk assessments.

DATES: Written comments should be submitted by December 1, 2022.

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

FOR FURTHER INFORMATION CONTACT: Jim Anderson by email at: *jim.anderson@faa.gov;* phone: 405–666–1001

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0766

Title: Air Carrier Contract Maintenance Requirements

Form Numbers: There are no forms associated with this collection.

Type of Review: This is a renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period

soliciting comments on the following collection of information was published on July 15, 2022 (87 FR 42538).

Air carrier maintenance has evolved from mostly an ''in-house'' operation to an extended network of maintenance providers that fulfill contracts with air carriers to perform their aircraft maintenance. Any person performing maintenance for an air carrier must follow the air carrier's maintenance manual.

The FAA has found that, although an air carrier is required to list its maintenance providers and a general description of the work to be done in its maintenance manual, these lists are not always kept up to date, are not always complete, and are not always in a format that is readily useful for FAA oversight and analysis purposes. Without accurate and complete information on the work being performed for air carriers, the FAA cannot adequately target its inspection resources for surveillance and make accurate risk assessments.

This collection of information supports regulatory requirements necessary under 14 CFR part 121 and part 135 to ensure safety of flight by requiring air carriers to provide a list that includes the name and physical (street) address, or addresses, where the work is carried out for each maintenance provider that performs work for the certificate holder, and a description of the type of maintenance, preventive maintenance, or alteration that is to be performed at each location. The list must be updated with any changes, including additions or deletions, and the updated list provided to the FAA in a format acceptable to the FAA by the last day of each calendar month.

This collection also supports the FAA's strategic goal to provide to the next level of safety, by achieving the lowest possible accident rate and always improving safety, so all users of our aviation system can arrive safely at their destinations.

Respondents: 303 air carriers (64 Part 121 air carriers and 239 part 135 air carriers).

Frequency: Monthly.

Estimated Average Burden per Response: Eight hours.

Estimated Total Annual Burden: 2,424 hours.

Issued in Hillsboro, OR on October 27, 2022.

James R. Anderson

Aviation Safety Inspector Flight Standards, Aircraft Maintenance Division, Commercial Air Carrier Group.

[FR Doc. 2022–23734 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0418]

Agency Information Collection Activities: Requests for Comments; Clearance a Renewed Approval of Information Collection: Notice of Landing Area Proposal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2022. The collection involves gathering information from airport sponsors about any establishment, construction, alteration, or change to the status or use of an airport. The FAA uses this information to conduct airport airspace analyses to understand the impact of proposed actions on existing and planned operating procedures, determine potential hazardous effects, and identify any mitigating measures needed to enhance safe air navigation. Additionally, the information updates the aeronautical charts and maps of airports having emergency landing or landmark values.

DATES: Written comments should be submitted by December 1, 2022.

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

FOR FURTHER INFORMATION CONTACT: Raymond Zee by email at: *Raymond.Zee@faa.gov;* phone: 202–267–7874.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0036.

Title: Notice of Landing Area Proposal.

Form Numbers: FAA Form 7480–1.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2022 (87 FR 18853). Title 14 Code of Federal Regulations Part 157, Notice of Construction, Alteration, Activation, and Deactivation of Airports, requires that each person who intends to establish, construct, deactivate, or change the status of an airport, runway, or taxiway notify the FAA of such activity. The FAA uses the information collected to determine the effect the proposed action will have on existing airports and on the safe and efficient use of airspace by aircraft, the effects on existing airspace or contemplated traffic patterns of neighboring airports, the effects on the existing airspace structure and projected programs of the FAA, and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area will have on the airport proposal. This information also updates aeronautical charts and maps of airports having emergency landing or landmark values. The FAA collects this information via an online reporting tool available on the FAA website or via FAA Form 7480–1).

Respondents: Approximately 645 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 645 hours.

Issued in Washington, DC, on October 27, 2022.

Raymond Zee,

Civil Engineer, Airport Data and Airspace Branch, Office of Airport Safety and Standards.

[FR Doc. 2022–23712 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2022–0580]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: QSA Customer Feedback Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 13, 2022. The collection involves the voluntary submission of responses to survey questions. The information is collected from holders of FAA production approvals and selected suppliers and provides them an opportunity to offer their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Quality System Audit (QSA). The information to be collected will be used to promote continuous improvement initiatives and industry dialog in the FAA oversight process.

DATES: Written comments should be submitted by December 1, 2022.

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

FOR FURTHER INFORMATION CONTACT: Joedy Collado, AIR–634 by email at: *joedy.collado@faa.gov;* phone: 202–267–6440.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0605.

Title: Quality System Audit Feedback Report.

Form Numbers: FAA Form 8100–7.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 13, 2022 (87 FR 29426). The feedback information collection is voluntary and is collected by way of a self-addressed stamped envelope. It is used by local field offices, manufacturing inspection offices and the surveillance and oversight policy section of AIR–600 to improve the administration and conduct of the QSA at the local and national levels. Improvements to FAA Order 8120.23, Certificate Management of Production Approval Holders, have been and will continue to be included as policy evolves as a direct benefit of the on-going collection of that feedback information. It will also be used for reporting as a Customer Service Standard in fulfillment of Executive Order 12862, Setting Customer Service Standards, dated September 11, 1993.

Respondents: There are approximately 50 holders of FAA production approvals responding annually. This metric was updated from the 60 day FRN as a wider sampling was taken to more accurately validate and maintain consistency with supporting statement responses. Audit frequencies change from year to year as due dates range from 12 to 48 months. Accordingly, the sampling period was adjusted to capture the most recent three year period that full data was readily available.

Frequency: Feedback information is collected about thirty days after conclusion of the oversight activity. The feedback provided is voluntarily submitted by the audited facility on occasion which is predicated on their audit due date frequency.

Estimated Average Burden per Response: 30 Minutes.

Estimated Total Annual Burden: 25 Hours.

Issued in Washington, DC, on October 25, 2022.

Joedy Collado,

Aviation Safety Inspector, Compliance Systems, Systems Policy Branch, AIR–630, Policy and Innovation Division.

[FR Doc. 2022–23726 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0579]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Suspected Unapproved Parts Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 18, 2022. The information collection is reported voluntarily by those who wish to report suspected unapproved parts (SUP) to the FAA for review. The information is used to determine if an unapproved part investigation is warranted.

DATES: Written comments should be submitted 30 days after date of publication in the **Federal Register**.

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: Robert Franklin by email at: *robert.franklin@faa.gov;* phone: 202–267–1603.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0552.

Title: Suspected Unapproved Parts Report.

Form Numbers: FAA Form 8120–11.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 18, 2022 (87 FR 30327).

The information collected on the FAA Form 8120–11, Suspected Unapproved Parts Report, is reported voluntarily by manufacturers, repair stations, aircraft owner/operators, air carriers, and the general public who wish to report suspected unapproved parts (SUP) to the FAA for review. The report information is collected and correlated by the FAA Hotline Program Office, and used to determine if an unapproved part investigation is warranted. When unapproved parts are confirmed that are likely to exist on other products or aircraft of the same or similar design or are being used in other facilities, the information is used as a basis for an aviation industry alert or notification. Alerts are used to inform industry of situations essential to the prevention of accidents, if the information had not been collected. The consequence to the aviation community would be the inability to determine whether or not unapproved parts are being offered for sale or use for installation on type-certificated products.

Procedures and processes relating to the SUP program and associated reports are found in FAA Order 8120.16A, Suspected Unapproved Parts Program, and Advisory Circular 21–29, Detecting and Reporting Suspected Unapproved Parts. When unapproved parts are identified, the FAA notifies the public by published Field Notifications, disseminated using Unapproved Parts Notifications, Aviation Maintenance Alerts, Airworthiness Directives, entry into an issue of the Service Difficulty Reporting Summary, a Special Airworthiness Information Bulletin, a display on an internet site, or direct mailing. Reporting of information is strictly voluntary. The information is requested from any individual or facility suspecting an unapproved part. Any burden is minimized by requesting only necessary information to warrant an investigation.

Respondents: Anyone may fill out and send FAA Form 8120–11to the FAA.

Frequency: Whenever anyone discovers or suspects they have received an unapproved part.

Estimated Average Burden per Response: About 30 minutes to read and disposition each form.

Estimated Total Annual Burden: The FAA collects approximately 200 forms from the public per year.

Issued in Des Moines, Washington, on October 19, 2022.

Michael A. Millage,

Manager, Production & Airworthiness Systems, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–23724 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2022–0030]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 3, 2023.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2022–0030 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jason Broehm, Office of Safety 202–366–2201 Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue,SE, Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Safe Streets and Roads for All Grant Program.

Background: The Department of Transportation's (DOT) Office of the Secretary and the Federal Highway Administration are committed to a comprehensive strategy to address the unacceptable number of traffic deaths and serious injuries occurring on our roads and streets. The Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), Section 24112 aligns with the Department's safety priority through the creation of the Safe Streets and Roads for All Grant Program. This grant program supports local initiatives to prevent deaths and serious injuries on roads and streets and is intended for metropolitan planning organizations, political subdivisions of a State, Federally recognized Tribal governments, and multijurisdictional groups of these entities.

This program includes grant funds to develop a comprehensive safety action plan; to conduct planning, design and development activities for projects and strategies identified in a comprehensive safety action plan; or to carry out projects and strategies identified in a comprehensive safety action plan. To receive applications for grant funds, evaluate the effectiveness of projects that have been awarded grant funds, and monitor project financial conditions and project progress, a collection of information is necessary.

Eligible applicants will request Safe Streets and Roads for All funds in the form of a grant application. Additional information submission will be required of grant recipients during the grant agreement, implementation, and evaluation phases.

Responding to the grant opportunity is on a voluntary-response basis, utilizing an electronic grant platform. The grant application is planned as a one-time information collection. DOT estimates that it will take approximately 30 hours to complete an application for a comprehensive safety action plan grant and approximately 110 hours to complete an application for an implementation grant.

Respondents: Metropolitan planning organizations, political subdivisions of a State, Federally recognized Tribal governments and multijurisdictional groups of these entities.

Frequency: one time per grant application.

During the project management phase, the grantee will complete quarterly progress and monitoring reports to ensure that the project budget and schedule are maintained to the maximum extent possible, that compliance with Federal regulations will be met, and that the project will be

completed with the highest degree of quality. Reporting responsibilities include quarterly program performance reports using the Performance Progress Report (SF–PPR) and quarterly financial status using the SF–425 (also known as the Federal Financial Report or SF–FFR).

Respondents: Grant recipients.

Frequency: quarterly throughout the period of performance.

During the project management phase, each grantee that expends $750,000 or more during their own fiscal year in all Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR 200.501. (The $750,000 threshold is not limited to Safe Streets and Roads for All funding.) This reporting responsibility is required annually and uses a form, the SF–SAC. It is estimated that this survey will take an average of 100 hours for large auditees and 21 hours for all other auditees to complete, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Grant recipients.

Frequency: annually during any fiscal year in which $750,000 or more in any Federal funds are expended, throughout the period of performance.

During the project evaluation phase, the reporting requirement is necessary to assess program effectiveness for the Federal government and to comply with Subsection 24112(g). This report provides information regarding how the project is achieving the outcomes that grantees have targeted to help measure the effectiveness of the Safe Streets and Roads for All Grant Program. In addition, under Subsection 24112(h), at the end of the period of performance for a grant under the program each grant recipient is required to submit a report that describes the costs of each eligible project carried out using the grant funds; the outcomes and benefits generated; the lessons learned; and any recommendations relating to future projects or strategies.

Respondents: Grant recipients.

Frequency: one time after the period of performance ends.

Estimated Average Burden per Response:

- *Application phase:* approximately 30 hours for the comprehensive safety action plan grants and 110 hours for the implementation grants per respondent.
- *Grant Agreement phase:* approximately 1 hour per respondent (comprehensive safety action plan or implementation grant).
  - *For grantees expending $750,000 or more of all Federal funds in a fiscal year only:*
    - Approximately 100 hours for large grantees.
    - Approximately 21 hours for all other grantees.
- *Project Management phase:* 8 hours annually per grant.
- *Project Evaluation phase:* 12 hours annually per implementation grant; 2 hours annually per action plan grant.

Estimated Total Annual Burden Hours—first year: Approximately 41 hours, including grant application, for comprehensive safety action plan grants and approximately 131 hours, including grant application, for implementation grants.

Subsequent years (cumulative): 10 hours for action plan grants (expected period of performance: 2 years); 48 hours for implementation grants (expected period of performance: 5 years); *add 100 hours for single audits for large grantees and 21 hours for all other grantees expending $750,000 or more of Federal funds in a single fiscal year.*

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 23 U.S.C. 134 and 135; and 23 CFR Chapter 1, subchapter E, part 450.

Dated: October 27, 2022.

Michael Howell,

FHWA Information Collection Officer.

[FR Doc. 2022–23718 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0045]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 13 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before December 1, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2022–0045 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2022–0045, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT,

1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2022–0045), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2022-0045.* Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2022–0045, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 13 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The criteria states that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the ME in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

As a result of MEs misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified ME based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since that time, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in § 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

prohibition in § 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (78 FR 3069).

III. Qualifications of Applicants

Ralph Bollman

Mr. Bollman is a 57-year-old class CM license holder in Pennsylvania. He has a history of seizure disorder and has been seizure free since 1984. He takes anti-seizure medication with the dosage and frequency remaining the same since 1984. His physician states that he is supportive of Mr. Bollman receiving an exemption.

Diane Berggren

Ms. Berggren is a 54-year-old class C license holder in Oregon. She has a history of epilepsy and has been seizure free since 2011. She takes anti-seizure medication with the dosage and frequency remaining the same since 2011. Her physician states that he is supportive of Ms. Berggren receiving an exemption.

Ryan Freedman

Mr. Freedman is a 32-year-old chauffer license holder in Michigan. He has a history of seizure disorder and has been seizure free since 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since April 2019. His physician states that he is supportive of Mr. Freedman receiving an exemption.

Jared Friedman

Mr. Friedman is a 30-year-old class D license holder in New York. He has a history of seizure disorder and has been seizure free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since May 2019. His physician states that he is supportive of Mr. Friedman receiving an exemption.

Jacob Higginbotham

Mr. Higginbotham is a 23-year-old class C license holder in Nevada. He has a history of epilepsy and has been seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since 2012. His physician states that he is supportive of Mr. Higginbotham receiving an exemption.

Matthew Jacobson

Mr. Jacobson is a 27-year-old class C license holder in Pennsylvania. He has a history of seizures and has been seizure free since 2013. He takes anti-seizure medication with the dosage and frequency remaining the same since 2016. His physician states that he is supportive of Mr. Jacobson receiving an exemption.

Keith Maat

Mr. Maat is a 37-year-old class C license holder in Kansas. He has a history of partial seizures evolving to secondary generalized seizures disorder and has been seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since July 2019. His physician states that he is supportive of Mr. Maat receiving an exemption.

Matthew Raymond

Mr. Raymond is a 34-year-old class B CDL holder in New York. He has a history of epilepsy and has been seizure free since 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since 1999. His physician states that he is supportive of Mr. Raymond receiving an exemption.

Andrew Rieschick

Mr. Rieschick is a 35-year-old class O license holder in Nebraska. He has a history of generalized tonic-clonic seizure disorder and has been seizure free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since 2009. His physician states that he is supportive of Mr. Rieschick receiving an exemption.

Steven Schultz

Mr. Schultz is a 34-year-old class DM license holder in Illinois. He has a history of seizures and has been seizure free since 2001. He takes anti-seizure medication with the dosage and frequency remaining the same since 2019. His physician states that he is supportive of Mr. Schultz receiving an exemption.

David Shively

Mr. Shively is a 53-year-old class C license holder in Virginia. He has a history of seizures and has been seizure free since 1991. He takes anti-seizure medication with the dosage and frequency remaining the same since 1991. His physician states that he is supportive of Mr. Shively receiving an exemption.

Stephen St. Marthe

Mr. St. Marthe is a 27-year-old class C license holder in North Carolina. He has a history of focal epilepsy with secondary generalization and has been seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since 2014. His physician states that he is supportive of Mr. St. Marthe receiving an exemption.

Carsten Thode

Mr. Thode is a 58-year-old class B CDL holder in Washington. He has a history of epilepsy and has been seizure free since 2014. He takes anti-seizure medication with the dosage and frequency remaining the same since 1990. His physician states that he is supportive of Mr. Thode receiving an exemption.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–23759 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0329; FMCSA–2016–0002; FMCSA–2017–0058; FMCSA–2017–0059; FMCSA–2017–0061; FMCSA–2018–0135; FMCSA–2018–0138; FMCSA–2020–0027]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 23 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below. Comments must be received on or before December 1, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2015–0329, Docket No. FMCSA–2016–0002, Docket No.

FMCSA–2017–0058, Docket No. FMCSA–2017–0059, Docket No. FMCSA–2017–0061, Docket No. FMCSA–2018–0135, Docket No. FMCSA–2018–0138, or Docket No. FMCSA–2020–0027 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2015–0329, FMCSA–2016–0002, FMCSA–2017–0058, FMCSA–2017–0059, FMCSA–2017–0061, FMCSA–2018–0135, FMCSA–2018–0138, or FMCSA–2020–0027 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2015–0329, Docket No. FMCSA–2016–0002, Docket No. FMCSA–2017–0058, Docket No. FMCSA–2017–0059, Docket No. FMCSA–2017–0061, Docket No. FMCSA–2018–0135, Docket No. FMCSA–2018–0138, or Docket No. FMCSA–2020–0027), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov,* insert the docket number, FMCSA–2015–0329, FMCSA–2016–0002, FMCSA–2017–0058, FMCSA–2017–0059, FMCSA–2017–0061, FMCSA–2018–0135, FMCSA–2018–0138, or FMCSA–2020–0027 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2015–0329, FMCSA–2016–0002, FMCSA–2017–0058, FMCSA–2017–0059, FMCSA–2017–0061, FMCSA–2018–0135, FMCSA–2018–0138, or FMCSA–2020–0027 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 3, 1971).

The 23 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA

will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 23 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 23 drivers in this notice remain in good standing with the Agency. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of October and are discussed below.

As of October 13, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 14 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Matthew Albrecht (PA)
Cory Adkins (FL)
Richard Blaine (PA)
Jacquelyn Hetherington (OK)
Agustin Hernandez (TX)
Andrew Hippler (ID)
Scott Lufkin (NC)
Paul Mansfield (KS)
Berenice Martinez (TX)
Jose Ramirez (IL)
Thomas Sneer (MN)
Daniel Stroud (UT)
Michael Sweet (GA)
Jason Wynne (TX)

The drivers were included in docket number FMCSA–2015–0329, FMCSA–2016–0002, FMCSA–2017–0058, FMCSA–2017–0059, FMCSA–2017–0061, FMCSA–2018–0135, or FMCSA–2018–0138. Their exemptions were applicable as of October 13, 2022 and will expire on October 13, 2024.

As of October 30, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Adrian Almanza (IL)
Jimmy Benavides (TX)
James Bryan (AR)
William Heath (NC)
Kenneth Morrison (NY)
Darren Norton (MO)
Marty Posey (IN)
Anthony Vasquez (TX)
Daniel Zeolla (PA)

The drivers were included in docket number FMCSA–2020–0027. Their exemptions are applicable as of October 30, 2022 and will expire on October 30, 2024.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 23 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–23760 Filed 10–31–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Departmental Offices; Department of the Treasury.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on revisions of an information collection that are proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning the revisions of the Treasury International Capital (TIC) Forms BC, BL–1, BL–2, BQ–1, BQ–2, and BQ–3 (called the ''TIC B forms'').

DATES: Written comments should be received on or before January 3, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 1050, 1500 Pennsylvania Avenue NW, Washington DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by email (*comments2TIC@treasury.gov*) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, 202–622–1276. Copies of the proposed TIC B Forms and instructions are available on the Treasury's TIC Forms web page, *https://home.treasury.gov/data/treasury-international-capital-tic-system-home-page/tic-forms-instructions.* Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Titles: Treasury International Capital (TIC) Form BC ''Monthly Report of U.S. Dollar Claims of Financial Institutions on Foreign Residents;'' TIC BL–1 ''Monthly Report of U.S. Dollar Liabilities of Financial Institutions to Foreign Residents;'' TIC BL–2 ''Monthly Report of Customers' U.S. Dollar Liabilities to Foreign Residents;'' TIC BQ–1 ''Quarterly Report of Customers' U.S. Dollar Claims on Foreign Residents;'' TIC BQ–2 ''Part 1: Quarterly Report of Foreign Currency Liabilities and Claims of Financial Institutions and of their Domestic Customers' Foreign Currency Claims with Foreign Residents'' and ''Part 2: the Report of Customers' Foreign Currency Liabilities to Foreign Residents;'' and TIC BQ–3 ''Quarterly Report of Maturities of Selected Liabilities and Claims of

Financial Institutions with Foreign Residents.''

OMB Number: 1505–0016.

Abstract: Forms BC, BL–1, BL–2, BQ–1, BQ–2, BQ–3 are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128) and are designed to collect timely information on international portfolio capital movements. These forms are filed by U.S.-resident financial institutions that are not exempt. On the monthly forms, these organizations report their own claims on (BC), their own liabilities to (BL–1), and their U.S. customers' liabilities to (BL–2) foreign residents, denominated in U.S. dollars. On the quarterly forms, these organizations report their U.S.-resident customers' U.S. dollar claims on foreign residents (BQ–1), and their own and their domestic customers' claims and liabilities with foreign residents, where all claims and liabilities are denominated in foreign currencies (BQ–2). On the quarterly BQ–3 form, these organizations report the remaining maturities of all their own U.S. dollar and foreign currency liabilities and claims (excluding securities) with foreign residents. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

Current Actions: One change is proposed to page 18 of the Instructions for the Treasury International Capital (TIC) Form B Reports. In section I.D.1. ''General Instructions—Accounting Issues—General'', add the following sentence as the new first sentence of the existing first paragraph: ''These reports should be prepared in accordance with generally accepted accounting principles (GAAP) and these instructions.'' This additional text clarifies that balances are expected to be reported according to GAAP. Similar text is found in the FFIEC 009 instructions.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Forms: BC, BL–1, BL–2, BQ–1, BQ–2, and BQ–3.

Estimated Number of Respondents: BC, 320; BL–1, 360; BL–2, 110; BQ–1, 85; BQ–2, 190 and BQ–3, 155.

Estimated Average Time per Respondent per Filing: BC, 11.2 hours; BL–1, 7.7 hours; BL–2, 8.9 hours; BQ–1, 3.8 hours; BQ–2, 7.8 hours; and BQ–3, 10.5 hours. The average time varies, and is estimated to be generally twice as many hours for major data reporters as for other reporters.

Estimated Total Annual Burden Hours: BC, 43,170 hours for 12 reports per year; BL–1, 33,440 hours for 12 reports per year; BL–2, 11,760 hours for 12 reports per year; BQ–1, 1,290 hours for 4 reports per year, BQ–2, 5,960 hours for 4 reports per year; and BQ–3, 6,510 hours for 4 reports per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) whether Forms BC, BL–1, BL–2, BQ–1, BQ–2, and BQ–3 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 2022–23703 Filed 10–31–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: VA Pilot Program on Graduate Medical Education and Residency (PPGMER)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 3, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Janel Keyes, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Janel.Keyes@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority:

Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA Pilot Program on Graduate Medical Education and Residency (PPGMER).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: Section 403 of the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018 (Public Law 115–182) mandated that VA create a pilot

program to establish additional graduate medical education (GME) physician residency placement positions at certain covered facilities. The pilot program will place no fewer than 100 resident physicians at covered facilities (sites) operated by Indian tribe or tribal organization (25 U.S.C. 5304), Indian Health Service, Federally-Qualified Health Centers (42 U.S.C. 1396d(1)(2)(B)) and Department of Defense. Participants in this pilot program are required by the statute to collect and provide VA with programmatic data. VA is required to include this information in an annual report to Congress until the program terminates on August 7, 2031. The information will be collected by the GME sponsoring institutions and the physician residents they place in the participating covered facilities. The sponsors themselves will determine the best method for collection of the necessary data depending on their own resources and staffing. The information to be collected will include required elements, such as number of patients seen per day by each resident placed in a covered facility, for the annual report on implementation of the pilot program submitted by VA to Congress.

Physician Resident Data Collection

Affected Public: Individuals or households.

Estimated Annual Burden: 600 hours.

Estimated Average Burden per Respondent: 6 hours.

Frequency of Response: Once annually.

Estimated Number of Respondents: 100.

GME Sponsor Data Collection

Affected Public: Private Sector.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 120 hours.

Frequency of Response: Once annually.

Estimated Number of Respondents: 10.

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. 2022–23715 Filed 10–31–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nomination for Appointment to the Veterans' Advisory Committee on Rehabilitation

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA), is seeking nominations of qualified candidates to be considered for appointment as members of the Veterans' Advisory Committee on Rehabilitation (hereinafter referred to as ''the Committee'').

DATES: Nominations for membership on the Committee must be received by no later than 4 p.m. EST on December 6, 2022. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nomination packages should be emailed to *VACOR.VBACO@VA.GOV* or faxed to (202) 725–5122.

FOR FURTHER INFORMATION CONTACT: Mrs. Latrese Thompson at 202–461–9773. A copy of Committee charter and list of the current membership can be obtained by contacting Mrs. Thompson.

SUPPLEMENTARY INFORMATION:

Duties and Responsibilities: In carrying out the duties set forth, the Committee responsibilities include, but are not limited to, submit to the Secretary an annual report on the rehabilitation programs and activities of the VA.

Authority: The Committee was established pursuant to 38 U.S.C. 3121, to advise the Secretary of VA with respect to the administration of Veterans' rehabilitation programs. Nominations of qualified candidates are being sought to fill upcoming vacancies on the Committee. Committee members shall be appointed by the Secretary from the general public and shall serve for terms to be determined by the Secretary not to exceed three years.

Membership Criteria and Qualification: VACOR is requesting nominations for the upcoming vacancies on the Committee. The Committee is composed of up to twelve members and several ex-officio members. VBA is requesting nominations for upcoming vacancies on the Committee.

Members of the Committee are appointed by the Secretary from the general public, including but not limited to:

(1) Veterans with service-connected disabilities;

(2) Persons who have distinguished themselves in the public and private sectors in the fields of rehabilitation medicine, vocational guidance, vocational rehabilitation, and employment and training programs;

(3) Ex-officio members of the Committee shall include one representative from the Veterans Health Administration and one from the Veterans Benefits Administration; one representative each from the Rehabilitation Services Administration of the Department of Education, and the National Institute for Handicapped Research of the Department of Education; and one representative of the Assistant Secretary for Veterans' Employment and Training of the Department of Labor.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications. We ask that nominations include information of this type so that VA can ensure a balanced Committee membership.

Requirements for Nomination submission: Nominations should be typed (one nomination per nominator). Nomination package should include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating that he/she is a U.S. citizen and is willingness to serve as a member of the Committee;

(2) the nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) the nominee's curriculum vitae or resume; and

(4) a summary of the nominee's experience and qualifications relative to the membership considerations described above; and

(5) a statement confirming that he/she is not a federally registered lobbyist.

Individuals appointed to the Committee by the Secretary shall be invited to serve a three-year term. The Secretary may reappoint a member for an additional term of service. In accordance with Federal Travel Regulation, Committee members will receive travel expenses and a per diem allowance for any travel made in association with duties as members of the Committee and within federal travel guidelines. Self- nominations are acceptable. Any letters of nomination from organizations or other individuals should accompany the package when it is submitted. Non-Veterans are also eligible for nomination.

The Department makes every effort to ensure that the membership of VA Federal advisory committees is balanced

in terms of points of view represented and the committee's function. Appointments to this Committee shall be made without discrimination based on a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: October 27, 2022.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–23755 Filed 10–31–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Tuesday,

No. 210 November 1, 2022

Part II

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Automatic Commercial Ice Makers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0006]

RIN 1904–AD81

Energy Conservation Program: Test Procedure for Automatic Commercial Ice Makers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: In this final rule, the U.S. Department of Energy (''DOE'') amends the test procedure for automatic commercial ice makers to update incorporated references to the latest version of the industry standards; establish a relative humidity test condition; provide additional detail regarding certain test conditions, settings, setup requirements, and calculations; include a voluntary measurement of potable water use; clarify certification and reporting requirements; and add enforcement provisions. This final rule also provides additional detail to the DOE test procedure to improve the representativeness and repeatability of the current test procedure.

DATES: The effective date of this rule is December 1, 2022. The final rule changes will be mandatory for equipment testing starting October 27, 2023. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on December 1, 2022.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, 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, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-TP-0006.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Julia Hegarty, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0729. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards into part 431:

AHRI Standard 810 (I–P)–2016 with Addendum 1, ''Performance Rating of Automatic Commercial Ice-Makers,'' January 2018; and

ANSI/ASHRAE Standard 29–2015, ''Method of Testing Automatic Ice Makers,'' approved April 30, 2015.

AHRI standards can be obtained from the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, 703–524–8800, *ahri@ahrinet.org,* or *www.ahrinet.org.*

ASHRAE standards can be purchased from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE), 1791 Tullie Circle NE, Atlanta, GA 30329, (404) 636–8400, *ashrae@ashrae.org,* or *www.ashrae.org.* (Co-published with American National Standards Institute (ANSI).)

For a further discussion of these standards, see section IV.N of this document.

Table of Contents

I. Authority and Background
A. Authority
B. Background
II. Synopsis of the Final Rule
III. Discussion
A. Scope
B. Definitions
1. Refrigerated Storage ACIM
2. Portable ACIM
3. Industry Standard Definitions
C. Industry Test Standards Incorporated by Reference
D. Additional Amendments
1. Low-Capacity ACIMs
2. Stability Criteria
3. Test Conditions
4. Test Setup and Equipment Configurations
5. Modulating Capacity Ice Makers
6. Standby Energy Use and Energy Use Associated With Ice Storage
7. Calculations and Rounding Requirements
8. Potable Water Use
E. Representations of Energy Use and Energy Efficiency
1. Sampling Plan and Determination of Represented Values
2. Test Sample Value Rounding Requirements
3. Enforcement Provisions
F. Test Procedure Costs and Harmonization
1. Test Procedure Costs and Impact
2. Harmonization With Industry Standards
G. Effective and Compliance Dates
IV. Procedural Issues and Regulatory Review
A. Review Under Executive Orders 12866 and 13563
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act of 1995
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under Section 32 of the Federal Energy Administration Act of 1974
M. Congressional Notification
N. Description of Materials Incorporated by Reference
V. Approval of the Office of the Secretary

I. Authority and Background

Automatic commercial ice makers (''ACIMs'' or ''ice makers'') are included in the list of ''covered equipment'' for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(F)) DOE's energy conservation standards and test procedures for ACIMs are currently prescribed at 10 CFR 431.136 and 431.134, respectively. The following sections discuss DOE's authority to establish test procedures for ACIMs and relevant background information regarding DOE's consideration of test procedures for this 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 C[2] of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy

[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), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

efficiency. This equipment includes ACIMs, the subject of this document. (42 U.S.C. 6311(1)(F))

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. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) 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. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle (as determined by the Secretary) and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA prescribed the first Federal test procedure for ACIMs, directing that the ACIM test procedure shall be the AHRI Standard 810–2003, ''Performance Rating of Automatic Commercial Ice-Makers'' (''AHRI Standard 810–2003''). (42 U.S.C. 6314(a)(7)(A)) EPCA requires if AHRI Standard 810–2003 is amended, that DOE must amend the Federal test procedures as necessary to be consistent with the amended AHRI standard, unless DOE determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures to be representative of actual energy efficiency and to not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(7)(B)(i))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including ACIMs, 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))

If the Secretary determines, on her 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. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. 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. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6314(b)(1))

B. Background

DOE's existing test procedures for ACIMs appear at title 10 of the Code of Federal Regulations (''CFR''), part 431, § 431.134.

On March 19, 2019, DOE published a request for information (''RFI'') to solicit comment and information to inform DOE's determination of whether to propose amendments to the current ACIM test procedure. 84 FR 9979 (''March 2019 RFI''). Following the RFI and in consideration of the comments received, DOE published a notice of proposed rulemaking (''NOPR'') on December 21, 2021, to seek feedback on initial proposals. 86 FR 72322 (''December 2021 NOPR''). In the December 2021 NOPR, DOE proposed the following amendments to the test procedure:

(1) Updating the referenced methods of test to AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015, except for the provisions as discussed;

(2) Including definitions and test requirements for low-capacity ACIMs;

(3) Incorporating changes to improve test procedure representativeness, accuracy, and precision, which include: clarifying calorimeter constant test instructions; specifying ambient temperature measurement requirements; establishing a relative humidity test condition; establishing an allowable range of water hardness; clarifying the stability requirements that were updated in ASHRAE Standard 29–2015; clarifying water pressure requirements; and increasing the tolerance on capacity collection time;

(4) Specifying certain test settings, conditions, and installations, including: clarifying ice hardness test conditions; clarifying baffle use for testing; amending clearance requirements; clarifying automatic purge control settings; and providing instructions for testing ACIMs with automatic dispensers;

(5) Including voluntary provisions for measuring potable water use;

(6) Including clarifying language for calculations, rounding requirements, sampling plan calculations, and certification instructions; and

(7) Adding language to the equipment-specific enforcement provisions.

DOE received comments in response to the December 2021 NOPR from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE DECEMBER 2021 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	13	Trade Association.
Appliance Standards Awareness Project; American Council for an Energy-Efficient Economy; Natural Resources Defense Council.	ASAP, ACEEE, NRDC (Joint Commenters).	15	Efficiency Advocacy Organizations.
Hoshizaki America, Inc	Hoshizaki	14	Manufacturer.
Mile High Equipment Co. DBA Ice-O-Matic	Ice-O-Matic (IOM)	11	Manufacturer.
Pacific Gas and Electric Company; San Diego Gas and Electric; and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	16	Utilities.
Association of Home Appliance Manufacturers	AHAM	[3]18	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[4]

II. Synopsis of the Final Rule

In this final rule, DOE amends the representation provisions, product-specific enforcement provisions, and test procedure for ACIMs as follows:

(1) Updating the referenced methods of test to AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015, except for the provisions as discussed;

(2) Including definitions and test requirements for low-capacity ACIMs;

(3) Incorporating changes to improve test procedure representativeness, accuracy, and precision, which include: clarifying calorimeter constant test instructions; specifying ambient temperature measurement requirements; establishing a relative humidity test condition; clarifying the stability requirements that were updated in ASHRAE Standard 29–2015; and clarifying water pressure requirements;

(4) Specifying certain test settings, conditions, and installations, including: clarifying ice hardness test conditions; clarifying baffle use for testing; amending clearance requirements; clarifying automatic purge control settings; and providing instructions for testing ACIMs with automatic dispensers;

(5) Including voluntary provisions for measuring potable water use;

(6) Including clarifying language for calculations, rounding requirements, sampling plan calculations, and certification instructions; and

(7) Adding language to the equipment-specific enforcement provisions.

The adopted amendments are summarized in Table II.1 compared to the test procedure provisions prior to the amendment, as well as the reason for the adopted change.

TABLE II.1—SUMMARY OF CHANGES ESTABLISHED IN THIS FINAL RULE

Current DOE approach	Amended approach	Attribution
References industry standard AHRI Standard 810–2007 with Addendum 1 "2007 Standard for Performance Rating of Automatic Commercial Ice Makers" ("AHRI Standard 810–2007"), which refers to ANSI/ASHRAE Standard 29–2009 "Method of Testing Automatic Ice Makers," (including Errata Sheets issued April 8, 2010 and April 21, 2010), approved January 28, 2009 ("ASHRAE Standard 29–2009").	Updates reference to industry standard AHRI Standard 810 (I–P)–2016 with Addendum 1, which refers to ASHRAE Standard 29–2015.	Adopts latest industry standards.
Scope includes ACIMs with capacities between 50 and 4,000 lb/24 h.	Includes definitions for low-capacity ACIMs and expands test procedure scope to include low-capacity ACIMs with capacity less than or equal to 50 lb/24 h; includes additional instructions to allow for testing low-capacity ACIMs.	Ensures representative, repeatable, and reproducible measures of performance for ACIMs currently not in scope.
Does not specify the ambient & water temperature and water pressure when harvesting ice to be used in determining the ice hardness factor.	Specifies that the harvested ice used to determine the ice hardness factor must be produced at the Standard Rating Conditions presented in section 5.1.2 of AHRI Standard 810 (I–P)–2016 with Addendum 1.	Harmonizes with industry standard; improves representativeness, repeatability, and reproducibility.
Does not specify where to measure the temperature of the ice block used to determine the calorimeter constant.	Specifies that the temperature measurement location must be at approximately the geometric center of the block of ice and that any liquid water on the block of ice must be wiped off the surface prior to placement in the calorimeter.	Improves representativeness, repeatability, and reproducibility.

[3] DOE received AHAM's late comment on September 1, 2022, which was past the comment deadline of February 22, 2022. Although this comment was received 191 days after the close of the comment period, DOE has included the comment and responses in this final rule. AHAM indicated it did not file timely comments on the proposed test procedure because AHAM was not aware that the proposed test procedure included AHAM products in its scope. DOE has determined that AHAM's comments may provide a unique stakeholder perspective not included in other comments received during this rulemaking, and therefore DOE has considered them in this final rule despite the late submission.

[4] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for ACIMs. (Docket No. EERE–2017–BT–TP–0006, which is maintained at *www.regulations.gov*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II.1—SUMMARY OF CHANGES ESTABLISHED IN THIS FINAL RULE—Continued

Current DOE approach	Amended approach	Attribution
Capacity measurements begin after the unit has been stabilized.	All cycles or samples used for the capacity test must meet the stability criteria.	Clarifies industry test procedure ("TP") to reduce test burden while maintaining representative results; harmonize with industry standard.
Continuous ACIMs shall be considered stabilized when the weights of three consecutive 14.4-minute samples taken within a 1.5-hour period do not vary by more than ±2 percent.	Continuous ACIMs shall be considered stabilized when the weights of two consecutive 15.0 min ± 2.5 s samples having no more than 5 minutes between the end of a sample and the start of the next sample do not vary more than ±2 percent or 0.055 pounds, whichever is greater.	Harmonizes with industry TP update.
Does not specify relative humidity test condition	Adds an average minimum relative humidity test condition of 30.0 percent.	Improves representativeness, repeatability, and reproducibility.
Use of baffles and purge setting addressed in guidance..	Incorporates existing guidance into the test procedure; allows for an alternate ambient measurement location instead of shielding the thermocouple and for rear clearances which are less than the required inlet measurement distance.	Improves representativeness, repeatability, and reproducibility.
ACIMs shall be tested with a clearance of 18 inches on all four sides.	ACIMs shall be tested according to the manufacturer's specified minimum rear clearances requirements, or 3 feet from the rear of the ACIMs, whichever is less; all other sides of the ACIMs and all sides of the remote condensers, if applicable, shall be tested with a minimum clearance of 3 feet or the minimum clearance specified by the manufacturer, whichever is greater.	Improves representativeness, repeatability, and reproducibility and updates certain requirements to harmonize with industry standard.
Does not specify use of weighted/unweighted sensors to measure ambient temperature.	Specifies that unweighted sensors shall be used for all ambient temperature measurements.	Improves representativeness, repeatability, and reproducibility.
Does not specify how to measure water inlet pressure requirements.	Specifies that the water pressure shall be measured within 8 inches of the ACIM and within the allowable range within 5 seconds of water flowing into the ACIM.	Improves representativeness, repeatability, and reproducibility.
Does not specify how to collect capacity samples for ACIMs with dispensers.	Provides instruction to test certain ACIMs with an automatic dispenser with an empty internal bin at the start of the test and to allow for the continuous production and dispensing of ice, with samples collected from the dispenser through a conduit connected to an external bin one-half full of ice.	In response to waiver.
Does not specifically reference potable water usage	Includes voluntary reference to potable water use in 10 CFR 431.134 based on AHRI Standard 810 (I–P)–2016 with Addendum 1.	Harmonizes with industry standard; improves representativeness, repeatability, and reproducibility.
Rounds energy use in multiples of 0.1 kWh/100 lb and harvest rate to the nearest 1 lb/24 h.	Rounds energy use in multiples of 0.01 kWh/100 lb; rounds harvest rate to the nearest 0.1 lb/24 h for ACIMs with harvest rates of 50 lb/24 h or less.	Harmonizes with latest industry standard; improves representativeness, repeatability, and reproducibility.
Does not specify if intermediate values used in calculations should be rounded.	Clarifies that the calculations of intermediate values be performed with raw measured data and only the final results be rounded; clarifies that the energy use, condenser water use, and potable water use (if voluntarily measured) be calculated by averaging the calculated values for the three measured samples for each respective metric.	Improves representativeness, repeatability, and reproducibility.
Does not specify how to calculate the percent difference between two measurements.	Specifies that the percent difference between two measurements be calculated by taking the absolute difference between two measurements and divide by the average of the two measurements.	Improves representativeness, repeatability, and reproducibility.
References "maximum energy use" and "maximum condenser water use" at 10 CFR 429.45, no reference to water use in sampling plan.	Removes "maximum" from the referenced terms; adds reference to condenser water use in sampling plan.	Improves clarity.
Defines "maximum condenser water use" at 10 CFR 431.132.	Modifies the term and definition of "maximum condenser water use" to instead refer to the term "condenser water use".	Improves clarity.
Defines "cube type ice" at 10 CFR 431.132	Removes "cube type ice" from 10 CFR 431.132; removes reference to cube type ice in the definition of "batch type ice maker".	Improves clarity.
Does not specify how the represented value of harvest rate for each basic model should be determined based on the test sample.	The represented value of harvest rate for the basic model is determined as the mean of the harvest rate for each tested unit.	Improves representativeness, repeatability, and reproducibility.

TABLE II.1—SUMMARY OF CHANGES ESTABLISHED IN THIS FINAL RULE—Continued

Current DOE approach	Amended approach	Attribution
Does not specify rounding requirements for represented values in 10 CFR 429.45.	Specifies that represented values determined in 10 CFR 429.45 must be rounded consistent with the test procedure rounding instructions, upon the compliance date of any amended standards.	Improves representativeness, repeatability, and reproducibility.
No equipment-specific enforcement provisions	The certified harvest rate will be considered for determination of the energy consumption and condenser water use levels only if the average measured harvest rate is within five percent of the certified harvest rate, otherwise the measured harvest rate will be used to determine the applicable standards.	Improves clarity.

DOE has determined that while the amendments will introduce additional test requirements compared to the current approach, any impact to the measured efficiency of certified ACIMs is expected to be *de minimis.* For low-capacity ACIMs newly added within scope of the test procedure, testing according to the amended test procedure for purposes of certifications of compliance will not be required until the compliance date of any energy conservation standards for that equipment. However, if a manufacturer chooses to make representations of the energy efficiency or energy use of a low-capacity ACIM, beginning 360 days after publication of the final rule in the **Federal Register**, the manufacturer will be required to base such representations on the DOE test procedure. (42 U.S.C. 6314(d)(1)) While DOE does not expect that manufacturers will incur additional cost as a result of the amended test procedure, DOE provides a discussion of testing costs in section III.F.1 of this final rule. DOE has also determined that the amended test procedure will not be unduly burdensome to conduct. Discussion of DOE's amendments are addressed in detail in section III of this final rule.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based by testing in accordance with the amended test procedures beginning 360 days after the publication of this final rule.

III. Discussion

In the following sections, DOE describes the amendments to the test procedures for ACIMs. This reflects DOE's review of the updates to the referenced industry test procedures, the comments received in response to the March 2019 RFI and the December 2021 NOPR, and other relevant information.

A. Scope

DOE defines automatic commercial ice maker as a factory-made assembly (not necessarily shipped in 1 package) that: (1) consists of a condensing unit and ice-making section operating as an integrated unit, with means for making and harvesting ice and (2) may include means for storing ice, dispensing ice, or storing and dispensing ice. 10 CFR 431.132 (see also, 42 U.S.C. 6311(19)) The current DOE test procedure for ACIMs applies to both batch type and continuous type ice makers [5] with harvest rates between 50 and 4,000 lb/24 h. DOE further subdivides the batch type and continuous type equipment ACIM categories into several distinct equipment classes based on the equipment configuration, condenser cooling method, and harvest rate in pounds per 24 hours (lb/24 h), as shown in Table III.1. See also, 10 CFR 431.136(c) and (d). ACIM configurations include ice-making heads, remote condensing equipment (both with and without a remote compressor), and self-contained equipment. Ice-making heads and self-contained equipment can be either air- or water-cooled; however, DOE prescribes standards only for remote condensing equipment that are air-cooled. Self-contained ACIMs include a means for storing ice, while ice-making heads and remote condensing equipment are typically paired with separate ice storage bins. At 10 CFR 431.132, DOE defines these configurations, as well as several metrics related to ACIMs.

TABLE III.1—SUMMARY OF ACIM EQUIPMENT CLASSES

Equipment configuration	Condenser cooling fluid	Ice-making mechanism	Harvest rate (lb/24 h)
Ice-Making Head	Water	Batch	<300.
			≥300 and <850.
			≥850 and <1,500.
			≥1,500 and <2,500.
			≥2,500 and <4,000.
		Continuous	<801.
			≥801 and >2,500.
			≥2,500 and >4,000.
	Air	Batch	<300.
			≥300 and >800.
			≥800 and <1,500.
			≥1,500 and <4,000.
		Continuous	<310.

[5] A batch type ice maker is defined as an ice maker that has alternate freezing and harvesting periods, including ACIMs that produce cube type ice and other batch technologies. 10 CFR 431.132. Batch type ice makers also produce tube type ice and fragmented ice. A continuous type ice maker is defined as an ice maker that continually freezes and harvests ice at the same time. *Id.* Continuous type ice makers primarily produce flake and nugget ice.

TABLE III.1—SUMMARY OF ACIM EQUIPMENT CLASSES—Continued

Equipment configuration	Condenser cooling fluid	Ice-making mechanism	Harvest rate (lb/24 h)
Remote-Condensing (but not remote compressor).	Air	Batch	≥310 and >820.
			≥820 and <4,000.
		Continuous	<988.
			≥988 and <4,000.
			<800.
			≥800 and <4,000.
Remote-Condensing and Remote Compressor.	Air	Batch	<930.
			≥930 and <4,000.
		Continuous	<800.
			≥800 and <4,000.
Self-Contained	Water	Batch	<200.
			≥200 and <2,500.
			≥2,500 and <4,000.
		Continuous	<900.
			≥900 and <2,500.
			≥2,500 and <4,000.
	Air	Batch	<110.
			≥110 and <200.
			≥200 and <4,000.
		Continuous	<200.
			≥200 and <700.
			≥700 and <4,000.

The regulatory and statutory definitions of ACIM are not limited by harvest rate (*i.e.,* capacity). (*See* 10 CFR 431.132 and 42 U.S.C. 6311(19), respectively) However, the scope of DOE's test procedure is limited explicitly to ACIMs with capacities between 50 and 4,000 lb/24 h. 10 CFR 431.134(a). DOE is aware of ACIMs available in the market with harvest rates less than or equal to 50 lb/24 h (hereafter referred to as ''low-capacity ACIMs'').

DOE had previously considered test procedures for low-capacity ACIMs in a December 16, 2014, NOPR for test procedures for miscellaneous refrigeration products (''MREFs''). 79 FR 74894 (''December 2014 MREF Test Procedure NOPR'').[6] In a supplemental notice of proposed determination regarding miscellaneous refrigeration products coverage, DOE noted that a working group established to consider test procedures and standards for miscellaneous refrigeration products made two observations: (1) ice makers are fundamentally different from the other product categories considered as miscellaneous refrigeration products; and (2) ice makers are covered as commercial equipment and there is no clear differentiation between consumer and commercial ice makers. 81 FR 11454, 11456 (Mar. 4, 2016). In a 2016 final rule, DOE determined that ice makers were significantly different from the other product categories considered, and ice makers were not included in the scope of coverage or test procedure for miscellaneous refrigeration products. 81 FR 46773 (July 18, 2016).

As discussed, EPCA defines ''covered equipment'' to include certain types of ''industrial equipment,'' including automatic commercial ice makers. 42 U.S.C. 6311(1). EPCA defines ''industrial equipment'' to mean equipment, including automatic commercial ice makers, (1) which in operation consumes, or is designed to consume, energy, (2) which, to any significant extent, is distributed in commerce for industrial or commercial use; and (3) which is not a ''covered product'' as defined in 42 U.S.C. 6291(a)(2), other than a component of a covered product with respect to which there is in effect a determination under 42 U.S.C. 6312(c); without regard to whether such article is in fact distributed in commerce for industrial or commercial use. 42 U.S.C. 6311(2).

As discussed, the regulatory and statutory definitions of ACIM are not limited by harvest rate (s*ee* 10 CFR 431.132 and 42 U.S.C. 6311(19), respectively) and low-capacity ACIMs are not a covered product as defined in 42 U.S.C. 6291–6292. DOE has determined that low-capacity ACIMs are, to a significant extent, distributed in commerce for commercial use. DOE reviewed the low-capacity ACIM market and found that manufacturers specifically market certain low-capacity ACIMs for commercial use and/or using commercial air and water ambient rating conditions (*i.e.,* 90 °F air temperature and 70 °F water temperature which are the same air and water ambient rating conditions used in DOE's test procedures for ACIMs currently prescribed at 10 CFR 431.134)[7] and distributors sell low-capacity ACIMs for commercial use.[8] As such, notwithstanding that low-capacity ACIMs may also be distributed in commerce for personal use or consumption by individuals, low-capacity ACIMs meet the definition of ''industrial equipment'' and therefore are covered under the EPCA definition of ''covered equipment.''

In the December 2014 MREF Test Procedure NOPR, DOE stated it is aware that manufacturers are using the DOE ACIM test procedure to represent the energy use of consumer ice makers (*i.e.,*

[6] Available at *www.regulations.gov/document?D=EERE-2013-BT-TP-0029-0011.*

[7] See *www.scotsman-ice.com/service/Specs%20Sheets/2017/SIS-SS-CU0415_0117%20LR.pdf, http://www.hoshizaki.com/docs/color-specs/AM-50BAJ-(AD)DS.pdf, http://www.hoshizaki.com/docs/color-specs/IM-50BAA-Q.pdf, http://www.hoshizaki.com/docs/color-specs/C-80BAJ-(AD)DS.pdf, https://www.manitowocice.com/asset/?id=qsoqru&regions=us&prefLang=en, https://www.scotsman-ice.com/service/Specs%20Sheets/2018/SIS-SS-CU-CU50_0118%20LR.pdf, https://iom-stage.azurewebsites.net/getattachment/b06fdb7c-aaaa-4e5b-b5a6-b091e657a0d3/UCG060A-Spec-Sheet, and https://www.summitappliance.com/catalog/model/BIM44GCSS.*

[8] See *www.katom.com/cat/countertop-ice-makers.html?brand=Danby, https://www.katom.com/cat/undercounter-ice-makers.html?suggested_use=Commercial&production_range_lb%2Fday=1%20-%2099%20lbs, https://www.ckitchen.com/313767/ice-machine-with-bin.html?filter=type-of-cooling:air-cooled;4-hr-production:10-50lbs, https://www.webstaurantstore.com/13283/undercounter-ice-machines.html?filter=24-hour-ice-yield:38~102-pounds,* and *www.staples.com/ice+maker/directory_ice%2520maker.*

low-capacity ACIMs). 79 FR 74894, 74916. DOE also stated that it is unaware of any test procedure that has been specifically developed for consumer ice makers (*i.e.,* low-capacity ACIMs). *Id.*

In the December 2021 NOPR, DOE proposed a test procedure for low-capacity ACIMs and requested comment on the proposal to include test procedure provisions for low-capacity ACIMs within the scope of the ACIM test procedure. 86 FR 72322,72328.

In response to the December 2021 NOPR, the Joint Commenters responded that there are many low-capacity models on the market, and these units currently are not subject to DOE efficiency standards or test procedures. (Joint Commenters, No. 15, p. 1)

The CA IOUs and the Joint Commenters expressed support for DOE's proposal to include ACIMs with daily harvest rates below 50 lb/day into the scope of the test procedure, with the Joint Commenters adding that this will ensure any manufacturer claims about capacity and efficiency will be based on standardized test procedures to help purchasers make informed choices. (CA IOUs, No. 16, p. 1; Joint Commenters, No. 15, p. 1)

The CA IOUs stated that they believe extending the scope of the test procedure to low-capacity ice makers is a reasonable first step to a future rulemaking to set minimum energy efficiency standards for these low-capacity ACIM units. (CA IOUs, No. 16, p. 1)

Hoshizaki and AHRI stated that they do not agree with adding provisions for low-capacity ACIMs. (Hoshizaki, No. 14, p. 1; AHRI, No. 13, p. 2) AHAM stated that they do not agree with adding provisions for low-capacity ACIMs to the extent that they include consumer or residential ice makers. (AHAM, No. 18, p. 2) IOM stated that it supports the goal of developing an industry standard to allow for the consistent testing of low-capacity ACIMs.. (IOM, No. 11, p. 1) However, IOM, AHRI, and Hoshizaki stated that such a standard should be developed by an industry organization (ASHRAE 29 or AHRI 810) to determine proper methodology for consistent testing. (IOM, No. 11, p. 1; AHRI, No. 13, p. 2; Hoshizaki, No. 14, p. 1)

AHAM stated that DOE first examined establishing coverage for consumer stand-alone ice makers as part of the rulemaking to establish coverage for miscellaneous refrigeration products. (AHAM, No. 18, p. 2) AHAM noted that, per the recommendation of an Appliance Standards Rulemaking Advisory Committee (ASRAC) working group and its agreed-upon term sheet, DOE declined to cover consumer stand-alone ice makers as part of that rulemaking with the stated reasoning that those products were too different from the other products over which DOE was proposing to establish coverage under the miscellaneous refrigeration product category. *Id.* AHAM noted that the ASRAC stakeholders never suggested or determined that the difference between stand-alone small capacity ice makers and other miscellaneous refrigeration products was that ice makers were commercial equipment. (AHAM, No. 18, p. 3)

AHAM stated that consumer stand-alone ice makers are not automatic commercial ice makers. *Id.* AHAM stated that Congress intended to include only commercial products under the scope of ''automatic commercial ice makers'' as demonstrated by the word ''commercial'' and did not intend to cover residential/consumer products. *Id.* AHAM stated that, in EPCA, automatic commercial ice makers are included in 42 U.S.C. Part A–1 for ''Certain Industrial Equipment'', not Part A, which is for ''Consumer Products other than Automobiles''. *Id.* AHAM stated that automatic commercial ice makers fall under the EPCA definition of ''covered equipment'' which means that, as a threshold matter, it is a type of ''industrial equipment''. *Id.* AHAM commented that DOE's guidance states that ''consumer products and industrial equipment are mutually exclusive categories. An appliance model can only be considered commercial under the Act if it does not fit the definition of 'consumer product' ''.[9] (AHAM, No. 18, p. 4) AHAM states that stand-alone ice makers that are capable of making 50 pounds per day or less more squarely fit under DOE's definition of a consumer product and that residential ice makers that fit under the counter or on the countertop are regularly distributed in commerce for personal use or consumption by individuals. (AHAM, No. 18, p. 3)

AHAM commented that there are several distinguishing design features or characteristics of stand-alone or under-counter ice makers with low capacities including: space constraints, ice quality (*i.e.,* clear, cubed ice or nugget type ice), countertop designs (portable ice makers only), lack of connection to the water supply (portable ice makers only), infrequent and low ice usage, different durability requirements, different sanitary considerations, lack of requirement for National Sanitation Foundation (''NSF'') certifications/listings, different manufacturer warranties, and different safety standards (*i.e.,* Underwriters' Laboratories (''UL'') 60335–2–89, Particular Requirements for Commercial Refrigerating Appliances and Ice makers with an Incorporated or Remote Refrigerant Unit or Motor-Compressor and UL 60335–2–24, Particular Requirements for Refrigerating Appliances, Ice-Cream Appliances, and Ice Makers). (AHAM, No. 18, p. 4–6)

Hoshizaki commented that repeatability is key with low-production models where one cube or chunk could cause the test to be out of tolerance. (Hoshizaki, No. 14, p. 1) Hoshizaki stated that a very low-production machine could have 31% stability swings and could prove impossible to meet the stability threshold in the ASHRAE 29 test. *Id.*

In the December 2021 NOPR, DOE also requested comment on whether there are any industry test procedures for testing and rating low-capacity ACIMs, specifically asking about features specific to low-capacity ACIMs that might need addressed to produce results representative of an average use cycle. 86 FR 72322,72328.

Hoshizaki, AHRI, and AHAM commented they are not aware of any test procedures for low-capacity ice makers. (Hoshizaki, No. 14, p. 1; AHRI, No. 13, p. 2; AHAM, No. 18, p. 8) AHRI and Hoshizaki added that a study would be needed to determine a repeatable process to accurately represent ice capacity and energy use. *Id.* AHRI recommended DOE bring this to the ASHRAE Standard Project Committee (''SPC'') 29 for consideration. (AHRI, No. 13, p. 2)

As stated in the December 2021 NOPR, the energy performance of low-capacity ACIMs are typically either not specified or based on the existing ACIM industry test procedures. 86 FR 72322,72328. However, the lack of a DOE test procedure could allow for manufacturers to make performance claims using other unknown test procedures, which could result in inconsistent ratings from model to model. *Id.*

DOE is still unaware of an industry test procedure for testing and rating low-capacity ACIMs. Manufacturers continue to use the DOE ACIM test procedure to represent the energy use of low-capacity ACIMs or do not specify the energy use. DOE acknowledges the comments regarding including low-capacity ACIMs within scope of industry test standards and will consider any updated industry test

[9] *See https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/cce_faq.pdf.*

standards, if available, during future ACIM test procedure rulemakings.

DOE discusses stability requirements for low-capacity ACIMs in section III.D.1 of this final rule.

In response to AHAM's comments regarding low-capacity ACIMs, as previously stated, EPCA defines ''industrial equipment'' to mean equipment (1) which in operation consumes, or is designed to consume, energy, (2) which, to any significant extent, is distributed in commerce for industrial or commercial use; and (3) which is not a ''covered product'' as defined in 42 U.S.C. 6291(a)(2), other than a component of a covered product with respect to which there is in effect a determination under 42 U.S.C. 6312(c); without regard to whether such article is in fact distributed in commerce for industrial or commercial use. 42 U.S.C. 6311(2). DOE has determined that low-capacity ACIMs (1) consume energy; (2) are, to a significant extent, distributed in commerce for commercial use; and (3) are not covered products. As such, notwithstanding that low-capacity ACIMs may also be distributed in commerce for personal use or consumption by individuals, low-capacity ACIMs meet the definition of ''industrial equipment'' and therefore are covered under the EPCA definition of ''covered equipment.'' DOE has determined that establishing a test procedure for low-capacity ACIMs will allow purchasers to make more informed decisions regarding the performance of low-capacity ACIMs. DOE is amending the scope of the ACIM test procedure to include all automatic commercial ice makers with capacities up to 4,000 lb/24 h (*i.e.,* to include within the scope of the test procedure, low-capacity ACIMs with a harvest rate less than 50 lb/24 h). Under the amended test procedure, were a manufacturer to choose to make representations of the energy efficiency or energy use of a low-capacity ACIM, beginning 360 days after publication of the final rule in the **Federal Register**, manufacturers would be required to base such representations on the DOE test procedure. (42 U.S.C. 6314(d)(1))

B. Definitions

As noted, 10 CFR 431.132 provides definitions concerning ACIMs. DOE adds new definitions to support test procedure amendments elsewhere in this document, as discussed in the following paragraphs.

1. Refrigerated Storage ACIM

Typical self-contained ACIMs have an ice storage bin that is insulated but provides no active refrigeration. As a result, the ice melts at a certain rate and the ice maker must periodically replenish the melted ice. Conversely, some self-contained low-capacity ACIMs feature a refrigerated storage bin that prevents melting of the stored ice. Because of the additional refrigeration system components, ACIMs with a refrigerated storage bin (*i.e.,* refrigerated storage ACIMs) have different energy use characteristics than ACIMs without refrigerated storage.

In the December 2021 NOPR, DOE proposed to define ''refrigerated storage automatic commercial ice maker'' as an automatic commercial ice maker that has a refrigeration system that actively refrigerates the self-contained storage bin in 10 CFR 431.132 for refrigerated storage ACIMs. 86 FR 72322, 72328.

In the December 2021 NOPR, DOE requested comment on the proposed definitions for refrigerated storage automatic commercial ice maker. 86 FR 72322, 72328.

In response to the December 2021 NOPR, Hoshizaki commented that it is not aware of any standard, self-contained refrigerated storage commercial ice makers. (Hoshizaki, No. 14, p. 1)

AHRI commented it was unable to categorize this equipment class with the information provided and would appreciate clarification on this equipment class and the desired intent behind its potential inclusion. (AHRI, No. 13, p. 2) Hoshizaki additionally requested examples of this product, and requested that this be addressed in AHRI 810 and ASHRAE 29 for definition. (Hoshizaki, No. 14, p. 1)

As stated in the December 2021 NOPR, DOE included a definition of refrigerated storage ACIMs to effectively differentiate refrigerated storage ACIMs from ACIMs with unrefrigerated storage bins, and to support the proposed test provisions for refrigerated storage ACIMs. 86 FR 72322, 72328. An example of a refrigerated storage ACIM is the Whynter UIM–155.[10] To clarify and provide more information on the scope of the refrigerated storage ACIM definition, DOE has added ''ice'' to the definition to differentiate refrigerated storage ACIMs from other refrigeration equipment that is not intended only for ice storage, so the phrase at the end of the definition reads ''self-contained ice storage bin''.

DOE will consider any updated industry standards, if available, during future ACIM test procedure rulemakings.

DOE is modifying the definition of refrigerated storage automatic commercial ice maker in this final rule.

2. Portable ACIM

Some low-capacity ACIMs are ''portable'' and do not require connection to water supply plumbing to operate. Instead, these units contain a reservoir that the user manually fills with water prior to operation and must refill when it becomes empty. In the December 2014 MREF Test Procedure NOPR, DOE proposed to define ''portable ice maker'' as an ice maker that does not require connection to a water supply and instead has one or more reservoirs that would be manually supplied with water. 79 FR 74894, 74916. DOE noted that the lack of a fixed water connection and the small size of these units contribute to their portability. *Id.* DOE did not receive comments on the proposed definition for portable ice makers in response to the December 2014 MREF Test Procedure NOPR.

In the December 2021 NOPR, DOE proposed a definition for a portable ice maker as proposed in the December 2014 MREF Test Procedure NOPR, but with additional specification that ACIMs with an optional connection to a water supply line would not be considered portable ACIMs (*i.e.,* a unit would be considered portable if the water supplied to the unit is only via one or more reservoirs). 86 FR 72322, 72328. DOE proposed to define ''portable automatic commercial ice maker'' as an automatic commercial ice maker that does not have a means to connect to a water supply line and has one or more reservoirs that are manually supplied with water in 10 CFR 431.132. *Id.*

In the December 2021 NOPR, DOE requested comment on the proposed definition for portable automatic commercial ice maker. *Id.*

In response to the December 2021 NOPR, AHRI commented that the proposed definitions seemed reasonable. (AHRI, No. 13, p. 2–3) However, Hoshizaki and AHRI requested that DOE work with AHRI and ASHRAE to add this definition in both AHRI 810 and ASHRAE 29. (Hoshizaki, No. 14, p. 1–2; AHRI, No. 13, p. 2–3)

AHAM stated that portable ice makers are designed to fit on the countertop and rely on a reservoir instead of being plumbed into the water supply. (AHAM, No. 18, p.4)

The CA IOUs commented on two types of portable ACIMs: portable drawer ice machines and portable bin ice machines. (CA IOUs, No. 16, p. 3)

[10] *See www.whynter.com/product/uim-155/.*

The CA IOUs commented that portable drawer ice machines are designed without a door, and the ice drops directly from the evaporator into a drawer. *Id.* The CA IOUs stated that in this design, the user does not have to open a door to access the drawer. *Id.* The CA IOUs commented that portable bin ice machines are similar to traditional self-contained machines where the evaporator is in the bin itself; however, the evaporator uses a pipe trickle design to create semi-hollow or gourmet ice. *Id.* The CA IOUs noted that water can be filled directly into the evaporator in the portable bin ice machines, but both portable drawer and portable bin low-capacity ice machine designs can reuse ice-melt water to feed the evaporator. *Id.*

DOE notes that the proposed definition of portable automatic commercial ice maker does not distinguish between portable ACIMs with and without doors. DOE has also not identified any need to differentiate between these portable ACIM configurations for the purposes of testing. Therefore, all portable ACIMs would be included under this definition and any further categorization of portable ACIM equipment classes could be investigated in any energy conservation standards rulemaking for portable ACIMs.

DOE is maintaining the definition of portable automatic commercial ice maker in this final rule, consistent with the December 2021 NOPR.

3. Industry Standard Definitions

In addition to the definitions specified at 10 CFR 431.132, the current DOE test procedure at 10 CFR 431.134 references section 3, ''Definitions'' of AHRI Standard 810–2007, which includes many of the same terms DOE defines at 10 CFR 431.132 and 31.134. In the December 2021 NOPR, to avoid potential confusion regarding multiple definitions of similar terms, DOE proposed to clarify in 10 CFR 431.134 that where definitions in AHRI Standard 810 conflict with those in DOE's regulations, the DOE definitions take precedence. 86 FR 72322, 72328–72329.

AHRI Standard 810 (I–P)–2016 with Addendum 1 updated its definition of ''Energy Consumption Rate'' to require expressing the rate in multiples of 0.01 kWh/100 lb of ice. To maintain consistency with the industry standard, DOE proposed to incorporate this same rounding requirement in its definition of ''Energy use'' at 10 CFR 431.132 instead of the current requirement of multiples of 0.1 kWh/100 lb of ice. 86 FR 72322, 72328.

AHRI Standard 810 (I–P)–2016 with Addendum 1 also deleted its definition of ''Cubes Type Ice Maker'' and replaced it with a definition of ''Batch Type Ice-Maker.'' 86 FR 72322, 72328. To be consistent with this industry update, DOE proposed to remove the reference to cubes type ice maker in the definition of ''batch type ice maker'' in 10 CFR 431.132. *Id.* DOE also proposed to remove ''cube type ice'' from the list of DOE definitions at 10 CFR 431.132, consistent with the industry standard update. 86 FR 72322, 72329.

In the December 2021 NOPR, DOE requested comment on its proposal to amend 10 CFR 431.132 to revise the previously described definitions, consistent with updates to AHRI Standard 810 (I–P)–2016 with Addendum 1, additionally requesting feedback on the proposed clarification that the DOE definitions take precedence over any conflicting industry standard definitions. 86 FR 72322, 72329.

Hoshizaki agreed with this proposal, but requested that AHRI 810, ASHRAE 29, and 10 CFR 431.132 definitions be consistent. (Hoshizaki, No. 14, p. 2)

AHRI commented that the proposed definitions seemed reasonable, but stated that this should go to ASHRAE SPC 29 and AHRI standard 810 for consideration and inclusion. (AHRI, No. 13, p. 2–3)

DOE is amending 10 CFR 431.132 to revise the previously described definitions in this final rule. These updates are consistent with updates in the current industry standard AHRI Standard 810 (I–P)–2016 with Addendum 1. DOE is also maintaining in this final rule the clarification that the DOE definitions take precedence over any conflicting industry standard definitions, consistent with the December 2021 NOPR.

The following section discusses additional updates included in the latest versions of the industry standards.

C. Industry Test Standards Incorporated by Reference

The existing DOE ACIM test procedure incorporates by reference AHRI Standard 810–2007 and ASHRAE Standard 29–2009. 10 CFR 431.134(b). Since publication of the January 11, 2012 test procedure final rule (''January 2012 final rule''), both AHRI and ASHRAE have published new versions of the referenced standards. 77 FR 1591. The most recent versions are AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015 (reaffirmed in 2018). DOE has reviewed the most recent versions of both AHRI Standard 810 and ASHRAE Standard 29 and has compared the updated versions of these industry standards to those currently incorporated by reference in the ACIM test procedure.

The updates in ASHRAE Standard 29–2015 provide additional specificity to several aspects of the test method. In general, these updates increase the precision and improve the repeatability of the test method, but do not fundamentally change the testing process, conditions, or results. In addition, ASHRAE made several grammatical, editorial, and formatting changes to improve the clarity of the test method. DOE summarizes these changes in Table III.2.

TABLE III.2—SUMMARY OF CHANGES BETWEEN ASHRAE STANDARD 29–2009 AND ASRHAE STANDARD 29–2015

Requirement	ASHRAE standard 29–2009	ASHRAE standard 29–2015
Test Room Operations	None	No changes to the test room shall be made during operation of the ice maker under test that would impact the vertical ambient temperature gradient or the ambient air movement.
Temperature Measuring Instruments.	Accuracy of ±1.0 °F and resolution of ≤2.0 °F.	Accuracy and resolution of ±1.0 °F; where accuracy greater than ±1.0 °F, the resolution shall be at least equal to the accuracy requirement.
Harvest Water Collection	None	Harvest water shall be captured by a non-perforated pan located below the perforated pan.
Ice Collection Container Specifications.	''Perforated pan, bucket, or wire basket'' and ''non-perforated pan or bucket.''	Requirements regarding water retention weight and perforation size for perforated pans and ''solid surface'' for non-perforated pans.
Pressure Measuring Instruments	None	Accuracy of and resolution of ±2.0 percent of the quantity measured.
Sampling Rate	None	Maximum interval between data samples of 5 sec.

TABLE III.2—SUMMARY OF CHANGES BETWEEN ASHRAE STANDARD 29–2009 AND ASRHAE STANDARD 29–2015—Continued

Requirement	ASHRAE standard 29–2009	ASHRAE standard 29–2015
Supply Water Temperature and Pressure.	±1 °F (water supply temperature).	±1 °F (water supply temperature) and ''within 8 in. of the ice maker . . . within the specified range'' (water pressure) during water fill interval.
Inlet Air Temperature Measurement	Measure a minimum of 2 places, centered 1 ft from the air inlet(s).	Measure at a location geometrically center to the inlet area at a distance 1 ft from each inlet.
Clearances	18 inches on all sides	3 ft or the minimum clearance allowed by the manufacturer, whichever is greater.
Stabilization Criteria	Three consecutive 14.4 min samples (continuous) taken within a 1.5 hr period or two consecutive batches (batch) do not vary by more than ±2 percent.	Two consecutive 15.0 min ± 2.5 sec samples taken within 5 mins of each other within 2 percent or 0.055 lbs (continuous) or calculated 24-hour ice production rate from two consecutive batches within ±2 percent or 2.2 lb (batch).
Capacity Test Ice Collection	Three consecutive 14.4 min samples (continuous) or batches (batch).	Specifies that batch ice must be weighed 30 ± 2.5 sec after collection and continuous ice samples must be within 5 mins of each other.
Calorimetry Testing	(1) Room temperature is not specified. (2) To determine the calorimeter constant, 30 lbs of water must be added. (3) Rate of stirring is described as ''vigorously''. (4) To determine the calorimeter constant, 6 lbs of ice must be added. (5) The block of ice is seasoned at room temperature. A temperature measurement location is not specified for the block of ice. (6) To determine the calorimeter constant, it is not explicitly stated to continue stirring for 15 minutes after the ice has melted. (7) The calorimeter constant shall be determined twice, at the beginning and at the end of the daily tests. (8) The calorimeter constant shall be no greater than 1.02. (9) To determine the net cooling effect, the water must stand in the calorimeter for 1 min before adding harvested ice. (10) Section 7.2.3 specifies that the ice sample used for calorimetry testing shall be intercepted in a manner similar to that prescribed in section 7.2.2 (7.2.2 reads: Record the required data (see section 8).), except that the sample size shall be suitable for the test.	(1) Room temperature shall be within 65–75°F during the entire procedure. (2) To determine the calorimeter constant, add a quantity of water 5 times the mass of ice (see #4 below). (3) Rate of stirring is to be 1 ± 0.5 revolutions/second. (4) To determine the calorimeter constant, add a mass of ice between 50–200% of the rated ice production for a period of 15 minutes of the ice maker to be tested, or 6 lbs, whichever is less. (5) The block of pure ice must reach an equilibrium temperature measured by a thermocouple embedded in the interior of the block and free of trapped water. (6) To determine the calorimeter constant, continue stirring for 15 minutes after ice has disappeared. (7) The calorimeter constant shall be determined, at a minimum, each time the temperature measuring and weighting instruments are calibrated or if there is a change to the container or stirring apparatus. (8) The calorimeter constant must be within 1.0–1.02. (9) To determine the net cooling effect, stir the water for 15 minutes prior to the addition of the harvested ice. (10) Section 7.2.4 specifies that the ice sample used for calorimetry testing shall be intercepted using a non-perforated container, precooled to ice temperature, and collected from a stabilized ice maker over a time period of 15 min or until 6 lbs has been captured.
Recorded Data	Specifies 7 discrete elements be recorded.	Specifies that ambient temperature gradient (at rest), maximum air-circulation velocity (at rest), and water pressure must also be recorded.

DOE also reviewed the updates to AHRI Standard 810 (I–P)–2016 with Addendum 1 and identified the following revisions: new definitions for, among others, ice hardness factor and potable water use rate; and an updated rounding requirement for energy consumption rate (from 0.1 kilowatt hours per 100 pounds (''kWh/100 lb'') to 0.01 kWh/100 lb). The changes to AHRI Standard 810 (I–P)–2016 with Addendum 1 are primarily clerical in nature and provide greater consistency in the use of terms and specific definitions for those terms.

DOE also compared the latest version of ASHRAE Standard 29–2015 to the requirements in the current DOE test procedure in 10 CFR 431.134. These test methods specify different conditions for calorimetry testing of continuous ice makers. Specifically, the current DOE test procedure requires an ambient air temperature of 70 ± 1 °F, with an initial water temperature of 90 ± 1 °F. 10 CFR 431.134(b)(2)(ii). ASHRAE Standard 29–2015 states in appendix A3 that room temperature shall be kept between 65 °F and 75 °F, and that the water

temperature is 20 °F ± 1 °F above room temperature.

In the December 2021 NOPR, DOE tentatively determined that the current ambient and water condition requirements for calorimetry testing in the DOE test procedure are appropriate because they provide more precise and repeatable measurements than the tolerances described in ASHRAE Standard 29–2015. 86 FR 72322, 72331. Additionally, manufacturers have been meeting the requirements to maintain 70 °F ± 1 °F ambient air temperature and 90 °F ± 1 °F initial water temperature for calorimetry testing as part of the current DOE test procedure in 10 CFR 431.134. The current DOE test approach also is consistent with the industry test standard requirements, *i.e.,* a test performed at the DOE-required temperature conditions meets the temperature conditions specified in ASHRAE Standard 29–2015. Therefore, in the December 2021 NOPR, DOE did not propose to amend the 70 °F ± 1 °F ambient air temperature and 90 °F ± 1 °F initial water temperature requirements for calorimetry testing. 86 FR 72322, 72331. DOE proposed to explicitly provide that the harvested ice used to determine the ice hardness factor be produced at the Standard Rating Conditions specified in section 5.2.1 of AHRI Standard 810 (I–P)–2016 with Addendum 1. *Id.* These conditions are provided in the industry standard, indicating that they are currently used by manufacturers and therefore this clarification would not change how manufacturers test.

Additionally, added specificity may be needed to accurately determine the calorimeter constant. DOE has found that the lack of specificity as to the location of the temperature measurement of the block of pure ice may lead to variation in the resulting calorimeter constant. Therefore, in the December 2021 NOPR, DOE proposed to specify that the block of pure ice, as specified in section A2.e of ASHRAE Standard 29–2015, is measured by a thermocouple embedded at approximately the geometric center of the interior of the block. 86 FR 72322, 72331. Furthermore, DOE proposed to specify that any liquid water present on the block of ice must be wiped off the surface of the block before placing the block into the calorimeter. *Id.*

In the December 2021 NOPR, DOE proposed to adopt by reference AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015 (note that AHRI Standard 810 (I–P)–2016 with Addendum 1 refers to ASHRAE Standard 29–2015 and not the 2018 re-affirmed version) as the basis for DOE's ACIM test procedure, with additional proposed provisions as specified in the December 2021 NOPR. 86 FR 72322, 72331.

In the December 2021 NOPR, DOE requested comment on its proposal to maintain the current specifications for ambient air temperature and initial water temperature for calorimetry testing. 86 FR 72322, 72331. DOE additionally requested comment on its proposal to clarify that the harvested ice used to determine the ice hardness factor be collected from the ACIM under test at the Standard Rating Conditions specified in section 5.2.1 of AHRI Standard 810 (I–P)–2016 with Addendum 1. *Id.*

In response to the December 2021 NOPR, Hoshizaki commented that it does not agree with this change, and requested that any changes to the test procedure be brought to the ASHRAE 29 standard committee for clarification and acceptance. (Hoshizaki, No. 14, p. 2)

Similarly, AHRI commented that members are not opposed to this change but note that such a change must follow the proper channels and first be incorporated into the ASHRAE 29 method of test before being adopted into federal regulation. (AHRI, No. 13, p. 3)

AHAM commented that requiring the ice sample to be used for calorimetry testing be intercepted using a non-perforated container, precooled to ice temperature is not necessary because the measurement of ice sample weight is very quick (about five seconds) and will not reduce the accuracy due to the ice sample melting or evaporating. (AHAM, No. 18, p. 13) AHAM stated that this requirement does not add a large burden, but it is an unnecessary burden. *Id.*

The test approach proposed in the December 2021 NOPR is consistent with the industry test standard requirements and manufacturers have been meeting the requirements to maintain 70 °F ± 1 °F ambient air temperature and 90 °F ± 1 °F initial water temperature for calorimetry testing as part of the current DOE test procedure in 10 CFR 431.134.

DOE is maintaining in this final rule the current specifications for ambient air temperature and initial water temperature for calorimetry testing and clarifying that the harvested ice used to determine the ice hardness factor be collected from the ACIM under test at the Standard Rating Conditions specified in section 5.2.1 of AHRI Standard 810 (I–P)–2016 with Addendum 1.

Additionally, DOE requested comment on its proposal to clarify that the temperature of the block of pure ice, as specified in section A2.e. of ASHRAE Standard 29–2015, is measured by a thermocouple embedded at approximately the geometric center of the interior of the block. 86 FR 72322, 72331. DOE also requested comment on its proposal to clarify that any water that remains on the block of ice must be wiped off the surface of the block before placing the ice into the calorimeter. *Id.*

In response to the December 2021 NOPR, Hoshizaki requested that any clarification of wording in ASHRAE 29 be brought to the ASHRAE 29 standard committee for discussion and acceptance. (Hoshizaki, No. 14, p. 2)

AHRI encouraged DOE to bring any requests for clarification or interpretation to the proper industry working groups for consideration, since consistency and repeatability are of utmost importance to ensure that all original equipment manufacturers (''OEMs'') and testing bodies address these provisions in a constant manner. (AHRI, No. 13, p. 3)

The test approach proposed in the December 2021 NOPR is consistent with the industry test standard requirements and would limit variation in determining the calorimeter constant. Therefore, DOE is maintaining these clarifications in this final rule, consistent with the December 2021 NOPR.

Additionally, DOE requested comment on its proposal to adopt by reference AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015, except for the provisions for calorimetry testing as discussed previously, for all ACIMs. 86 FR 72322, 72331.

Hoshizaki and AHRI agreed to the adoption of AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE 29–2015. (Hoshizaki, No. 14, p. 2; AHRI, No. 13, p. 3) However, Hoshizaki supports adoption of the standards in their entirety with no exceptions, otherwise there is a risk that changes not reflected in the standards will not be realized by testers. (Hoshizaki, No. 14, p. 2) Hoshizaki and AHRI requested that any proposed changes be brought before the relevant standard committees for discussion and acceptance. (Hoshizaki, No. 14, p. 2)

DOE is adopting by reference AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015, except for the additional amendments as specified in this final rule. DOE has determined that the additional amendments are consistent with the test requirements in the industry standards but provide added specificity to limit variation in testing. These modifications are consistent with section 8(c) of 10 CFR part 430, subpart

C, appendix A (the ''Process Rule''), applicable to ACIMs under 10 CFR 431.4, which states that DOE may adopt industry test procedure standards with modifications, or craft its own procedures as necessary to ensure compatibility with the relevant statutory requirements, as well as DOE's compliance, certification, and enforcement requirements. Additional modifications to the industry standard test methods are discussed in the following sections.

D. Additional Amendments

As part of this rulemaking, DOE conducted testing to identify whether ASHRAE Standard 29–2015 and AHRI Standard 810 (I–P)–2016 with Addendum 1 could potentially benefit from additional detail and to investigate topics discussed in the March 2019 RFI and December 2021 NOPR. The testing and initial findings are discussed along with any corresponding amendments in the following sections.

1. Low-Capacity ACIMs

DOE examined the comments received in response to the December 2014 MREF Test Procedure NOPR to consider what test method would be appropriate for low-capacity ACIMs. During the December 2014 MREF Test Procedure NOPR public meeting, True Manufacturing commented that there are very few differences between ice makers with harvest rates less than 50 lb/24 h and those with harvest rates greater than 50 lb/24 h. (Public Meeting Transcript, No. EERE–2013–BT–TP–0029–0014 at p. 31) Hoshizaki commented in response to the December 2014 MREF Test Procedure NOPR that the ASHRAE 29 test needs to be evaluated for accuracy for units that make less than 50 lb/24 h, as they are outside the listed scope of the standard. (Hoshizaki, No. EERE–2013–BT–TP–0029–0011 at p. 1)

In the December 2021 NOPR, DOE evaluated the provisions in its existing ACIM test procedure to determine if any modifications are necessary to ensure the proposed test method would provide representative and repeatable measures of performance for low-capacity ACIMs and would not be unduly burdensome to conduct. 86 FR 72322, 72331. DOE also evaluated the provisions in AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015 to determine their applicability to low-capacity ACIMs. *Id.* During investigative testing of batch type low-capacity ACIMs, DOE observed that the ice collection container requirements in section 5.5.2(a) of ASHRAE Standard 29–2015 may not be appropriate for this equipment. Section 5.5.2(a) requires that the collection container have a water retention weight that is no more than 1.0 percent of that of the smallest batch of ice for which the container is used. For low-capacity batch type ACIMs, the weight of ice in each batch is significantly lower than for other higher capacity ACIMs. Accordingly, 1.0 percent of an individual batch represents a very small weight for low-capacity ACIMs. For example, one such low-capacity ACIM has a typical batch weight of 0.087 pounds; 1.0 percent of that would be 0.00087 pounds, the equivalent of 0.080 teaspoons of water. The water retention weight of a typical very small collection container is approximately 0.0030 pounds. DOE was not able to identify collection containers that would meet this threshold for the low-capacity ACIMs with the lowest batch weights.

From its test sample, DOE determined that a water retention weight of no more than 4.0 percent would allow for testing low-capacity ACIMs with the lowest batch weights with a typical collection container. Accordingly, in the December 2021 NOPR, DOE proposed that the water retention requirement in section 5.5.2(a) not apply to batch type low-capacity ACIMs, and instead to require a water retention weight of no more than 4.0 percent of the smallest batch of ice for which the container is used. 86 FR 72322, 72332.

During the January 24, 2022, webinar to discuss the December 2021 NOPR, AHRI commented that the water retention weight requirement for low-capacity ACIMs and DOE's test data should be considered by the method of test committee (*e.g.,* ASHRAE 29). (AHRI, January 24, 2022, webinar to discuss the December 2021 NOPR [11])

DOE will consider any updated industry standards, if available, during future ACIM test procedure rulemakings.

DOE is maintaining that the water retention requirement in section 5.5.2(a) of ASHRAE Standard 29–2015 not apply to batch type low-capacity ACIMs, and instead to require a water retention weight of no more than 4.0 percent of the smallest batch of ice for which the container is used, consistent with the December 2021 NOPR.

a. Portable ACIMs

For portable ACIMs, DOE has determined that some provisions for measuring and maintaining inlet water conditions in ASHRAE Standard 29–2015 are not appropriate: *i.e.,* sections 5.4, 5.6, 6.2, and 6.3. These sections include instrument specifications, test conditions, and measurement instructions regarding inlet water flow, pressure, and temperature. These sections are not applicable to portable ACIMs because such equipment does not have a fixed water connection, and therefore the conditions in these sections would not provide representative conditions for portable ACIMs. Portable ACIMs instead require that the fill reservoir be manually filled with a maximum volume of water that is recommended by the manufacturer.

To determine typical operation and the corresponding need for additional test procedure instructions regarding the water supply for portable ACIMs, DOE conducted tests on portable ACIMs according to the requirements of AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015, except for sections 5.4, 5.6, 6.2, and 6.3 of ASHRAE Standard 29–2015. From this testing, DOE has determined that additional instructions are needed regarding supply water characteristics and filling the water reservoirs in portable ACIMs.

Section 5.2.1 of AHRI Standard 810 (I–P)–2016 with Addendum 1 specifies an inlet water temperature of 70.0 °F for ACIM testing. Because portable ACIMs do not have a continuous water supply, the water filled in the water reservoir is not maintained at a constant temperature; the temperature may change after the initial fill based on heat transfer with the ambient air and the other components of the ACIM. Accordingly, DOE has determined that specifying only the initial fill temperature of the water supplied to the reservoir is most representative of typical use. In the December 2021 NOPR, DOE proposed to establish the initial water temperature in a separate external container before transferring the water to the water reservoir. 86 FR 72322, 72332. In DOE's experience, using an external container to establish and verify the initial water temperature is significantly less burdensome than measuring and adjusting the water temperature within the water reservoir itself. Therefore, in the December 2021 NOPR, DOE proposed that the initial water temperature condition be established in an external container and verified by inserting a temperature sensor into approximately the geometric center of the water in the external container. 86 FR 72322, 72332. The initial water temperature would be defined as 70 °F ± 1.0 °F, consistent with the condition as specified in section 5.2.1 of AHRI Standard 810 (I–P)–2016 with Addendum 1 and the tolerance as

[11] *See* pages 19–20; *www.regulations.gov/document/EERE-2017-BT-TP-0006-0012.*

specified in section 6.2 of ASHRAE Standard 29–2015. *Id.*

Portable ACIM users may have an option of filling the reservoirs to varying levels. To determine the appropriate fill level for testing, DOE reviewed operating instructions for portable ACIMs available from a range of manufacturers. DOE observed that the operating instructions typically instruct the user to fill to the maximum specified level, or to any level up to the maximum. To ensure repeatable and reproducible test results, DOE determined that filling the water reservoir to the maximum volume of water as specified by the manufacturer is representative of typical use. In addition, specifying a consistent fill level for testing at the maximum fill level would limit variability associated with reservoir water temperature and would ensure the portable ACIM has sufficient water to conduct the test.

In summary, in the December 2021 NOPR, DOE proposed that portable ACIMs be subject to the test procedure as proposed in the NOPR, except that sections 5.4, 5.6, 6.2, and 6.3 of ASHRAE Standard 29–2015 would not apply. 86 FR 72322, 72332. DOE proposed to provide the following additional test instructions necessary for testing portable ACIMs: ensure that the ice storage bin is empty; fill an external container with water; establish a water temperature in the external container that is consistent with the requirements of section 5.2.1 of AHRI Standard 810 (I–P)–2016 with Addendum 1 and the tolerance specified in section 6.2 of ASHRAE Standard 29–2015 (*i.e.,* 70 °F ± 1.0 °F); verify the water temperature in the external container by inserting a temperature sensor into approximately the geometric center of the water; after establishing water temperature, immediately transfer the water to the portable ACIM reservoir and fill the reservoir to the maximum level as specified by the manufacturer. *Id.*

DOE also determined that additional instructions are needed for portable ACIMs to meet the requirements of section 6.6 of ASHRAE Standard 29–2015, which requires that ''bins shall be used when testing and shall be filled one-half full with ice.'' Because section 6.6 of ASHRAE Standard 29–2015 does not specify how the bin would be filled with ice, a laboratory may fill the ice storage bin one-half full of externally produced ice (*i.e.,* ice that was made by a separate ACIM), for example to avoid waiting for the unit under test to produce enough ice to fill the bin one-half full prior to initiating the start of the test. Using externally produced ice does not directly affect the performance of a non-portable ACIM because the conditions within the ice storage bin do not have a direct impact on the incoming potable water temperature.

In contrast, the conditions within the ice storage bin of a portable ACIM do directly impact performance because portable ACIMs typically recycle the melt water (at 32 degrees) from the internal ice storage bin and combine it with water from the reservoir (initially at 70 degrees) to make additional ice. Accordingly, any externally produced ice introduced to a portable ACIM to fill the bin one-half full prior to testing could affect the performance of the system during the test when compared to the tested performance using ice produced by the portable ACIM under test.

To limit test variability that could occur due to the introduction of externally produced ice, in the December 2021 NOPR DOE proposed that for portable ACIMs, the ice storage bin must be empty prior to the initial water fill, and the unit under test must be operated to produce ice into the ice storage bin until the bin is one-half full (*i.e.,* precluding the use of externally produced ice to fill the bin one-half full prior to testing). 86 FR 72322, 72333. DOE proposed to define one-half full as half of the vertical dimension of the storage bin, based on the maximum possible fill level. *Id.* Once the ice storage bin is one-half full of ice, testing would proceed according to section 7 of ASHRAE Standard 29–2015, consistent with non-portable ACIM testing. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal regarding reservoir water and ice storage bin instructions for portable ACIMs. 86 FR 72322, 72332–72333.

Hoshizaki agreed with the proposal if the portable units have a way to collect the ice in a way not to confuse the ice made in each cycle from the ½ full bin. (Hoshizaki, No. 14, p. 2–3) Hoshizaki and AHRI requested that this be brought to the ASHRAE 29 standard committee for consideration. (Hoshizaki, No. 14, p. 2–3; AHRI, No. 13, p. 3)

AHRI commented that consistency and repeatability are of utmost importance to ensure that all manufacturers and testing bodies address these provisions in a constant manner. (AHRI, No. 14, p. 3)

AHAM commented that the 70 °F ± 1.0 °F tolerance requirement for the initial water temperature is unnecessarily tight for low-capacity ACIMs, including portable ACIMs, which adds unnecessary test burden. (AHAM, No. 18, p. 10–11) AHAM commented that the test procedure should specify that the water should be stirred to eliminate gradients that would naturally occur because some models recirculate melt water to the reservoir and that, for all low-capacity ACIMs, the temperature of the inlet water will vary throughout the entire test with little effect on the ultimate result. *Id.*

AHAM commented that the DOE's proposed test procedure for portable ACIMs does not specify that the bin should be emptied and dried out before the first 15-minute run, which AHAM suggests may be implicit in the proposed test procedure but should be stated clearly. (AHAM, No. 18, p. 12)

DOE notes that, in the December 2021 NOPR, DOE proposed that the ice storage bin is empty prior to the initial potable water reservoir fill and that the initial water temperature of 70 °F ± 1.0 °F for testing portable ACIMs is only required to be verified in an external container immediately before filling the portable ACIM water reservoir. 86 FR 72322, 72332–72333.

DOE testing has shown that portable ACIMs are able to have ice collected in a similar manner to non-portable ACIMs which distinguish the ice made in each cycle from the ice already present in the ice storage bin. DOE has additionally determined that the additional provisions regarding reservoir water fill are necessary to allow for testing of portable ACIMs.

DOE is maintaining the test requirements as proposed in the December 2021 NOPR for portable ACIMs in this final rule.

b. Refrigerated Storage ACIMs

DOE has determined that refrigerated storage ACIMs can be tested according to the current DOE ACIM test procedure as well as AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015. DOE investigated whether additional specification was necessary to ensure that these test methods would provide representative and repeatable results for refrigerated storage ACIMs and would not be unduly burdensome to conduct.

DOE identified two aspects of refrigerated storage ACIM testing that may need further specification to limit variability: door openings for refrigerated storage ACIMs and refrigeration set point controls.

Door opening durations may affect the measured performance of refrigerated storage ACIMs more than non-refrigerated storage ACIMs because the refrigeration system provides cooling for the entire self-contained storage bin rather than only for the ice making evaporator. Thus, when opening the storage container door to collect ice from refrigerated storage ACIMs, some

portion of cold air from the storage container will likely be replaced by higher temperature ambient air. Both the duration and the extent of the door opening can contribute to this air exchange within the storage container. Therefore, specifying the duration and the extent of the door opening would limit variability from test to test, thus promoting repeatable and reproducible test results.

From investigative testing, DOE has determined that the process of opening the bin door, carefully removing or replacing the ice collection container, and closing the door can be readily performed in under 10 seconds. Therefore, in the December 2021 NOPR, DOE proposed that for refrigerated storage ACIMs, any storage bin door openings shall be conducted with the door in the fully open position for 10 ± 1 seconds. 86 FR 72322, 72333. DOE proposed to specify that ''fully open'' means opened to an angle of not less than 75 degrees (or to the maximum angle possible, if that is less than 75 degrees), which is consistent with the definition for fully open in ANSI/ASHRAE Standard 72–2018, ''Method of Testing Open and Closed Commercial Refrigerators and Freezers.'' *Id.* To ensure a consistent number of door openings, DOE also proposed to specify that door openings would occur only when collecting the ice sample and when returning the empty collection container to the ice storage compartment (*i.e.,* two separate door openings per sample collection). *Id.*

Refrigeration set point controls may also affect the measured performance of refrigerated storage ACIMs, if the controls can be adjusted by the user to maintain different storage compartment temperatures. DOE investigated whether refrigerated storage ACIMs allow the user to adjust the refrigeration set point of the ACIM and if so, how. DOE reviewed user manuals for several refrigerated storage ACIMs and found that the models either do not allow the user to adjust the refrigeration set point, or have a factory preset temperature control that can be adjusted by the user, but not in an easily accessible manner (*e.g.,* temperature control screws adjustable only with a screwdriver or accessible behind grilles). The ability to adjust the refrigeration set point on some refrigerated storage ACIMs does not appear to be a setting that users would typically adjust and is likely used only for troubleshooting. Based on this information, DOE proposed in the December 2021 NOPR that the refrigeration set point for testing a refrigerated storage ACIM be consistent with section 4.1.4 of AHRI Standard 810 (I–P)–2016 with Addendum 1 (*i.e.,* per the manufacturer's written instructions with no adjustment prior to or during the test). 86 FR 72322, 72333.

In the December 2021 NOPR, DOE requested comment on its proposal to test refrigerated storage ACIMs consistent with AHRI Standard 810 (I–P)–2016 with Addendum 1, with the specified proposed door opening duration and frequency. 86 FR 72322, 72333. DOE requested comment on whether a specific refrigeration set point or internal air temperature should be specified instead of the manufacturer's factory preset. *Id.*

In response to the December 2021 NOPR, Hoshizaki and AHRI both requested DOE clarify refrigerated storage ACIMs and share examples before feedback can be given. (Hoshizaki, No. 14, p. 3; AHRI, No. 13, p. 4)

AHRI commented that ASHRAE 29 does not cover products installed in residential refrigerators or freezers, and if these are the type of systems being referred to as self-contained refrigerated storage ACIMs, the scope of both ASHRAE 29 and the DOE rulemaking would need to be expanded to cover such equipment. (AHRI, No. 13, p. 4) AHRI suggested that DOE clarify the equipment type and bring this issue to ASHRAE SPC 29 for consideration. *Id.* AHAM commented that DOE's proposed test procedure draws heavily from AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015 that were not developed with residential products in mind. (AHAM, No. 18, p. 9)

DOE is not referring to products installed in residential refrigerators or freezers in this Final rule. Refrigerated storage ACIMs are explicitly excluded from the freezer definition at 10 CFR 430.2 and differ from the refrigerator-freezer definition at 10 CFR 430.2 because refrigerated storage ACIMs only produce and store ice in a single compartment. Section III.B.1 provides further clarity and an example of refrigerated storage ACIMs.

Because DOE did not receive any comments regarding the refrigerated storage ACIM proposals, DOE is maintaining the test requirements as proposed in the December 2021 NOPR for refrigerated storage ACIMs in this final rule.

2. Stability Criteria

The current DOE test procedure, through reference to section 7.1.1 of ASHRAE Standard 29–2009, defines ACIM stability based on the harvest rate. Specifically, continuous type ice makers shall be considered stabilized when the weights of three consecutive 14.4-minute samples taken within a 1.5-hour period do not vary by more than ±2 percent. Batch type ice makers are considered stable when the weights from the samples from two consecutive cycles do not vary by more than ±2 percent.

a. Capacity Test Cycles or Samples

Section 7.1.1 of ASHRAE Standard 29–2015 revised the stabilization criteria to consider continuous type ice makers stable when the weights of two consecutive 15.0 minute ± 2.5 seconds samples do not vary by more than the greater of ±2 percent, or 0.055 pounds. Section 7.1.1. of ASHRAE Standard 29–2015 specifies that batch type ice makers are considered stable when the 24-hour calculated ice production rate from samples taken from two consecutive cycles do not vary by the greater of ±2 percent or 2.2 pounds. Compared to the 2009 version, ASHRAE Standard 29–2015 added absolute stability criteria of 0.055 lb/15 minutes for continuous equipment and 2.2 lb/24 h for batch equipment.

In addition, ASHRAE Standard 29–2009 states that the unit must be stable before the capacity tests are started. This provision was changed in ASHRAE Standard 29–2015, which instead states that the ice maker must be stable for capacity test data to be valid. In application, the stability provision in ASHRAE Standard 29–2009 means that any cycle or sample after the stability criteria is met is valid to be used for the capacity test. DOE notes that the applicability of the stability criteria in ASHRAE Standard 29–2015 could be understood in one of two ways: (1) Unchanged from ASHRAE Standard 29–2009, meaning that any cycle or sample after the stability criteria are met is valid to be used for the capacity test; or (2) the ice production rate for each cycle used for the capacity test relative to any other cycle or sample used for the capacity test must be within the greater of ±2 percent and 2.2 lb/24 h for batch type ice makers, and each sample used for the capacity test must be within the greater of ±2 percent and 0.055 lb/15 mins for continuous ice makers. The second interpretation limits potential variability compared to the first interpretation because it puts specific limits on the variability between cycles and samples to be used for the capacity tests. The difference in the potential interpretations of the stability provisions in ASHRAE Standard 29–2015 could result in variation in capacity ratings. Additionally, the second interpretation limits test burden by not requiring separate cycles for

meeting the stability criteria and for testing performance. Under the second interpretation, the same cycles are used to determine stability and performance. In the December 2021 NOPR, DOE proposed to expressly provide that the second interpretation be used for determining stability, such that all cycles or samples used for the capacity test are stable. 86 FR 72322, 72334. DOE does not expect that this proposal would impact ACIM performance as measured under the existing test procedure as it would not substantively change the cycles required for evaluating performance. *Id.*

In the December 2021 NOPR, DOE requested comment on its interpretation of section 7.1.1 of ASHRAE Standard 29–2015 and proposal to require that all cycles or samples used for the capacity test meet the stability criteria. 86 FR 72322, 72334.

Hoshizaki agreed that all cycles should meet the stability criteria. (Hoshizaki, No. 14, p. 3) AHRI commented that the stability criteria should match the requirements of ASHRAE 29. (AHRI, No. 13, p. 4)

AHRI commented that some units vary in performance each cycle due to water dump frequency by design, and DOE should ask the ASHRAE committee for an interpretation if DOE is concerned about ambiguity in ASHRAE 29. (AHRI, No. 13, p. 4)

IOM commented that this proposal would take the stabilization criteria further than ASHRAE Standard 29–2009 and ASHRAE Standard 29–2015, requiring that all cycles not differ by more than 2%. (Ice-O-Matic, No. 11, p. 1) IOM added that a dataset with small linear growth (100, 102, and 104 lb/24 hr) would not be considered stabilized under this DOE rule, while it would be considered stabilized under ASHRAE Standard 29–2015. *Id.* IOM commented that in practice it is not uncommon for units which achieved stabilization under ASHRAE Standard 29–2009 to produce capacity test samples which vary in excess of ±2 percent. *Id.* IOM stated that because allowable variance during capacity tests is already being reduced by changing from ASHRAE 29–2009 to ASHRAE 29–2015, IOM finds DOE's proposal to further reduce potential variance excessive, and believes it has the potential to increase test burden on manufacturers. *Id.* IOM generally supported using test cycles to also confirm stability following the requirements for stability as defined in ASHRAE Standard 29–2015. (IOM, No. 11, p. 3)

DOE has determined that clarifying the stability criteria specified in ASHRAE 29–2015 will produce test results that are more representative, repeatable, and reproducible. As indicated in the IOM comment, the current ASHRAE 29–2009 approach may introduce potential variability in test results. Additionally, reducing the number of cycles or samples required for the capacity test will reduce test burden by reducing total test time. DOE discusses test burden in section III.F.1 of this final rule.

Therefore, DOE is maintaining in this final rule its interpretation of section 7.1.1 of ASHRAE Standard 29–2015 and requirement that all cycles or samples used for the capacity test meet the stability criteria, consistent with the December 2021 NOPR.

b. Test Sample Duration

Section 7.1.1 of ASHRAE Standard 29–2015 added a requirement that the duration of each sample for continuous type ice makers be 15.0 minutes ±2.5 seconds. DOE testing indicated that removing the plastic pan or bucket within the tolerance of ±2.5 seconds can be difficult depending on the specific test setup (*e.g.,* removing the container from the ice maker or bin without spilling ice). An increased tolerance would reduce burden on manufacturers to test continuous ice makers, while still sufficiently limiting the variability between samples used for the capacity test to the criteria proposed.

In the December 2021 NOPR, DOE proposed to increase the tolerance to collect samples for continuous ice makers from 15.0 minutes ± 2.5 seconds to 15.0 minutes ± 9.0 seconds. 86 FR 72322, 72334. Increasing the tolerance to 9.0 seconds could affect the weight of each sample; however, variability would not increase because the samples used for the capacity test would still need to meet the proposed stability criteria. *Id.* With the 9-second tolerance, the maximum and minimum allowable collection times would vary by approximately 2 percent, which is consistent with the allowable variation in capacity to determine stability. *Id.* DOE expected that this proposal would reduce the test burden compared to the ASHRAE Standard 29–2015 approach and would ensure that valid samples can be obtained. *Id.* Additionally, in the December 2021 NOPR, DOE did not expect that this proposal would affect measured performance as compared to the existing test procedure because the sample collection period as proposed is not substantively different from the existing test procedure approach. *Id.*

In the December 2021 NOPR, DOE requested comment on the proposal to increase the tolerance for continuous ice makers to collect samples to 15.0 minutes ± 9.0 seconds. 86 FR 72322, 72334.

In response to the December 2021 NOPR, IOM commented in support of the proposal to increase the tolerance on sample collection for continuous ice makers. (Ice-O-Matic, No. 11, p. 1)

Hoshizaki and AHRI commented that they do not agree with the proposed change. (Hoshizaki, No. 14, p. 3; AHRI, No. 13, p. 4) Hoshizaki commented such time could impact high-capacity continuous models and have a significant impact on capacity and energy totals, and AHRI added that the proposed changes could impact the output depending on the capacity of the unit. *Id.* AHRI stated that this proposal could change the integrity of the test and would need further evaluation prior to being considered. *Id.*

AHRI added that the increase to ±9.0 seconds would allow high-capacity units to potentially collect a greater sample and while the test was not designed to be applied to low-capacity machines, the impact of this proposed change could be substantially less. *Id.*

Hoshizaki requests that further discussion be put through the ASHRAE 29 committee. (Hoshizaki, No. 14, p. 3)

DOE has re-evaluated its proposal and determined that although a greater tolerance would reduce test burden on manufacturers to test continuous ACIMs, the collection duration tolerance in ASHRAE 29–2015 provides a repeatable and reproducible method of test. DOE has determined that the specified tolerance included in ASHRAE 29–2015 demonstrates that manufacturers can meet the specified tolerance without the need for an increased tolerance. Therefore, DOE is declining to allow for a greater collection duration tolerance than the tolerance specified for continuous ACIMs in ASHRAE 29–2015 (*i.e.,* ±2.5 seconds).

c. Low-Capacity ACIM Stability Criterion

Section 7.1.1 of ASHRAE 29–2015 includes stabilization requirements, which specify: (1) For continuous ACIMs, collected weights must not vary by more than ±2 percent or 25 g (0.055 lb), whichever is greater; or (2) for batch ACIMs, the calculated 24-hour ice production rates must not vary by more than ±2 percent or 1 kg (2.2 lb), whichever is greater.

Based on investigative testing conducted as part of this rulemaking, DOE observed that the absolute stability criteria of 2.2 lb/24 h for batch type ice makers would not necessarily represent stable operation for low-capacity batch ACIMs. DOE conducted a market

assessment and observed batch low-capacity ACIMs with harvest rates as low as 7 lb/24 h. Based on this harvest rate of 7 lb/24 h, a 2.2 lb/24 h stability criteria could result in a harvest rate variation of up to 31 percent (*i.e.,* 2.2 lb/24 h divided by 7 lb/24 h). Because of the potential high variability in the stability criteria for low-capacity ACIMs, DOE proposed in the December 2021 NOPR to not apply the absolute stability criteria specified in ASHRAE 29–2015 to the proposed test procedure for low-capacity ACIMs. 86 FR 72322, 72334.

DOE also considered whether applying only the ±2 percent stability criterion would be appropriate for low-capacity ACIMs. Due to the lower overall ice harvest rates, a ±2 percent stability requirement represents much smaller weight variations for low-capacity ACIMs. For example, a 2 percent stability requirement for the 7 lb/24 h model represents a variation of 0.14 lb/24 h, which may be difficult to achieve for low-capacity ACIMs.

The ±2 percent stability requirement is also not currently applicable to the lowest capacity ACIMs currently in scope for the DOE test procedure (*i.e.,* the requirement is 2 percent or 2.2 lb/24 h, whichever is greater). Accordingly, the effective stability requirement for the lowest capacity ACIMs currently in scope is approximately 4 percent (*i.e.,* 2.2 lb/24 h divided by 50 lb/24 h). In the December 2021 NOPR, DOE determined that applying this same percentage (*i.e.,* 4 percent) as the low-capacity ACIM stability requirement would be more appropriate than applying either the 2 percent or 2.2 lb/24 h stability requirements currently defined in section 7.1.1 of ASHRAE 29–2015. 86 FR 72322, 72334. DOE observed through testing that low-capacity ACIMs are able to achieve stability based on a 4 percent requirement. *Id.*

Therefore, for consistency (on a percentage basis) with the ASHRAE 29–2015 test requirements for the lowest capacity ACIMs currently in scope and to limit test burden, in the December 2021 NOPR, DOE proposed to require a ±4 percent stability criterion (without an absolute stability criterion) for testing low-capacity ACIMs. 86 FR 72322, 72334.

In the December 2021 NOPR, DOE requested comment on the proposal to require that all cycles or samples of low-capacity ACIMs used for the capacity test meet a ±4 percent stability criterion and not be subject to an absolute stability criterion. 86 FR 72322, 72334.

In response to the December 2021 NOPR, Hoshizaki and AHRI requested that this proposal be brought to the ASHRAE 29 standard committee with supporting testing to show that this stability is necessary and adequate for these products since currently they are outside of the scope, and that ASHRAE 29 was not developed for low-capacity ACIMs. (Hoshizaki, No. 14, p. 3; AHRI, No. 13, p. 4–5) AHRI added that the units should not be allowed to bypass stability requirements currently in the standard simply because the method of test has not been designed to incorporate such units. (AHRI, No. 13, p. 4–5) AHRI commented that members do not currently have testing data to show that 4 percent would be accurate or comparable for this equipment type. *Id.*

AHAM commented in support of the ±4 percent stability criterion for low-capacity ice makers. (AHAM, No. 18, p. 11) AHAM stated that DOE's ACIM energy conservation standards or test procedure need a method to account for this planned variation such that the variation does not penalize manufacturers when the test procedure is used for enforcement purposes. *Id.*

DOE observed from testing of low-capacity ACIMs to support the December 2021 NOPR that a ±4 percent stability criterion is appropriate and ensures representative, repeatable, and reproducible measures of performance for low-capacity ACIMs. A ±4 percent stability criterion is consistent with the absolute stability requirements from ASHRAE 29–2015 for the lowest capacity ACIMs currently in scope (*i.e.,* 2.2 lb/24 h divided by 50 lb/24 h). A ±4 percent stability criterion does not bypass any requirement because low-capacity ACIMs are not currently subject to the DOE test procedure and are not within the scope of ASHRAE 29–2009 or ASHRAE 29–2015. DOE will consider any updated industry standards, if available, during future ACIM test procedure rulemakings. DOE discusses enforcement provisions for ACIMs in section III.E.3 of this final rule.

DOE is maintaining in this final rule the requirement that all cycles or samples of low-capacity ACIMs used for the capacity test meet a ±4 percent stability criterion and not be subject to an absolute stability criterion, consistent with the December 2021 NOPR.

3. Test Conditions

The DOE test procedure specifies standard test conditions to ensure that test results reflect energy use during a representative average use cycle and are not unduly burdensome for manufacturers to perform.

DOE discusses test conditions, including tolerances and instrumentation accuracies, in the following sections.

a. Relative Humidity

Variation in the moisture content of ambient air may affect the energy consumption of automatic commercial ice makers. However, neither the current DOE test procedure, nor AHRI Standard 810 (I–P)–2016 with Addendum 1 or ASHRAE Standard 29–2015 include requirements to control for moisture content for testing. In contrast, industry test standards for other refrigeration equipment, such as commercial refrigerators, freezers and refrigerator-freezers (''CRE'') and refrigerated bottled or canned beverage vending machines (''BVMs''), have requirements for the moisture content.

In the December 2021 NOPR, DOE presented data from three ACIMs tested at relative humidity levels of 35, 55, and 75 percent at the standard rating conditions to investigate the effect of relative humidity on energy use, as replicated in Table III.3. 86 FR 72322, 72335. The results showed a wide range of impacts on energy use among the three tested units when relative humidity is varied. *Id.* Test Unit 1 showed less than 1 percent variation in energy use among the three relative humidity test conditions. *Id.* Whereas, Test Unit 2 showed a 35 percent difference in energy use between the 35 percent and 75 percent relative humidity test conditions. *Id.* Test Unit 3 showed a 4 percent difference in energy use between the 35 percent and 75 percent relative humidity conditions. *Id.* DOE stated in the December 2021 NOPR that it was unable to determine why Test Unit 2 showed significantly greater variation in performance compared to the other test units. *Id.* In summary, these results indicated that for certain ACIM models, relative humidity has a significant impact on measured energy use.

TABLE III.3—COMPARISON OF ENERGY USE RATES AT DIFFERENT RELATIVE HUMIDITY TEST CONDITIONS AS PRESENTED IN THE DECEMBER 2021 NOPR

Test unit	Type	35% relative humidity (kWh/100 lb)	55% relative humidity (kWh/100 lb)	75% relative humidity (kWh/100 lb)	Difference from 35% relative humidity to 55% relative humidity (%)	Difference from 35% relative humidity to 75% relative humidity (%)
1	Batch	8.27	8.28	8.28	+0.2	+0.2
2	Batch	8.47	10.49	11.47	+24	+35
3	Continuous	4.27	Not Tested	4.43	N/A	+4

In the December 2021 NOPR, DOE considered relative humidity test conditions for ACIMs by comparing the test conditions required for testing other types of commercial food service equipment, including CRE, BVMs, and refrigerated buffet and preparation tables. 86 FR 72322, 72335. In particular, DOE compared the moisture content level corresponding to the combination of ambient temperature and relative humidity specified for these other equipment types. *Id.* DOE summarized these test condition requirements along with the proposed relative humidity test condition of 35 percent for ACIMs, as replicated in Table III.4. *Id.*

TABLE III.4—COMPARISON OF RELATIVE HUMIDITY TEST CONDITIONS AS PRESENTED IN THE DECEMBER 2021 NOPR

Equipment type	Test standard	Ambient temperature (°F)	Wet Bulb temperature (°F)	Relative humidity (percent)	Corresponding moisture content (lbs water vapor/lbs dry air)
Commercial Refrigeration Equipment.	ASHRAE 72–2005†	75.2	64.4	* 55	0.010
Refrigerated Beverage Vending Machines.	ASHRAE 32.1–2010†	75	No requirement	45	0.008
Refrigerated Buffet and Preparation Tables.	ASTM Standard F2143–2016	86	No requirement	35	0.009
Automatic Commercial Ice Makers.	Proposed	90	No requirement	** 35	0.011

* The relative humidity for commercial refrigeration equipment is calculated from the dry bulb temperature and the wet bulb temperature using a pressure of 760 mm of mercury.
** Proposed test condition.
† The test conditions currently incorporated by refence in the DOE test procedures are unchanged in the most recent versions of the industry standards, ASHRAE 72–2018 and ASHRAE 32.1–2017.

Based on these considerations, DOE proposed to require a relative humidity test condition of 35 percent for ACIM testing. 86 FR 72322, 72335. As indicated in Table III.4, the proposed relative humidity condition of 35 percent, in combination with the ambient air condition of 90 °F, would correspond to a moisture content of 0.011 lbs water vapor/lbs dry air. This would closely match the moisture contents associated with the test procedures for the other types of commercial food service equipment.

In the December 2021 NOPR, DOE also investigated appropriate tolerances to specify for the relative humidity test condition. 86 FR 72322, 72336. DOE considered a test condition tolerance and test operating tolerance on relative humidity. *Id.* A test condition tolerance is a tolerance that is calculated based on the average of all relative humidity measurements during each freeze cycle. *Id.* In contrast, a test operating tolerance would apply to all individual measurements during each cycle. *Id.* The industry standards referenced in Table III.4, ASHRAE 72–2018, ASHRAE 32.1–2017, and ASTM Standard F2143–2016, all require a test condition tolerance. *Id.* ASHRAE 72–2018 is the only standard mentioned in Table III.4 that also requires a test operating tolerance. *Id.*

DOE also investigated typical accuracies of relative humidity sensors, finding that accuracies of ±2.0 percent are typical for relative humidity sensors. *Id.* Additionally, DOE noted that its test procedure for BVMs requires a relative humidity instrument accuracy of ±2.0 percent for a test condition tolerance of ±5.0 percent. See section 1.1 of appendix B to subpart Q of 10 CFR part 431. *Id.* Similarly, section 6.3 of ASTM Standard F2143–2016 also requires a relative humidity instrument accuracy of ±2.0 percent for a test condition tolerance of ±5.0 percent. *Id.*

Based on this analysis, DOE proposed a relative humidity test condition tolerance of ±5.0 percent. *Id.* DOE also proposed to require a relative humidity instrument accuracy of ±2.0 percent. *Id.*

In summary, DOE proposed to require a relative humidity test condition of 35 percent. 86 FR 72322, 72335. DOE proposed that the relative humidity be maintained and measured at the same location used to confirm ambient dry bulb temperature, or as close as the test setup permits. 86 FR 72322, 72336. DOE proposed to add a test condition tolerance on the proposed relative humidity test condition of ±5.0 percent. *Id.* DOE proposed to require a relative humidity instrument accuracy of ±2.0 percent. *Id.* DOE stated in the December 2021 NOPR that it did not expect the proposal to affect measured performance of existing ACIM models. *Id.*

DOE requested comment on the proposal to control relative humidity at

35 ± 5.0 percent. 86 FR 72322, 72336. Specifically, DOE requested comment on the representativeness of 35 percent relative humidity in field use conditions, whether manufacturers currently control and measure relative humidity for ACIM testing (and if so, the conditions used for testing), and the burden associated with controlling relative humidity within a tolerance of ±5.0 percent. *Id.*

In response to the December 2021 NOPR, Hoshizaki and AHRI commented that due to inherent humidity caused by ice makers in the production of ice, the control of relative humidity has been left out of the test protocols currently used (*e.g.,* ASHRAE 29). (Hoshizaki, No. 14, p. 3; AHRI, No. 13, p. 5) AHRI, Joint Commenters, Hoshizaki, IOM, The Legacy Companies, and Manitowoc Ice commented that ACIMs respond differently to the humidity of ambient air than other refrigerated equipment because the evaporator is in a wetted setting, so units are not greatly affected by humidity changes during testing. (AHRI, No. 13, p. 5; Joint Commenters, No. 15, p. 1; Hoshizaki, No. 14, p. 3; IOM, No. 11, p. 2; The Legacy Companies, January 24, 2022 webinar to discuss the December 2021 NOPR; [12] Manitowoc Ice, January 24, 2022 webinar to discuss the December 2021 NOPR) [13] AHRI and added that units are designed to handle these conditions and that humidity control is not necessary (AHRI, No. 13, p. 5; AHAM, No. 18, p. 12).

IOM and The Legacy Companies commented that they do not support the proposal to control humidity. (IOM, No. 11, p. 2; The Legacy Companies, January 24, 2022 webinar to discuss the December 2021 NOPR) [14] Joint Commenters commented that ACIM test chambers typically do not control the relative humidity of ambient air. (Joint Commenters, No. 15, p. 1) IOM commented that they do not control for or measure humidity levels in its environmental chambers. (IOM, No. 11, p. 2) Welbilt commented that they do not have humidity control in their test chambers and that ACIM test chambers are often very specialized because of the range of ambient conditions that are needed to test ACIMs whereas CRE test chambers are typically used for testing at one or two ambient conditions. (Welbilt, January 24, 2022 webinar to discuss the December 2021 NOPR) [15]

AHRI, Hoshizaki, IOM, Joint Commenters, and Manitowoc Ice commented that test data should be reviewed and validated to confirm the need for relative humidity control. (AHRI, Public Meeting Transcript, No. EERE–2017–BT–TP–0006–0012 at p. 29; Hoshizaki, No. 14, p. 3; IOM, No. 11, p. 2; Joint Commenters, No. 15, p. 1–2; Manitowoc Ice, January 24, 2022 webinar to discuss the December 2021 NOPR) [16] AHAM commented that DOE's testing is not sufficient to justify its proposed requirement. AHAM, No. 18, p. 13. Joint Commenters added that DOE should conduct additional relative humidity testing and if a large performance difference for some units is confirmed, then a relative humidity requirement is needed to ensure the reproducibility of the test procedure. (Joint Commenters, No. 15, p. 1–2)

AHRI, Hoshizaki, IOM, Welbilt, and Joint Commenters commented that a relative humidity of 35 percent may be unrepresentative of the variety of environments housing ACIMs. (AHRI, No. 13, p. 5; Hoshizaki, No. 14, p. 3; IOM, No. 11, p. 2; Welbilt, January 24, 2022 webinar to discuss the December 2021 NOPR; [17] Joint Commenters, No. 15, p. 2) IOM added that commercial kitchens may have humidity much higher than 35 percent, front-of-house locations may be lower than 35 percent, and ACIMs utilizing a remote condenser may see humidity anywhere between 15 and100 percent. (IOM, No. 11, p. 2)

AHRI commented that the ambient temperatures would also vary greatly by application and such a humidity would be difficult to control while entering the test chamber for sample collection. (AHRI, No. 13, p. 5) IOM believes that a ±5 percent tolerance is too narrow and would be difficult to control during tests. (IOM, No. 11, p. 2) IOM suggested a ±10 percent tolerance if humidity is controlled. *Id.*

AHRI, IOM, and Welbilt asserted that the addition of humidity control requirements would impose undue burden to OEMs and testing facilities without benefiting the efficiency or testing of ACIMs. (AHRI, No. 13, p. 5; IOM, No. 11, p. 2; Welbilt, January 24, 2022 webinar to discuss the December 2021 NOPR [18]) AHRI, IOM, and Welbilt commented that it would also be extremely costly to add humidity control upgrades to testing laboratories for little wielded benefit. *Id.* Hoshizaki commented that full costs should be considered in adding this to the test criteria along with the cost to retest all products that currently do not have humidity control in their test. (Hoshizaki, No. 14, p. 3)

Hoshizaki requested that this be addressed in the ASHRAE 29 standard committee for consensus. (Hoshizaki, No. 14, p. 3)

DOE has reviewed and confirmed the validity of the test data from the three units presented in the December 2021 NOPR.

DOE has also conducted further analysis of the test data from Test Unit 2 to further investigate that unit's significant variation in energy use among the different relative humidity test conditions. DOE notes that during the January 24, 2022 webinar to discuss the December 2021 NOPR, True Manufacturing commented in response to a request for comment about the relative humidity test condition that some ACIMs that have poor insulation may inadvertently make ice on the back side of the evaporator plate or other unwanted areas, which could possibly decrease the harvest rate.[19] Indeed, DOE observed for Test Unit 2 that the 75 percent relative humidity test had additional drain water collected during the freeze cycles compared to the 35 percent relative humidity test. DOE investigated whether this additional drain water could have resulted from additional condensation of moisture at the higher relative humidity, and whether the higher energy use for Test Unit 2 at the 75 percent relative humidity test condition may correspond to such additional condensate being produced at that test condition. If so, this would indicate that the higher energy use was directly related to the relative humidity test condition.

Based on the technical characteristics of Test Unit 2, DOE calculated the theoretical amount of additional energy use that would be required by Test Unit 2 to condense the amount of additional drain water measured.[20] DOE compared

[12] *See* pages 30–31; *www.regulations.gov/document/EERE-2017-BT-TP-0006-0012.*

[13] *See* pages 32–33; *www.regulations.gov/document/EERE-2017-BT-TP-0006-0012.*

[14] *See* pages 30–31; *www.regulations.gov/document/EERE-2017-BT-TP-0006-0012.*

[15] *See* pages 29–30; *www.regulations.gov/document/EERE-2017-BT-TP-0006-0012.*

[16] *See* pages 32–33; *www.regulations.gov/document/EERE-2017-BT-TP-0006-0012.*

[17] *See* pages 29–30; *www.regulations.gov/document/EERE-2017-BT-TP-0006–0012.*

[18] *See* pages 29–30; *www.regulations.gov/document/EERE-2017-BT-TP-0006-0012.*

[19] *See* pages 34–35; *www.regulations.gov/document/EERE-2017-BT-TP-0006-0012.*

[20] DOE calculated the additional amount of heat removal required from the evaporator of Test Unit 2 to condense the same amount of moisture from the surrounding air that was observed in the additional drain water from the 75% relative humidity test. Subsequently, DOE calculated the additional amount of compressor, sump pump, and condenser fan motor energy and additional freeze cycle duration that would be necessary to remove this additional heat based on the Test Unit 2's compressor specification data at an assumed

Continued

the resulting theoretical amount of additional energy use to the measured amount of additional energy use. Table III.5 shows the average measured drain water (in lbs) and the average measured energy use (in kWh) of the freeze cycles for Test Unit 2. Table III.6 shows the comparison of these measured values to the theoretical amount of additional energy use that would be required by Test Unit 2 to condense this amount of additional drain water, as calculated by DOE.

TABLE III.5—SUMMARY OF DRAIN WATER AND ENERGY USE MEASUREMENTS FOR TEST UNIT 2

Cycle description	35% relative humidity	75% relative humidity	Difference between 35% and 75% relative humidity
Freeze cycle drain water (lbs)	0.59	1.01	0.43
Freeze cycle energy use (kWh)	0.21	0.32	0.11

TABLE III.6—COMPARISON OF THEORETICAL ADDITIONAL ENERGY USE TO MEASURED ADDITIONAL ENERGY USE FOR TEST UNIT 2

Cycle description	Measured difference between 35% and 75% relative humidity	Theoretical energy use required to produce 0.43 lbs of condensate
Freeze cycle energy use (kWh)	0.11	0.12

As indicated in Table III.6, DOE's calculated approach to determine the additional energy use required to condense the amount of additional drain water measured closely matched the measured approach. This indicates that the additional energy use at the 75 percent relative humidity test condition was likely due to the difference in condensed moisture accumulated at the 75 percent test condition, thus supporting that the relative humidity level during the test may have a direct impact on measured energy performance.

DOE also evaluated additional test data from previous investigative ACIM testing to further confirm the effects of relative humidity on measured energy use. DOE previously tested four batch style ACIMs at 55 and 75 percent relative humidity using the standard rating conditions specified in AHRI 810. Although this testing was not conducted at 35 percent relative humidity, the test data is instructive on whether a difference in relative humidity affects ACIM performance. Table III.7 summarizes the results of this previous testing.

TABLE III.7—COMPARISON OF ENERGY USE RATES AT DIFFERENT RELATIVE HUMIDITY TEST CONDITIONS

Test unit	Type	55% relative humidity (kWh/100 lb)	75% relative humidity (kWh/100 lb)	Difference from 55% relative humidity to 75% relative humidity (%)
4	Batch	9.45	9.30	−1.6
5	Batch	17.47	21.58	+23.5
6	Batch	30.33	30.56	+0.8
7	Batch	40.46	40.49	+0.1

These results show that for some ACIM models, a difference in relative humidity makes very little impact on ACIM performance, but for other models, a difference in relative humidity makes a significant impact on ACIM performance. Considering the three tested units presented in the December 2021 NOPR in addition to these four units, out of a total test sample of 7 ACIMs, relative humidity had a significant impact on ACIM performance for at least two ACIMs. This suggests that a difference in relative humidity may affect a substantial portion of the ACIM market.

As summarized previously in this section, comments received in response to the December 2021 NOPR indicate that certain manufacturers do not measure relative humidity of the ambient air during testing, and that ACIM test chambers typically do not control the relative humidity of the ambient air. Commenters also generally suggested defining a broader tolerance as compared to the proposed tolerance of ±5 percent, asserting that controlling relative humidity to within ±5 percent during testing would be difficult.

Based on the additional analysis discussed in this final rule, including consideration of comments received in

evaporator temperature of 15 °F and condenser temperature of 115 °F, and sump pump and condenser fan motor specification data with an assumed power factor of 80%.

response to the December 2021 NOPR, DOE is modifying the relative humidity test conditions adopted in this final rule, as compared to the provisions as proposed in the December 2021 NOPR, to instead specify a minimum threshold rather than a defined range. Specifically, this final rule adopts a requirement to maintain an average minimum ambient relative humidity of 30.0 percent throughout testing. This revised specification represents the minimum of the relative humidity tolerance, 35.0 ± 5.0 percent, as proposed in the December 2021 NOPR and will allow for a broader range of relative humidity values that will be easier to control during testing. Furthermore, DOE notes that its test data indicated that higher humidity levels are associated with higher measured energy use for certain ACIM models—suggesting that manufacturers of such models will be incentivized to test with relative humidity levels as close to the minimum defined threshold as possible.

See section III.F.1 of this final rule for a discussion of DOE's analysis of any expected costs or impacts on measured performance as a result of this amendment.

b. Water Hardness

ASHRAE Standard 29–2015 and AHRI Standard 810 (I–P)–2016 with Addendum 1 do not specify the water hardness of the water supply used for testing. The United States Geological Survey (''USGS'') defines water hardness as the concentration of calcium carbonate in milligrams per liter (''mg/L'') of water and lists general guidelines for the classification of water hardness as 0 to 60 mg/L of calcium carbonate for soft water; 61 to 120 mg/L of calcium carbonate for moderately hard water; 121 to 180 mg/L of calcium carbonate for hard water; and more than 180 mg/L of calcium carbonate for very hard water.[21] In the January 2012 final rule, DOE stated that harder water depresses the freezing temperature of water and results in increased energy use to produce the same quantity of ice. 77 FR 1591, 1605. DOE also stated that hard water (*i.e.,* water with a higher concentration of calcium carbonate) can affect energy consumption in the field due to increased scale build up on the heat exchanger surfaces over time, and the use of higher water purge quantities to help flush out dissolved solids to limit scale build up. *Id.* However, DOE declined to set requirements for water hardness for testing because of insufficient information to allow proper consideration of such a requirement. 77 FR 1591, 1605–1606. Specifically, DOE did not have information regarding the impact of variation in water hardness on as-tested performance of ACIMs, and therefore could not justify the additional burden associated with establishing a standardized water hardness requirement at that time. *Id.*

As part of this rulemaking, DOE conducted testing to investigate whether changing the water hardness could affect the energy consumption and harvest rate of ACIMs. Testing was conducted on new models (*i.e.,* with clean evaporators prior to accumulation of any significant scale). DOE conducted water hardness tests on three batch type ice makers and one continuous type ice maker.

According to the USGS, the vast majority of water hardness in the United States ranges from 0 mg/L to 250 mg/L of calcium carbonate.[22] Given the range of water hardness in the United States, DOE used a water hardness of 42 mg/L of calcium carbonate for a ''soft water'' test (which also represented water readily available at the test facility) and a water hardness of 342 mg/L of calcium carbonate for a ''very hard water'' test (*i.e.,* a 300 mg/L increase relative to the soft water test to represent an extreme comparison case). The ''soft water'' test at 42 mg/L of calcium carbonate was based on the water hardness of the potable water at the testing facility where the tests were conducted and therefore no additional preparation of the potable water was required to meet the 42 mg/L of calcium carbonate water hardness level. The ''very hard water'' test at 342 mg/L of calcium carbonate was prepared by adding calcium chloride and magnesium chloride hexahydrate with a mass ratio of 304:139 to the potable water at the testing facility to reach the water hardness level of 342 mg/L of calcium carbonate and the resulting mixture was recirculated for sixteen hours to ensure even mixing. DOE tested four ACIMs in a test chamber with soft and very hard water hardness at the standard rating conditions to investigate the effect of water hardness on harvest rate and energy use. The results of these tests are summarized in Table III.8.

TABLE III.8—ACIM PERFORMANCE DIFFERENCES OF SOFT WATER COMPARED TO VERY HARD WATER

Unit	Type	Harvest rate with soft water *	Harvest rate with very hard water *	Difference (%)	Energy use with soft water *	Energy use with very hard water *	Difference (%)
1	Batch	95	105	11	10.49	9.43	−10.1
2	Batch	126	131	4	8.28	7.96	−3.9
3	Batch	351	359	2.3	5.73	5.64	−1.6
4	Continuous	562	582	3.4	4.40	4.18	−5.0

These test results show that water hardness can impact measured harvest rates and energy consumption rates, and that very hard water generally resulted in more favorable performance than soft water. DOE acknowledges that the observed test results show the opposite impact on performance than expected and discussed in the January 2012 final rule (*i.e.,* that harder water would be expected to increase energy consumption).

In the December 2021 NOPR, DOE proposed to require that water used for testing have a maximum hardness of 180 mg/L of calcium carbonate. 86 FR 72322, 72337. DOE stated that establishing a maximum water hardness of 180 mg/L would ensure that ACIMs are tested with water that is not considered ''very hard'' according to the USGS and that the tested water hardness is within a range representative of water hardness that ACIMs are likely to experience in actual use. *Id.*

In the December 2021 NOPR, DOE proposed that water hardness must be measured using a water hardness meter with an accuracy of ±10 mg/L or taken from the most recent version of the water quality report that is sent by water suppliers, which is updated at least annually and is accessible at: *ofmpub.epa.gov/apex/safewater/f?p=136:102.* 86 FR 72322, 72337. DOE

[21] *See www.usgs.gov/special-topic/water-science-school/science/hardness-water?qt-science_center_objects=0#qt-science_center_objectswater.usgs.gov/owq/hardness-alkalinity.html.*

[22] See *www.usgs.gov/media/images/map-water-hardness-united-states.*

expected that any test facilities in locations with water supply hardness greater than 180 mg/L would likely already incorporate water softening controls, and therefore this proposal is not expected to require updates to existing test facilities. *Id.* For this same reason, DOE did not expect that this proposal would impact rated performance for any ACIMs tested under the current DOE test procedure. *Id.*

In the December 2021 NOPR, DOE also noted that this proposal would not conflict with any provisions of the industry test and rating standards and would provide additional specifications to ensure the representativeness of the results and improve the repeatability and reproducibility of the test results. 86 FR 72322, 72337.

In the December 2021 NOPR, DOE requested comment on its proposal that water used for ACIM testing have a maximum water hardness of 180 mg/L of calcium carbonate and on whether any test facilities would not have water hardness supplied within the proposed allowable range. 86 FR 72322, 72337. DOE requested comment on whether the supply water is softened when testing ACIMs and, if the water is not softened, the burden associated with implementing controls for water hardness. 86 FR 72322, 72337–72338. Additionally, DOE requested information on whether this requirement should only be applicable to potable water used to make ice (and not any condenser cooling water). 86 FR 72322, 72338.

In response to the December 2021 NOPR, Hoshizaki agreed that water hardness would be good to investigate for the test standard. (Hoshizaki, No. 14, p. 4) However, Hoshizaki and AHRI requested that water hardness be brought to the ASHRAE 29 committee for consideration. (Hoshizaki, No. 14, p. 4; AHRI, No. 14, p. 5)

Joint Commenters supported DOE's proposal to introduce a water hardness requirement to improve the reproducibility of the test procedure. (Joint Commenters, No. 15, p. 2) The Joint Commenters added that since the hardness of tap water varies throughout the U.S., DOE's proposal to establish a water hardness condition will likely increase the reproducibility of the test procedure, and therefore stated support for DOE's proposal to establish a maximum water hardness for testing of 180 mg/L, which will exclude very hard water. *Id.*

AHRI commented that different regions experience hard water that can consistently exceed 180 mg/L, so this issue would need to be evaluated across regions to ensure that undue burden is not being unfairly inflicted on specific areas of the country. (AHRI, No. 14, p. 5) During the January 24, 2022 ACIM test procedure public meeting, True Manufacturing commented that their test facilities have potable water that is approximately 300 mg/L all year long.[23]

IOM commented that although DOE's test data showed that harvest rate increases and energy use decreases when increasing calcium carbonate concentration, DOE does not provide any details on the characteristics of their test water besides calcium carbonate concentration. (IOM, No. 11, p. 2) If the ''very soft'' water was created by softening the ''very hard'' sample water using a salt-based ion-exchange water softener, the total dissolved solids (TDS) of the test water would remain the same, as ion-exchange systems simply replace calcium and magnesium with sodium chloride. *Id.* The act of softening ''very hard'' water creates a high salinity solution which might affect the freezing point of water, causing the diminished performance seen with ''very soft'' water. *Id.*

IOM commented the only way to reliably supply consistent test water to IOM's laboratory with specifications around calcium carbonate concentration would be to implement reverse osmosis systems, which are costly to install and maintain, and consume a significant amount of energy during use. (IOM, No. 11, p. 2)

IOM requested that if DOE were to implement this rule, it should only be applicable to the potable water used to make ice, unless DOE is able to demonstrate that hardness has an effect on energy consumption in water-cooled ACIMs. (IOM, No. 11, p. 2)

Comments from interested parties indicated that some ACIM test facilities have potable water with water hardness above of 180 mg/L of calcium carbonate and that softening or controlling the water hardness would impose a burden on certain manufacturers. DOE acknowledges that DOE's expectation in the December 2021 NOPR that any test facilities in locations with water supply hardness greater than 180 mg/L would likely already incorporate water softening controls was incorrect and therefore, updates to certain existing test facilities would be needed to control for water hardness. Although the USGS designates water hardness above of 180 mg/L of calcium carbonate as very hard water, DOE has determined that further investigation is necessary before establishing a water hardness test condition and is declining to specify a water hardness range for ACIM testing in this final rule. DOE notes that because a specific water hardness range is not specified, all water hardness levels will be considered valid for ACIM testing.

c. Ambient Temperature Gradient

The current ACIM test procedure incorporates by reference section 5.1.1 of ASHRAE Standard 29–2009, which stipulates that, with the ice maker at rest, the vertical ambient temperature gradient in any foot of vertical distance from 2 inches above the floor or supporting platform to a height of 7 feet above the floor, or to a height of 1 foot above the top of the ice maker cabinet, whichever is greater, shall not exceed 0.5 °F/foot. This language, which is consistent with the requirement in section 5.1.1 of ASHRAE Standard 29–2015, is consistent with the test room requirements for residential refrigerators, as specified in section 7.2 of ANSI–AHAM Standard HRF–1–1979, ''Household Refrigerators, Combination Refrigerator-Freezers, and Household Freezers'' (ANSI/AHAM HRF–1–1979), the version of the AHAM standard that was incorporated by reference in the DOE test procedure for residential refrigerators in a final rule published August 10, 1982. 47 FR 34517. DOE modified the requirements associated with temperature gradient for residential refrigerators, in a final rule published April 21, 2014, to remove the reference to a 7 feet height requirement and require only that the gradient be maintained to a height 1 foot higher than the top of the unit. 79 FR 22320, 22335.

In the December 2021 NOPR, DOE did not propose any changes to the ambient temperature gradient requirements, except through an updated reference to ASHRAE Standard 29–2015, and requested comment on this approach and on whether any modifications would improve test accuracy or decrease test burden. 86 FR 72322, 72338.

In response to the December 2021 NOPR, Hoshizaki commented that if ASHRAE 29–2015 is adopted, it supports use of the ambient temperature gradient requirements in that edition. (Hoshizaki, No. 14, p. 4) AHRI agreed with the adoption of ASHRAE Standard 29–2015 and its gradient requirements. (AHRI, No. 13, p. 5)

DOE is maintaining in this final rule the existing ambient temperature gradient requirements, through an updated reference to ASHRAE Standard 29–2015.

[23] *See* page 40; *www.regulations.gov/document/EERE-2017-BT-TP-0006-0012.*

d. Ambient Temperature and Water Temperature

The current DOE ACIM test procedure incorporates by reference AHRI 810–2007, which specifies an ambient temperature of 90 °F and a supply water temperature of 70 °F. AHRI Standard 810 (I–P)–2016 with Addendum 1 provides the same specifications. However, many ice makers may be installed in conditioned environments such as offices, schools, hospitals, hotels, and convenience stores (see 80 FR 4646, 4700 (Jan. 28, 2015)), which may have ambient air temperatures and supply water temperatures higher or lower than those specified in AHRI Standard 810.

In the December 2021 NOPR, DOE proposed to maintain the single set of rating conditions currently required in the DOE test procedure. 86 FR 72322,72338. Specifically, DOE proposed to maintain the reference to AHRI Standard 810, through AHRI Standard 810 (I–P)–2016 with Addendum 1, for rating conditions because those were selected as representative, repeatable rating conditions of this equipment. *Id.* As noted, EPCA requires that if AHRI Standard 810 is amended, DOE must amend the test procedures for ACIM as necessary to be consistent with the amended AHRI test standard, unless DOE determines, by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the requirements for test procedures regarding representativeness and test burden. (42 U.S.C. 6314(7)(B)) DOE does not have any contrary data or information regarding the representativeness of the conditions specified in AHRI Standard 810 (I–P)–2016 with Addendum 1.

In addition, the response of ACIM refrigeration systems to varying ambient conditions is different than the response of refrigeration systems in other refrigeration and heating, ventilation, and air-conditioning (''HVAC'') equipment. Other refrigeration or HVAC equipment are typically designed to maintain conditions within a space. Accordingly, as ambient conditions change, the refrigeration systems typically cycle (or in the case of variable-speed compressors, adjust speed) to match the varying heat loads. In the case of ACIMs, the refrigeration system continuously operates while actively making ice, as heat is constantly removed from the water throughout the freezing process. As a result, introducing a second lower-temperature test condition would not result in part-load operation for ACIMs and would not additionally differentiate between units based on a part-load response, as is the case for other refrigeration or HVAC equipment. Thus, in the December 2021 NOPR, DOE tentatively determined that the existing test conditions provide representative, repeatable rating conditions for this equipment, and DOE expected that the burden of introducing a second test condition (which would approximately double test duration) would not be justified. 86 FR 72322,72339.

In the December 2021 NOPR, DOE requested comment on its proposal to maintain the existing ambient temperature and water supply temperature requirements. If modifications should be considered to improve test representativeness or decrease test burden, DOE requested supporting data and information. 86 FR 72322,72339.

In response to the December 2021 NOPR, AHRI commented that the current 90 °F ambient temperature (which includes 90 °F for both the indoor ambient temperature and the condenser air inlet temperature for ACIMs with remote condensing units) and 70 °F water inlet temperature test conditions are representative for much of the installed base. (AHRI, No. 13, p. 6) AHRI stated that changing the test point would disrupt historical data and understanding of the performance of the equipment, for both manufacturers and consumers. (*Id.*) Hoshizaki stated that the existing ambient temperature and water supply temperature requirements provide representative, repeatable rating conditions for this equipment. (Hoshizaki, No. 14, p. 4)

AHAM commented that the 90 °F ambient temperature is applicable to commercial settings but not residential settings and that any measured energy use at a 90 °F ambient temperature is not representative of real-world use because most residential ice makers are installed in air-conditioned spaces with ambient temperature closer to 70 °F. (AHAM, No. 18, p. 10) AHAM clarified that they are not suggesting that DOE lower the proposed ambient temperature because most of the test chambers used for residential ice maker manufacturers are set to 90 °F because that is the test condition required for other refrigeration products. *Id.* AHAM stated that a second ambient condition would create undue burden through additional resource, personnel, and time requirements for testing. *Id.*

DOE is maintaining in this final rule the existing ambient temperature and water supply temperature requirements.

e. Water Pressure

As discussed in section III.C and shown in Table III.2, ASHRAE Standard 29–2015 now includes water pressure measurement requirements, whereas ASHRAE Standard 29–2009 did not address water pressure. Section 6.3 of ASHRAE Standard 29–2015 directs that the pressure of the supply water be measured within 8 inches of the ACIM and that the pressure remains within the specified range (AHRI Standard 810–2007 and 2016 both specify 30 ± 3 psig water supply) during the period of time that water is flowing into the ACIM inlet(s).

Certain ACIMs do not continuously draw water into the unit during the entire test. The portions of the test when the water inlet valve begins to open may result in a short, transient state when the water pressure falls outside of the allowable tolerance. Eliminating such transient periods would likely require certain laboratories to re-configure their water supply setups. Because of this burden and the relatively low impact of these transient periods on water consumed (*i.e.,* the transient periods are typically very short relative to the overall duration of water flow), in the December 2021 NOPR, DOE proposed to allow for water pressure to be outside of the specified tolerance for a short period of time when water begins flowing into the unit. 86 FR 72322, 72339.

Section 2.4 of the DOE test procedure for consumer dishwashers addresses this same issue by requiring that the specified water pressure be achieved within 2 seconds of opening the water supply valve. 10 CFR part 430, subpart B, appendix C1. The sampling rate in section 5.7 of ASHRAE Standard 29–2015 requires a maximum interval between data samples for water pressure of no more than 5 seconds. Therefore, in the December 2021 NOPR, DOE proposed to clarify that water pressure, when water is flowing into the ice maker, must be within the allowable range within 5 seconds of opening the water supply valve. 86 FR 72322, 72339. DOE did not expect that this proposal would impact tested performance under the current DOE test procedure as it provides additional specificity regarding the existing water pressure requirements. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal to require that water pressure when water is flowing into the ice maker be within the allowable range within 5 seconds of opening the water supply valve. 86 FR 72322, 72339.

In response to the December 2021 NOPR, IOM supported DOE's proposal

to allow 5 seconds after opening the water supply valve for water pressure to be in the allowable range. (IOM, No. 11, p. 3) Hoshizaki and AHRI commented they see the benefit to having an allowable range for water supply pressure but requests this be addressed by the ASHRAE 29 standard committee to ensure a consensus of the committee to change such requirements. (Hoshizaki, No. 14, p. 4; AHRI, No. 13, p. 6)

AHAM commented that the maximum five second sampling rate for water pressure is unnecessary, impractical, burdensome, and adds difficulty and complexity to the test procedure. (AHAM, No. 18, p. 12) AHAM commented that energy measurement only needs a timestamp and Watt-hour reading at the beginning and end of the test and that the intermediate scans check for ambient and gradient temperatures which can have a sampling rate of 30 seconds to one minute which is similar to the test procedure for refrigeration products.[24] *Id.* The sampling rate proposed in the December 2021 NOPR is consistent with the industry test standard requirements. DOE has determined that the industry standard approach is appropriate because ACIMs typically have a shorter overall test duration as compared to other refrigeration products, and for batch type ACIMs, the water fills may represent only a portion of the test period. Therefore, the more frequent sampling interval is appropriate to ensure the required water pressure is maintained throughout the water fill period, except for within the initial 5 seconds after opening the water supply valve.

DOE is maintaining in this final rule the requirement that water pressure, when water is flowing into the ice maker, be within the allowable range within 5 seconds of opening the water supply valve, consistent with the December 2021 NOPR.

4. Test Setup and Equipment Configurations

Since publication of the January 2012 final rule, DOE has issued two final guidance documents addressing certain aspects of the ACIM test procedure: prohibiting the use of temporary baffles and requiring use of a fixed purge water setting. As discussed in the following paragraphs, DOE has reviewed the guidance documents to determine whether they should be maintained and expressly included in the test procedure. In addition, in reviewing the existing DOE ACIM test procedure, DOE has determined that the representativeness and repeatability of the test procedure could be further improved through certain test setup and equipment configuration amendments as discussed in the following paragraphs.

a. Temporary Baffles

After publication of the January 2012 final rule, DOE issued a guidance document on September 24, 2013, regarding the use of temporary baffles during testing.[25] As described in the guidance, a baffle is a partition, usually made of a flat material such as cardboard, plastic, or sheet metal, that reduces or prevents recirculation of warm air from an ice maker's air outlet to its air inlet, or, for remote condensers, from the condenser's air outlet to its inlet. Temporary baffles refer to those installed only temporarily during testing and are not part of the ACIM model as distributed in commerce or installed in the field. During testing, the use of temporary baffles can block recirculation of warm condenser discharge air to the air inlet. This would reduce the average temperature of the air entering the inlet, which would result in lower energy use that would not be representative of the energy use of the unit as operated by the end user.

In the guidance document, DOE expressly stated that installing such temporary baffles is inconsistent with the ACIM test procedure, which states that the unit must be ''set up for testing according to the manufacturer's written instruction provided with the unit'' and that ''no adjustments of any kind shall be made to the test unit prior to or during the test that would affect the ice capacity, energy usage, or water usage of the test sample.'' [26] Therefore, DOE's final guidance stated that the use of baffles to prevent recirculation of air between the air outlet and inlet of the ice maker during testing is not consistent with the DOE test procedure for automatic commercial ice makers, unless the baffle is (a) a part of the ice maker or (b) shipped with the ice maker to be installed according to the manufacturer's installation instructions.

Based on the final guidance document, DOE proposed in the December 2021 NOPR to define the term ''baffle'' consistent with the description in the guidance document and to expressly prohibit the use of baffles when testing of ACIMs unless the baffle is (a) a part of the ice maker or (b) shipped with the ice maker to be installed according to the manufacturer's installation instructions. 86 FR 72322, 72340. In the December 2021 NOPR, DOE stated the proposed approach based on manufacturer installation instruction is likely how an ice maker would be installed during use and is most representative of the energy use of ACIMs operated in the field. *Id.* DOE added that this proposal would not add any burden or impact measured performance compared to the existing test procedure, as it is consistent with how the test procedure currently must be performed. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal to expressly provide that a baffle must not be used when testing ACIMs unless the baffle is (a) a part of the ice maker or (b) shipped with the ice maker to be installed according to the manufacturer's installation instructions. 86 FR 72322, 72340.

In response to the December 2021 NOPR, Hoshizaki and AHRI agreed that the unit should be installed in accordance with the manufacturer's installation instructions, and that baffles should only be used if instructed to do so in installation instructions. (Hoshizaki, No. 14, p. 4; AHRI, No. 13, p. 6)

AHAM commented that DOE's proposal to expressly provide that a baffle must not be used when testing ACIMs unless the baffle is (a) a part of the ice maker or (b) shipped with the ice maker to be installed according to the manufacturer's installation instructions fails to account for the differences between built-in and freestanding ice makers (*i.e.,* built-in products must be counter depth to be incorporated into kitchen designs and be flush with cabinetry). (AHAM, No. 18, p. 12) AHAM commented that applying the test as written may penalize manufacturers of built-in products, as it is not representative of their real-world use. *Id.*

The proposal to expressly provide that a baffle must not be used when testing ACIMs unless the baffle is (a) a part of the ice maker or (b) shipped with the ice maker to be installed according to the manufacturer's installation instructions is representative because a baffle is permitted to be used in testing if it is integral to the ice maker or shipped with the ice maker and instructed to be installed in the manufacturer's installation instructions. Regarding other installation requirements, DOE provides a

[24] *See* 10 CFR part 430, subpart B, appendices A and B.

[25] See *www1.eere.energy.gov/buildings/appliance_standards/pdfs/acim_baffles_faq_2013-9-24final.pdf.*

[26] Section 4.1.4, ''Test Set Up,'' of AHRI Standard 810–2007 and AHRI Standard 810 (I–P)–2016 with Addendum 1.

discussion of clearances in section III.D.4.c of this final rule.

DOE is maintaining in this final rule the requirement that a baffle must not be used when testing ACIMs unless the baffle is (a) a part of the ice maker or (b) shipped with the ice maker to be installed according to the manufacturer's installation instructions, consistent with the December 2021 NOPR.

The guidance document issued by DOE on September 24, 2013, also acknowledged that warm air discharged from an ice maker's outlet can affect the ambient air temperature measurement such that it fluctuates outside the maximum allowed ±1 °F or ±2 °F range, and that baffles can prevent such fluctuation. Because temporary baffles are not permitted for use during testing, DOE stated in the guidance document that if the ambient air temperature fluctuations cannot be maintained within the required tolerances, temperature measuring devices may be shielded so that the indicated temperature will not be affected by the intermittent passing of warm discharge air at the measurement location. DOE also stated that the shields must not block recirculation of the warm discharge air into the condenser or ice maker inlet.

Based on the final guidance document, in the December 2021 NOPR, DOE proposed to specify in the test procedure that if the ambient air temperature fluctuations (and relative humidity as discussed in section III.D.3.a) cannot be maintained within the required tolerances, temperature measuring devices (and relative humidity measuring devices) may be shielded to limit the impact of intermittent passing of warm discharge air at the measurement locations. 86 FR 72322, 72340. DOE further proposed that if shields are used, they must not block recirculation of the warm discharge air into the condenser or ice maker inlet. *Id.* DOE did not expect this proposal to impact measured ACIM performance compared to the existing test procedure, as it is consistent with the existing test approach. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal to specify that temperature measuring devices may be shielded to limit the impact of intermittent warm discharge air at the measurement locations and that if shields are used, they must not block recirculation of the warm discharge air into the condenser or ice maker air inlet. 86 FR 72322, 72340.

In response to the December 2021 NOPR, Hoshizaki and AHRI agreed with DOE's proposal to specify that temperature measuring devices may be shielded to limit the impact of intermittent warm discharge air at the measurement locations. (Hoshizaki, No. 14, p. 4; AHRI, No. 13, p. 6) However, Hoshizaki requested that this be addressed in the ASHRAE 29 standard committee. (Hoshizaki, No. 14, p. 4)

DOE is maintaining in this final rule the requirement that temperature and relative humidity measuring devices may be shielded to limit the impact of intermittent warm discharge air at the measurement locations and that if shields are used, they must not block recirculation of the warm discharge air into the condenser or ice maker air inlet, consistent with the December 2021 NOPR.

In the December 2021 NOPR, DOE also requested comment on whether any ACIM models discharge air such that the temperature and relative humidity measuring devices would be unable to maintain the required ambient air temperature or relative humidity tolerances even with the measuring devices shielded. 86 FR 72322, 72340. If so, DOE requested comment on whether alternate ambient air temperature and relative humidity measurement locations would be necessary (*e.g.,* the ambient temperature measurement locations for water-cooled ice makers, if those locations are not affected by condenser discharge air) and if the ambient air temperature and relative humidity measured at the alternate locations should be within the same tolerances as would otherwise be required. *Id.*

In response to the December 2021 NOPR, Hoshizaki and AHRI commented that they are not aware of a need for alternate ambient temperature locations. (Hoshizaki, No. 14, p. 4; AHRI, No. 13, p. 6)

Based on comments from interested parties that alternate ambient air temperature and relative humidity measurement locations are not necessary, DOE is maintaining the current ambient measurement locations for ACIM testing in this final rule, except as discussed in section III.D.4.d.

b. Purge Settings

Purge water refers to water that is introduced into the ice maker during an ice-making cycle to flush dissolved solids out of the ice maker and prevent scale buildup on the ice maker's wetted surfaces. Ice makers generally allow for setting the purge water controls to provide different amounts of purge water or different frequencies of purge cycles. Different amounts of purge water may be appropriate for different levels of water hardness or contaminants in the ACIM water supply. Most ice makers have manually set purge settings that provide a fixed amount of purge water, but some ice makers include an automatic purge water control setting that automatically adjusts the purge water quantity based on the supply water hardness.

Because purge water is cooled by the ice maker, allowing a different purge water quantity will result in a different measured energy use. To ensure representative and consistent test results for ice makers with automatic purge water controls, on September 25, 2013, DOE issued final guidance stating that ice makers with automatic purge water control should be tested using a fixed purge water setting that is described in the written instructions shipped with the unit as being appropriate for water of normal, typical, or average hardness.[27] DOE further stated that the automatic purge setting should not be used for testing.

Consistent with DOE's existing guidance, in the December 2021 NOPR, DOE proposed that ice makers with automatic purge water control must be tested using a fixed purge water setting that is described in the manufacturer's written instructions shipped with the unit as being appropriate for water of normal, typical, or average hardness. 86 FR 72322, 72341. Such a control setting is likely to reflect the most typical ACIM installation and operation. Any other automatic purge controls (*i.e.,* those without any user-controllable settings) would operate as they would during normal use. Additionally, while ACIMs may be installed and set up by service technicians based on the installation location, such setup is not appropriate for testing because it may introduce variability in test settings based on the test facility location. Consistent with DOE's existing guidance, DOE also proposed that purge water settings described in the instructions as suitable for use only with water that has higher or lower than normal hardness (such as distilled water or reverse osmosis water) must not be used for testing. *Id.*

DOE stated that this proposal would not conflict with any of the setup or installation requirements in AHRI Standard 810 (I–P)–2016 with Addendum 1. 86 FR 72322, 72341. Additionally, this proposal would not add burden to manufacturers or impact ACIM performance as measured under the existing test procedure, as it would codify the final guidance document issued on September 25, 2013,

[27] *See www1.eere.energy.gov/buildings/appliance_standards/pdfs/acim_purge_faq_2013-9-25final.pdf.*

specifying use of a fixed purge setting. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal to require ACIMs with automatic purge water control to be tested using a fixed purge water setting that is described in the manufacturer's written instructions shipped with the unit as being appropriate for water of normal, typical, or average hardness. 86 FR 72322, 72342.

In response to the December 2021 NOPR, Hoshizaki and AHRI requested that units be tested per normal operating instructions in accordance with manufacturer installation instructions. (Hoshizaki, No. 14, p. 5; AHRI, No. 13, p. 7)

DOE is maintaining in this final rule the requirement that ACIMs with automatic purge water control be tested using a fixed purge water setting that is described in the manufacturer's written instructions shipped with the unit as being appropriate for water of normal, typical, or average hardness, consistent with the December 2021 NOPR.

In support of the December 2021 NOPR, DOE conducted testing to investigate the energy and water consumption associated with flush or purge cycles. 86 FR 72322, 72341. DOE testing of a batch ACIM showed that the purge occurred once every 5 hours under the default setting and coincided with the start of a harvest, resulting in no separate purge cycle. *Id.* Table III.9 summarizes how a purge cycle contributes to the energy and water consumption of a continuous ACIM. *Id.* Table III.10 presents DOE's estimates of the test durations under the existing test approach and under an approach that would account for purge operation. *Id.*

TABLE III.9—SUMMARY OF ENERGY & WATER CONSUMPTION OF A CONTINUOUS ACIM WITH PURGE CYCLE

Mode	Average power draw (W)	Energy consumption (kWh)	Average water usage (lbs)
Ice Production	936	11.23	*275
Purge (every 12 hours by default)	35	0.01	2.0
Recovery after Purge	1,062	0.08	N/A

*This number represents the harvest weight during the associated operating period. The total amount of water used may be higher.
N/A: The water used during the recovery after purge does not differ from normal ice production.

TABLE III.10—SUMMARY OF ESTIMATED TEST DURATIONS WITH AND WITHOUT INCLUDING PURGE CYCLES

Test unit	Duration *(hours)*			
	Existing ice production test (without purge)	Existing test total (without purge)	Ice production test (with purge)	Test total (with purge)
Continuous	2	8	12.5	18.5
Batch	2	8	5.5	11.5

DOE observed that purge cycles for both batch and continuous ACIMs did not significantly contribute to the energy consumption over a period of normal operation.

Accounting for purge cycle operation would require extending the test period to capture both stable ice production and normal purge operation.

The energy and water consumption during the flush or purge cycles are very small relative to the energy and water consumed during normal ice production, and the additional test burden associated with measuring purge events would be a significant increase in test burden. Therefore, in the December 2021 NOPR, DOE did not propose to address flush or purge cycles in its test procedure. 86 FR 72322, 72342.

In the December 2021 NOPR, DOE requested comment on its initial determination to not directly account for energy or water used during intermittent flush or purge cycles. 86 FR 72322, 72342. DOE also requested data regarding the energy and water use impacts of purge cycles. *Id.*

In response to the December 2021 NOPR, Hoshizaki agreed with DOE that the test should not be changed to account for intermittent flush or purge cycles. (Hoshizaki, No. 14, p. 5) Hoshizaki added that accounting for purge cycles would require a significant increase in total test time, resulting in significant increase in test burden with only a small amount of energy and water contribution. (Hoshizaki, No. 14, p. 5) During the January 24, 2022 ACIM test procedure public meeting, Hoshizaki stated that for continuous ACIMs, a normal purge cycle contains less than five ounces of water and occurs once every 12 hours.[28]

Joint Commenters stated that DOE may have underestimated the frequency of purge cycles, citing the DOE's test of a batch type ACIM with a default purge setting of a purge every 5 hours (coinciding with the start of a harvest, resulting in no separate purge cycle). (Joint Commenters, No. 15, p. 2) However, Joint Commenters added that for batch type ACIMs, the purge water setting used in the field may differ from that in the manufacturer's instructions or default settings and may be set such that a separate purge cycle occurs as frequently as every batch cycle. *Id.* Joint Commenters encouraged DOE to investigate how the purge cycle settings in field installations may differ from the manufacturer default settings for ACIMs and to consider capturing the purge cycle energy in the test procedures. *Id.*

DOE is not aware of and did not receive any data to indicate how purge water settings used in the field may differ from that in the manufacturer's instructions or default settings. However, if a default purge setting was as frequent as every batch cycle, purges would be accounted for in the amended ACIM test procedure because the batches would likely be consistent even with the purge occurring every cycle and therefore the batches would meet the stability criteria as amended in this final rule.

DOE is maintaining in this final rule its determination to not directly account for energy or water used during intermittent flush or purge cycles, consistent with the December 2021 NOPR.

[28] *See* page 47; *www.regulations.gov/document/EERE-2017-BT-TP-0006-0012.*

c. Clearances

As discussed in section III.C and shown in Table III.2, the clearance requirements around a unit under test changed between ASHRAE Standard 29–2009 and ASHRAE Standard 29–2015. The current DOE test procedure, through reference to section 6.4 of ASHRAE Standard 29–2009, requires a clearance of 18 inches on all four sides of the test unit, while section 6.5 of ASHRAE Standard 29–2015 requires a minimum clearance of 3 feet to adjacent test chamber walls, or the minimum clearance specified by the manufacturer, whichever is greater.

In response to the March 2019 RFI, Howe Corporation (''Howe'') commented that it is reasonable for customers to expect units to perform at their ratings when using the minimum clearances as described in the manufacturer literature. Howe recommended that DOE require a clearance of 3 feet, or the minimum clearance allowed by the manufacturer, whichever is less, to better represent an average use cycle. Howe also commented that this clearance should include all machine clearances, not just walls within the test chamber, and that a minimum clearance enclosure be built for testing ACIMs based on the harshest manufacturer-recommended operating installation, without blocking an intake air path to the ice maker. Howe also commented that this setup would not be a large test burden as many manufacturers test units of similar size, and the enclosures could be used over multiple tests. (Howe, No. 6 at p. 4)

In support of the December 2021 NOPR, DOE conducted testing to assess how different clearance requirements could affect the measured energy consumption and harvest rate of ACIMs. 86 FR 72322, 72342. DOE investigated the performance of ACIMs under four clearance setups: (1) the clearance required by ASHRAE Standard 29–2015, (2) the clearance required by the current DOE test procedure (through reference to ASHRAE Standard 29–2009), (3) all minimum clearances as recommend by the manufacturer, and (4) the rear minimum clearance as recommend by the manufacturer with all other clearances per ASHRAE Standard 29–2015. *Id.* Table III.11 summarizes how four test units performed under the four clearance setups. *Id.*

TABLE III.11—SUMMARY OF CLEARANCE IMPACT ON ACIM PERFORMANCE

Test unit	Clearance setup	Harvest rate (lbs of ice/24hrs)	Change in harvest rate (from ASHRAE standard 29–2015)	Energy consumption (kWh/100 lbs of ice)	Change in energy consumption (from ASHRAE standard 29–2015)
1	ASHRAE Standard 29–2015	573	N/A	4.93	N/A
	Current DOE Test Procedure	575	0%	4.97	1%
	Minimum Clearances	548	−4%	5.25	6%
	Minimum Rear Clearance	576	1%	4.94	0%
2	ASHRAE Standard 29–2015	814	N/A	4.46	N/A
	Current DOE Test Procedure	815	0%	4.48	0%
	Minimum Clearances	794	−2%	4.59	3%
	Minimum Rear Clearance	820	1%	−4.41	1%
3	ASHRAE Standard 29–2015	1,164	N/A	4.41	N/A
	Current DOE Test Procedure	1,164	0%	4.46	1%
	Minimum Clearances	1,043	−10%	5.14	17%
	Minimum Rear Clearance	1,149	−1%	4.44	1%
4	ASHRAE Standard 29–2015	1,197	N/A	5.40	N/A
	Current DOE Test Procedure	1,195	0%	5.43	1%
	Minimum Clearances	1,105	−8%	6.04	12%
	Minimum Rear Clearance	1,197	0%	5.39	0%

The tests indicate that the different clearance requirements, except for the installation with all minimum clearances, have little to no impact on the measured performance of ACIMs. *Id.* The impact observed from the minimum clearance test is likely due to the exhaust air being directed through the test enclosure (*i.e.,* the minimum clearances on the sides, back, and top of the ACIM resulted in an enclosure guiding condenser exhaust air) back to the front air inlet on the ACIM, which results in the ACIM drawing in warmer air than under the three other setup configurations. *Id.* As described in section III.D.4.a, testing with a temporary baffle to prevent such air flow is not appropriate, so the condenser exhaust re-circulated during this investigative testing. *Id.*

Based on these test results, an installation configuration that provides only the minimum manufacturer test clearances for all sides represents a worst-case installation for ACIM performance. *Id.* While manufacturers might provide minimum clearances for all sides of a unit, the expectation may be that units are installed such that one or more of the sides has clearance exceeding the manufacturer minimum. *Id.*

Similarly, a minimum clearance of 3 feet to adjacent test chamber walls or a clearance of 18 inches on all four sides (as required by ASHRAE Standard 29–2015 and the current DOE test procedure, respectively) may also not be a typical ACIM installation. *Id.* Because ACIMs are typically installed in commercial food service applications with space constraints, such as commercial kitchens, end users likely install their ACIMs against at least a rear wall using the manufacturer minimum clearance to maximize available working space. *Id.* Based on the test data in Table III.10, testing according to the manufacturer-specified minimum rear clearance has little to no measured impact on ACIM performance for the four test units. *Id.* However, because ACIMs may exhaust condenser air from the rear of the unit, an inappropriate manufacturer minimum rear clearance (or lack of manufacturer instructions regarding rear clearance) could adversely affect ACIM performance while being representative of typical use, and should be captured in the tested performance. *Id.*

Therefore, in the December 2021 NOPR, DOE proposed that ACIMs be tested according to the manufacturer's specified minimum rear clearance requirements, or 3 feet from the rear of the ACIM, whichever is less. 86 FR 72322, 72343. DOE proposed testing be conducted with a minimum clearance of 3 feet or the minimum clearance specified by the manufacturer, whichever is greater, on all other sides of the ACIM and all sides of the remote condenser, if applicable. *Id.* As discussed, and shown in the DOE test data, the impact of this proposed change on measured energy use for currently certified ACIMs would likely be de minimis. *Id.* DOE expected manufacturer installation instructions would typically provide for clearances that would ensure sufficient air flow to avoid any adverse impacts on ACIM performance under the proposed test setup. *Id.*

In the December 2021 NOPR, DOE did not propose specific requirements for the wall used to maintain the rear clearance when conducting the test. 86 FR 72322, 72343. Test laboratories would be able to satisfy the clearance requirements in any way they choose, as long as the test installation meets the proposed requirements. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal to require that ACIMs be tested according to the manufacturer's specified minimum rear clearance requirements, or 3 feet from the rear of the ACIM, whichever is less, and that all other sides of the ACIM and all sides of the remote condenser, if applicable, shall be tested with a minimum clearance of 3 feet or the minimum clearance specified by the manufacturer, whichever is greater. 86 FR 72322, 72343. DOE also requested comment on whether this proposal would affect measured energy use and harvest rate compared to the existing DOE test procedure. *Id.*

In response to the December 2021 NOPR, Hoshizaki requested that this be explored in the ASHRAE 29 standard committee to clarify any changes to the current test specifications. (Hoshizaki, No. 14, p. 5) IOM did not support this proposal to change clearance requirements. (IOM, No. 11, p. 3)

AHRI commented that depending on the condenser location and air discharge, changes to the clearance requirements could impact performance of the unit. (AHRI, No. 13, p. 7) IOM commented that reducing the rear minimum clearance will very likely increase measured energy use and decrease measured harvest rate. (IOM, No. 11, p. 3) IOM added that minimum clearances are established to provide guidelines for installation from a product safety standpoint, not a performance standpoint, and it is well understood in the industry that increasing clearance around the unit will result in improved performance and efficiency. *Id.*

IOM commented that measuring performance and efficiency of a product in its worst possible installation configuration is unfair to manufacturers. (IOM, No. 11, p. 3) AHRI added that the requirements in ASHRAE Standard 29 are clear and effective regarding the clearance allowed and changes to these requirements could result in undue burden to test facilities that have already setup for ASHRAE 29 requirements. (AHRI, No. 13, p. 7)

DOE notes that, in response to the March 2019 RFI, Howe commented that it is reasonable for customers to expect ACIMs to perform at their certified ratings when using the minimum clearances as described in the manufacturer literature. (Howe, No. 6 at p. 4) While manufacturers might provide minimum clearances for all sides of an ACIM, the expectation may be that ACIMs are installed such that one or more of the sides have clearances exceeding the manufacturer minimum.

ACIMs may have different condenser locations and air discharge but because ACIMs are typically installed in commercial food service applications with space constraints, end users likely install their ACIMs against at least a rear wall using the manufacturer minimum clearance to maximize available working space and, therefore, the manufacturer's minimum rear clearance should be accounted for in the tested performance. Based on the test data in Table III.10, testing according to the manufacturer-specified minimum rear clearance has little to no measured impact on ACIM performance for the four test units. However, because ACIMs may exhaust condenser air from the rear of the unit, an inappropriate manufacturer minimum rear clearance (or lack of manufacturer instructions regarding rear clearance) could adversely affect ACIM performance while being representative of typical use and should be captured in the tested performance.

DOE notes that, in the December 2021 NOPR, DOE did not propose specific requirements for the wall used to maintain the rear clearance, which is the only change from the ASHRAE 29–2015 clearance requirements, when conducting the test and that test facilities would be able to setup the clearance requirements in any way they choose, as long as the test installation meets the proposed requirements, in order to limit any potential test burden.

DOE will consider any updated industry standards, if available, during future ACIM test procedure rulemakings.

DOE is maintaining in this final rule that ACIMs be tested according to the manufacturer's specified minimum rear clearance requirements, or 3 feet from the rear of the ACIM, whichever is less, consistent with the December 2021 NOPR. On all other sides of the ACIM and all sides of the remote condenser, if applicable, testing shall be conducted with a minimum clearance of 3 feet or the minimum clearance specified by the manufacturer, whichever is greater. Test laboratories may satisfy the clearance requirements in any way they choose, as long as the test installation meets the amended requirements.

d. Ambient Temperature Measurement

Air temperature fluctuations from the test chamber or the ACIM's condenser exhaust air can potentially affect an ACIM's measured energy consumption and harvest rate.

i. Ambient Temperature Sensors

The current ACIM test procedure, which is based on AHRI Standard 810–2007 and ASHRAE Standard 29–2009, does not specify whether a weighted or unweighted sensor is to be used to measure ambient temperature. A weighted sensor measures the temperature of a high conductivity (isothermal) mass to which it is connected. The mass slows equilibration of the measured temperature with the surrounding air, thus damping out air temperature fluctuations. This may result in a weighted sensor indicating that the fluctuations are within the required temperature test condition tolerances, whereas an unweighted sensor could indicate temperature extremes exceeding the required temperature test condition tolerances. This difference in function of the sensors impacts the application of the required temperature test condition tolerances, *i.e.,* temperature fluctuations that fall outside the required tolerances may not be detected when using a weighted sensor, but would be detected when using an unweighted sensor.

In support of the December 2021 NOPR, DOE conducted testing to evaluate the ability to meet the specified tolerances of ASHRAE Standard 29–2015 using both weighted and unweighted temperature sensors. 86 FR 72322, 72344. The temperature fluctuations recorded by weighted temperature sensors may be less than

those recorded with unweighted measurement due to damping of the fluctuations by the weighted thermal mass. *Id.* As such, weighted sensors may give the false impression that ambient temperature test condition tolerances of ±2 °F during the first 5 minutes of each freeze cycle, and not more than ±1 °F thereafter, are met during testing. *Id.* The measurement of ambient temperature using unweighted sensors provides more representative measures of actual instantaneous ambient temperature conditions than the measurement of weighted sensors. *Id.* DOE observed in its testing in support of the December 2021 NOPR that the ambient temperature was within the test condition tolerances specified in ASHRAE Standard 29–2015 for all freeze cycles when using either weighted or unweighted sensors. *Id.*

Therefore, in the December 2021 NOPR, DOE proposed to specify that unweighted sensors be used to make all ambient temperature measurements. 86 FR 72322, 72344. Based on comments received in the March 2019 RFI, this proposal reflects current industry practice and would not add any burden. *Id.* This proposal is consistent with AHRI Standard 810 (I–P)–2016 with Addendum 1 because it specifies the instrumentation for measuring ambient temperature, but does not otherwise change the existing requirements. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal to specify that ambient temperature measurements be made using unweighted sensors. 86 FR 72322, 72344.

In response to the December 2021 NOPR, Hoshizaki agreed with the proposal, but noted that if a clarification is needed that this be addressed by the ASHRAE 29 standard committee. (Hoshizaki, No. 14, p. 5) AHRI commented that the testing location is currently allowed to designate the sensor type used, and this has not negatively impacted ratings or product performance and therefore should not be changed without further clarification of issues that it may resolve and discussion at the method of test level. (AHRI, No. 13, p. 7) AHRI added that the change to requiring unweighted sensors could incur associated costs without providing benefits to the test results, but if such a change is to be considered, it should go through the ASHRAE 29 standards committee. *Id.* AHRI noted that this issue has been debated within other refrigeration ASHRAE committees continuously without conclusions being reached that unweighted sensors should be required. *Id.*

AHAM commented that in DOE's proposed test procedure the mean of the ambient temperatures is more important than a momentary fluctuation of temperature. (AHAM, No. 18, p. 13) AHAM commented in support of weighted sensors because they would dampen the influence of other units being simultaneously tested on the ambient and gradient measurements and disagreed with the use of unweighted sensors because they are more easily influenced by changes in temperature, including those resulting from opening and closing the test room door. *Id.* AHAM stated that, similar to DOE's test procedure for refrigeration products, weighted sensors are appropriate for testing residential ice makers in order to compensate for the fluctuations occurring during testing. *Id.*

Based on DOE's analysis indicating that the specified test conditions can be met with an unweighted sensor, which was presented in the December 2021 NOPR, DOE is maintaining in this final rule that ambient temperature measurements be made using unweighted sensors, consistent with the December 2021 NOPR.

ii. Alternative Ambient Measurement Locations

The current DOE guidance and proposal in the December 2021 NOPR regarding the use of temporary baffles, as discussed in section III.D.4.a, illustrates that temporary baffles can reduce or prevent recirculation of warm air from an ACIM's condenser exhaust air to its air inlet. This recirculation of warm air can potentially affect an ACIM's measured energy consumption and harvest rate and using a temporary baffle for testing is unrepresentative of actual ACIM use. The recirculation of warm air may also affect the ability to maintain ambient temperature within the range specified in AHRI Standard 810 (I–P)–2016 with Addendum 1 and relative humidity within the range proposed in the December 2021 NOPR. For example, if the condenser exhaust is warm enough and directed towards the air inlet location (and corresponding ambient temperature measurement), the measured ambient temperature may be warmer than the representative ambient temperature around the unit under test, even with shielding around the temperature sensor.

To evaluate the extent of this potential impact on temperature, DOE tested, in support of the December 2021 NOPR, an ACIM which exhausted its warm condenser air on the side of the ACIM adjacent to the side with the air intake. 86 FR 72322, 72344. Three ambient thermocouples were placed 1 foot from the geometric center of each side around the ACIM in addition to the unshielded ambient thermocouple that was placed 1 foot from the air inlet. *Id.* The unshielded ambient thermocouple that was located 1 foot from the air inlet was used to control the test chamber conditions in accordance with AHRI Standard 810 (I–P)–2016 with Addendum 1 (*i.e.,* the overall chamber temperature was reduced as necessary to maintain the temperature one foot in front of the air inlet as close to 90 °F as possible). *Id.* Table III.12 summarizes the results of this testing.

TABLE III.12—AVERAGE AMBIENT TEMPERATURES MEASURED ON EACH SIDE AROUND AND ACIM

Inlet (°F)	Exhaust (°F)	Opposite side of exhaust (°F)	Opposite side of inlet (°F)
89.9	90.2	88.5	88.2

As shown in Table III.12, the air within the chamber had to be reduced below 89 °F (outside the 90 ± 1 °F allowable ambient temperature range specified in ASHRAE Standard 29–2015) to maintain the temperature at the air inlet near the specified 90 °F condition. *Id.* This data suggests that ACIM models that allow the warm condenser exhaust air to recirculate to the air intake may require lower overall ambient test chamber temperatures to maintain the specified condition at the air inlet. *Id.*

The ambient temperature measurement is meant to represent the temperature of the air around the unit under test that is not impacted by unit operation. *Id.* Because test facilities may have difficulty effectively shielding the air inlet thermocouple from warm

discharge air without blocking the recirculation of that air to the ACIM air inlet, as discussed in section III.D.4.a., in the December 2021 NOPR, DOE proposed that the ambient temperature may be recorded at an alternative location. *Id.* DOE proposed that for ACIMs in which warm air discharge impacts the ambient temperature as measured in front of the air inlet (*i.e.,* the warm condenser exhaust airflow is directed to the ambient temperature location in front of the air inlet), the ambient temperature may instead be measured at locations 1 foot from the cabinet, centered with respect to the sides of the cabinet, for each side of the ACIM cabinet with no air discharge or inlet. *Id.* DOE expected that this proposal would not impact measured ACIM performance compared to the existing test approach. 86 FR 72322, 72344–72345. DOE also proposed that the relative humidity measurement, as proposed in the December 2021 NOPR, would also be made at the same alternative locations. 86 FR 72322, 72345.

Test installation according to the manufacturer's minimum rear clearance requirements, as discussed in section III.D.4.c, may affect the ability to measure the ambient temperature and relative humidity one foot from the air inlet if the air intake is through the rear side of the ACIM and the minimum rear clearance is less than 1 foot from the air inlet. *Id.* Additionally, the alternate measurement location, as proposed in the December 2021 NOPR, would not be feasible for the rear side of a model with no air discharge or inlet on that side and with a minimum rear clearance of less than 1 foot. *Id.*

In the December 2021 NOPR, DOE proposed that if a measurement location 1 foot from the rear of an ACIM is not feasible for testing that would otherwise require a measurement at that location, the ambient temperature and relative humidity shall instead be measured 1 foot from the cabinet, centered with respect to the surface(s) of the ACIM, for any surfaces around the perimeter of the ACIM that do not include an air discharge or air inlet. 86 FR 72322, 72345. DOE similarly did not expect this proposal to impact current ACIM measurements as it provides an alternative measurement location for the existing ambient temperature and relative humidity requirements. 86 FR 72322, 72345.

In the December 2021 NOPR, DOE requested comment on its proposal to allow for an alternate ambient temperature (and relative humidity) measurement location to avoid complications associated with shielding the measurement in front of the air inlet, as currently required. 86 FR 72322, 72345. DOE also requested comment on the proposal for measuring ambient temperature and relative humidity for ACIMs for which the proposed rear clearance would preclude temperature measurements at the rear of the unit under test. *Id.*

In response to the December 2021 NOPR, Hoshizaki and AHRI commented that if manufacturers need an alternate location for ambient temperatures, this can either be addressed by waiver or addressed through the ASHRAE 29 standard committee to change the requirements. (Hoshizaki, No. 14, p. 5; AHRI, No. 13, p. 7) AHRI added it does not feel that a dictated alternative measurement location will address any concerns that may arise with a particular model. (AHRI, No. 13, p. 7)

As discussed in section III.D.4.c, DOE is maintaining that ACIMs be tested according to the manufacturer's specified minimum rear clearance requirements, or 3 feet from the rear of the ACIM, whichever is less. The alternate measurement location is necessary to allow for testing certain equipment configurations—for example, if the air intake is through the rear side of the ACIM and the minimum rear clearance is less than 1 foot from the air inlet. Therefore, DOE is maintaining in this final rule to allow for an alternate ambient temperature (and relative humidity) measurement location, consistent with the December 2021 NOPR.

e. Ice Cube Settings

DOE is aware that some ice makers have the capability to make various sizes of cubes. The size of the cube can typically be selected on the control panel of the ice maker, for example. Section 5.2 of AHRI Standard 810 (I–P)–2016 with Addendum 1 states that for machines with adjustable ice cube settings, standard ratings are determined for the largest and the smallest cube settings, and that ratings for intermediate cube settings may be published as application ratings. This is consistent with the current DOE requirement as incorporated by reference in AHRI Standard 810–2007.

In the December 2021 NOPR, DOE did not propose any change to the existing industry requirement to determine ratings under the largest and smallest cube settings for ACIMs with adjustable ice cube settings. 86 FR 72322, 72345. EPCA requires the DOE test procedure to be reasonably designed to produce test results which reflect energy use during a representative average use cycle. The current requirement to test using the largest and smallest cube setting is based on the industry standard, which was developed based on industry's experience with this equipment. There is no information to support that testing at the ''worst possible configuration'' would be representative of an average use cycle. As such, DOE did not propose to change the current requirement to test at both the smallest and largest cube setting, which is the same as the requirement in AHRI Standard 810 (I–P)–2016 with Addendum 1. *Id.*

In the December 2021 NOPR, DOE requested comment on maintaining the current requirement to test at the largest and smallest ice cube size settings, consistent with AHRI Standard 810 (I–P)–2016 with Addendum 1. 86 FR 72322, 72345. DOE also requested information on the ice cube size setting typically used by customers with ACIMs with multiple size settings (largest, smallest, default, *etc.*). 86 FR 72322, 72345.

In response to the December 2021 NOPR, Hoshizaki and AHRI agreed with maintaining the requirements set by AHRI Standard 810 (I–P)–2016 with Addendum 1 for cube size settings. (Hoshizaki, No. 14, p. 5; AHRI, No. 13, p. 8)

DOE is maintaining in this final rule the current requirement to test at the largest and smallest ice cube size settings, consistent with AHRI Standard 810 (I–P)–2016 with Addendum 1.

f. Ice Makers With Dispensers

DOE is aware of certain self-contained ACIMs that dispense ice to a user through an automatic dispenser when prompted by the user. Testing according to the current DOE test procedure or the updated industry standards as proposed in the December 2021 NOPR may be difficult or impossible for certain ACIM configurations with automatic dispensers. 86 FR 72322, 72345.

Section 6.6 in ASHRAE Standard 29–2015 specifies that an ACIM must have its bin one-half full of ice when collecting capacity measurements. DOE is aware of self-contained ACIMs with dispensers that contain internal storage bins that are not accessible during normal operation (*i.e.,* users access the ice only through use of the dispenser). Because the internal bins are not accessible during normal operation, it can be difficult or impossible to establish a storage bin one-half full of ice for testing. Additionally, isolating the ice produced during testing from the ice initially placed in a one-half full storage bin may be difficult or impossible, depending on the dispenser and internal storage bin configuration.

Section 6.10 of ASHRAE Standard 29–2015 requires that the ACIM be completely assembled with all panels, doors, and lids in their normally closed positions during the test. Additionally, section 4.1.4 of AHRI Standard 810 (I–P)–2016 with Addendum 1 requires that the test unit shall be configured for testing per the manufacturer's written instructions provided with the unit. It also requires that no adjustments of any kind shall be made to the test unit prior to or during the test that would affect the ice capacity, energy usage, or water usage of the test sample. Many self-contained ACIMs with dispensers would require removing case panels or the top lid to access the internal ice bin for ice collection or establishing initial test setup. In typical operation, users would access the ice only through the dispenser mechanism.

Through a letter dated January 28, 2020, Hoshizaki petitioned for a waiver and interim waiver from the DOE ACIM test procedure at 10 CFR 431.134 for ice/water dispenser ACIM basic models to address the test issues previously described in this section (case number 2020–001).[29] On July 23, 2020, DOE granted Hoshizaki an interim waiver to test the identified ACIM basic models with a modified test procedure. 85 FR 44529. After providing opportunity for public comment on the interim waiver and reviewing the one comment received, DOE granted Hoshizaki a waiver through a final decision and order published on October 28, 2020. 85 FR 68315.

The decision and order requires, prior to the start of the test, removing the front panel of the unit under test and inserting a bracket to hold the shutter (which allows for the dispensing of ice during the test) completely open for the duration of the test. After inserting the bracket, return the front panel to its original position on the unit under test. Conduct the test procedure as specified in 10 CFR 431.134 except that the internal ice bin for the unit under test shall be empty at the start of the test and intercepted ice samples shall be obtained from a container in an external ice bin that is filled one-half full with ice and is connected to the outlet of the ice dispenser through the minimum length of conduit that can be used. *Id.*

This waiver granted to Hoshizaki includes instructions for testing the specific basic models addressed in that waiver process. However, other ACIM models with dispensers would likely require similar testing instructions. Moreover, after the granting of any waiver, DOE must publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l). Therefore, in the December 2021 NOPR, DOE proposed to add general test instructions to the proposed DOE test procedure at 10 CFR 431.134(b)(6) to allow for testing such models. 86 FR 72322, 72346. DOE proposed that ACIMs with a dispenser be tested with continuous production and dispensing of ice throughout the stabilization and test periods. *Id.* As noted in the December 2021 NOPR, if an ACIM with a dispenser is not able to allow for the continuous production and dispensing of ice because of certain mechanisms within the ACIM that prohibit this function, those mechanisms must be overridden to the minimum extent that allows for the continuous production and dispensing of ice. *Id.* For example, this would allow for the temporary removal of panels or overriding of certain controls, if necessary. *Id.* The capacity samples would be collected in an external bin one-half full with ice and connected to the outlet of the ice dispenser through the minimal length of conduit that can be used for the required time period as defined in ASHRAE Standard 29–2015. *Id.* Because of the continuous production and dispensing of ice, these ACIMs would be required to have an empty internal storage bin at the beginning of testing. *Id.* This would ensure that the collection periods capture only the quantity of ice produced during that period (*i.e.,* this would avoid any ice being collected that was produced prior to the collection period). *Id.* This proposed approach would address issues with testing ACIM models with automatic dispensers, while allowing a representative measure of how ACIMs with dispensers are typically used. *Id.* This approach would also minimize test burden by avoiding the need to significantly alter the configurations of these ACIM models for testing (*e.g.,* allowing for access to any internal storage bins during performance testing). *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal to collect capacity samples for ACIMs with dispensers through the continuous production and dispensing of ice throughout testing, using an empty internal storage bin at the beginning of the test period and collecting the ice sample through the dispenser in an external bin one-half full of ice. 86 FR 72322, 72346. DOE also requested comment on its proposal to allow for certain mechanisms within the ACIM that would prohibit the continuous production and dispensing of ice throughout testing to be overridden to the minimum extent that allows for the continuous production and dispensing of ice. *Id.* DOE sought information on how manufacturers of these ACIMs currently test and rate this equipment under the existing DOE test procedure, whether the proposal would impact the energy use as currently measured, and on the burden associated with the proposed approach or any alternative test approaches. *Id.*

In response to the December 2021 NOPR, Hoshizaki and AHRI agreed with adopting the approach stated, and AHRI noted that this process is also being proposed to the ASHRAE 29 committee for consideration. (Hoshizaki, No. 14, p. 6; AHRI, No. 13, p. 8)

AHAM commented that DOE's proposed test procedure does not account for integrated dispensing, such as for a dispenser ice maker with ice internal to the unit (a feature offered in certain residential products). (AHAM, No. 18, p. 11) AHAM states that, for these products, there is no way to determine if the bin is half full during the run-in portion of the test, and that DOE proposes to override the dispensing function so that it continually dispenses, which is not possible on all units that have this feature. *Id.*

The CA IOUs commented that a self-contained ice maker category type that DOE recognized needs specialized test methodology is the ice dispenser ice maker. (CA IOUs, No. 16, p. 4) The CA IOUs noted that the ice is made inside the ice bin and an automated ice dispenser is located underneath the bin to dispense ice into a cup. *Id.* The CA IOUs described that usually these machines have automated water dispensers integrated into them, the bins range between 10 and 100 lb, and the production capacity ranges between 200 and 500 lb per day. *Id.* The CA IOUs stated that there are 18 different models on the market, which are purchased by foodservice establishments and offices. *Id.* The CA IOUs recommended separating these ice machines into different classes to allow the test methodology to be refined for each category, resulting in testing consistency within each category. *Id.*

In the December 2021 NOPR, DOE proposed that mechanisms must be overridden to the minimum extent which allows for the continuous production and dispensing of ice (*e.g.,* insert a bracket to hold the shutter (which allows for the dispensing of ice

[29] The petition and related documents are available at *www.regulations.gov* in docket EERE–2020–BT–WAV–0005.

during the test) completely open for the duration of the test). 86 FR 72322, 72345–72346. DOE also proposed that the internal storage bin be empty at the beginning of the test period and that the intercepted ice samples be obtained from a container in an external ice bin that is filled one-half full of ice. *Id.* This would ensure that the collection periods capture only the quantity of ice produced during that period (*i.e.,* this would avoid any ice being collected that was produced prior to the collection period).

DOE notes that the test method proposed in the December 2021 NOPR would apply to all ACIMs with dispensers, not just the basic model for which there is a test procedure waiver. DOE has not identified the need for additional test instructions for any other ACIMs with dispensers and DOE has not received any additional petitions for waiver for other ACIMs with dispensers. Therefore, DOE is maintaining in this final rule the test method proposed in the December 2021 NOPR for ACIMs with dispensers. Further categorization of equipment may be discussed in any amended energy conservation standards for ACIMs with dispensers.

g. Remote ACIMs

DOE did not propose amendments to the existing test procedures for testing remote condensing ACIMs in the December 2021 NOPR. 86 FR 72322, 72346. Based on a review of manufacturer installation instructions for ACIMs with dedicated remote condensing units, manufacturers typically recommend line sets and/or limitations to installation locations. DOE preliminarily determined that testing according to the manufacturer recommendations, as is currently required, rather than one specified remote setup, would represent typical use in the field and would produce consistent test results. 86 FR 72322, 72347. DOE also did not propose any amendments to its test procedure to address ACIMs installed with a compressor rack because it lacked information on typical installation locations, operation, and market availability, and because any ACIMs designed only for connection to remote compressor racks are out of the scope of DOE's regulations. 86 FR 72322, 72344.

In the December 2021 NOPR, DOE requested comment on its initial determination that additional test setup and installation instructions are not required for testing remote condensing ACIMs. 86 FR 72322, 72347.

In response to the December 2021 NOPR, Hoshizaki and AHRI agreed that no additional test setup or installation instructions are required for units with dedicated remote condensing units. (Hoshizaki, No. 14, p. 6; AHRI, No. 13, p. 8) Hoshizaki added that if a manufacturer has further requests that are different from its instructions, it could file that with DOE so it is in the record of special instructions or taken through the waiver process for clarification. (Hoshizaki, No. 14, p. 6)

In response to the December 2021 NOPR, Hoshizaki and AHRI agreed with DOE in not establishing test procedures for ACIMs for rack units. (Hoshizaki, No. 14, p. 6; AHRI, No. 13, p. 8) Hoshizaki added that the sector is very small, and a new test criterion would need to be addressed in the ASHRAE 29 standard. (Hoshizaki, No. 14, p. 6)

DOE is maintaining in this final rule that additional test setup and installation instructions are not required for testing ACIMs with dedicated remote condensing units, consistent with the December 2021 NOPR. DOE is also not establishing separate test procedures for ACIMs intended for installation with a compressor rack.

5. Modulating Capacity Ice Makers

An ice maker could be designed to be capable of operating at multiple capacity levels, *i.e.,* a ''modulating capacity ice maker.'' This modulation could be accomplished by using a single compressor with multiple or variable capacities, using multiple compressors, or in some other manner. In the January 2012 final rule, DOE did not establish a test method for measuring the energy use or water consumption of automatic commercial ice makers that are capable of operating at multiple capacities. 77 FR 1591, 1601–1602. The decision to exclude modulating capacity ice makers was based on the lack of existing ACIMs with modulating capacity, as well as limited information regarding how such equipment would function. *Id.*

DOE conducted market research and examined publicly available sources to determine the prevalence of modulating capacity ice makers. DOE did not find any modulating capacity ice makers that are currently available in the market. Therefore, in the December 2021 NOPR, DOE did not propose test procedures for modulating capacity ice makers. 86 FR 72322, 72347.

In the December 2021 NOPR, DOE requested comment on its initial determination regarding the lack of availability of modulating capacity ice makers on the market. 86 FR 72322, 72347.

In response to the December 2021 NOPR, AHRI agreed with DOE's determination. (AHRI, No. 13, p. 8) Hoshizaki commented it is not aware of any modulating capacity ice makers on the market. (Hoshizaki, No. 14, p. 6) Hoshizaki requested that DOE share examples of modulating capacity ACIMs, and if examples exist, Hoshizaki will review and then offer comment. *Id.*

DOE continues to not be aware of any modulating capacity ice makers available on the market. Therefore, DOE is not establishing test instructions for modulating capacity ice makers in this final rule.

6. Standby Energy Use and Energy Use Associated With Ice Storage

The current ACIM test procedure considers only active mode energy use when an ice maker is actively producing ice and represents that consumption using a metric of energy use per 100 pounds of ice. The existing ACIM test procedure does not address standby energy use associated with continuously powered sensors and controls or ice storage outside of active mode operation. When not actively making ice, an ice maker continues to consume energy to power sensors and controls. In addition, ice that is stored in an integral or paired ice storage bin will melt over time and the ice maker will use additional energy to replace the ice that has melted to keep the bin full. In these ways, standby energy use from control devices and energy use associated with ice storage can impact the daily energy consumption of ACIM equipment.

DOE researched available test methods for determining energy use associated with ice storage. The AHRI certification program currently includes rating ice storage bins using AHRI 820–2017, ''Performance Rating of Ice Storage Bins.'' Similar methods are currently referenced in the Australian and Canadian test methods and standards applicable to self-contained ice makers and storage bins.[30] [31] AHRI 820–2017 describes a standardized method for measuring the ''efficiency'' of ice storage bins using a metric called ''Theoretical Storage Effectiveness,'' which describes the percent of ice that would remain in a bin 24 hours after it is produced. In contrast, the December 2014 MREF Test Procedure NOPR considered energy use associated with ice storage based on testing the ice maker and storing the ice in a bin over

[30] The Australian minimum energy performance standards (''MEPS'') apply to both stand-alone storage bins and ice storage bins contained in stand-alone equipment (AS/NZS 4865.2 & 3). The NRCan standard appears to apply only to storage bins contained in self-contained ice makers with integral storage bins.

[31] The newest version of the CSA test method, C742–15, refers directly to the 2012 version of AHRI 820 (and AHRI 821, which is the SI version of the standard).

a period of up to 48 hours with no ice retrieval to determine the energy use associated with replenishing the bin. 79 FR 74894, 74921–74922.

Many ice makers (including ice making heads (''IMHs'') and remote condensing unit (''RCU'') ice makers) can be paired with any number of storage bins, including those produced by other manufacturers. These ice makers are typically paired in the field with a bin chosen by the end user, rather than the manufacturer. However, DOE understands that many IMH and RCU equipment are advertised as compatible with a list of specific bins and, therefore, may be able to be rated based on recommended bin combinations.

In the December 2021 NOPR, DOE initially determined that the energy use of ACIMs in standby mode is likely very low compared to active mode ice making energy use. 86 FR 72322, 72348. Additionally, the contribution of any standby mode energy use to overall energy use can vary significantly depending on the specific installation and end use of the ACIM. *Id.*

At the time of the December 2021 NOPR, DOE did not have sufficient data and information to establish test procedures for standby energy use or energy use associated with ice storage. 86 FR 72322, 72348. In addition, incorporating standby energy use and energy use associated with ice storage would require significant test procedure changes requiring an increase in test time. Therefore, because of the lack of data and undue burden on manufacturers, DOE did not propose to amend its test procedures to account for standby or ice storage energy use in the December 2021 NOPR. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal to not amend its test procedures to account for standby or ice storage energy use. 86 FR 72322, 72348. DOE also requested data on the typical durations and associated energy use for all ACIM operating modes and on the potential burden associated with testing energy use in those modes. *Id.*

In response to the December 2021 NOPR, Hoshizaki and AHRI agreed that DOE should not amend the test procedure to account for standby energy use. (Hoshizaki, No. 14, p. 6; AHRI, No. 13, p. 8)

Hoshizaki commented the normal bin control switch in low-voltage test data shows very little power used to communicate with the control board. (Hoshizaki, No. 14, p. 6) Hoshizaki added that accounting for standby energy would require a significant increase in total test time, which would be a significant increase in test burden to measure a very small amount of energy. *Id.*

Joint Commenters commented that the standby power associated with powered controls outside of active icemaking can be around 25–50 kWh per year. (Joint Commenters, No. 15, p. 2) Joint Commenters noted that in the 2015 Final Rule Technical Support Document (''TSD'') for ACIM standards, DOE assumed a utilization factor (*i.e.,* the percent of time the ice maker is actively producing ice) of 42 percent, and assumed the unit was in standby mode 58 percent of the time, adding that DOE stated that the utilization factor was based on data provided by manufacturers and a field study. *Id.* Joint Commenters stated that despite the information cited in the 2015 Final Rule TSD, DOE cites insufficient information as a reason not to amend the test procedures to capture standby power, therefore, the Joint Commenters encouraged DOE to capture standby energy use in the test procedure to improve representativeness by more fully capturing the total energy consumption of ACIMs. *Id.*

The CA IOUs recommended that for self-contained machines the ice-melt rate procedure from AHRI 820 should be integrated into the method of test, and the ice-melt rate should be reported or integrated into the daily energy and harvest rate. (CA IOUs, No. 16, p. 7) The CA IOUs added that self-contained ice machines have an ice bin that is integral to the unit, and ice-melt rate should be reported for these units or have the ice-melt rate accounted for in the reported energy consumption. *Id.*

Joint Commenters urged DOE to capture the energy use associated with ice storage due to replacement cycles in the test procedures for self-contained units (SCU), which include an integrated storage bin, as well as for ice-making heads (IMH) and remote-condensing units (RCU). (Joint Commenters, No. 15, p. 3) Joint Commenters noted that in a NOPR published on December 16, 2014, regarding the miscellaneous refrigeration products (''MREFs'') test procedure (''December 2014 MREF Test Procedure NOPR''; 79 FR 74894), DOE proposed a test procedure that included a measurement of both the energy consumed during active ice production and the energy use associated with replenishing the ice supply to replace melted ice during ice storage. *Id.* For SCUs, Joint Commenters encouraged DOE to investigate the appropriateness of a procedure similar to the one it proposed for ice makers in the December 2014 MREF Test Procedure NOPR. *Id.*

Joint Commenters commented that the operation of ice makers includes replacement cycles (*i.e.,* when additional ice is produced to replenish the storage bin due to ice melt), and the effectiveness of the storage bin at keeping the stored ice cold (*i.e.,* slowing the melt) drives the frequency of the replacement cycles, and thus impacts the energy consumed over a period of time, such as a day or a year. (Joint Commenters, No. 15, p. 2–3) Joint Commenters noted that DOE previously found that the energy use associated with replacement of melted ice from ice storage bins ranged from 30 to 75% of total ice maker energy consumption. *Id.*

For IMHs and RCUs, Joint Commenters encouraged DOE to consider an approach that could involve establishing default values that represent the energy use associated with ice replacement. (Joint Commenters, No. 15, p. 3) Joint Commenters added the melt rates associated with the least-efficient storage bins on the market could be used to determine the extent of replacement cycle operation during a fixed period, such as 24 hours, noting that the default value of replacement cycle energy would take the form of an adder to measured energy consumption in the normal icemaking cycle. *Id.* Joint Commenters stated that a manufacturer could then choose to either use the default value or, if they wanted to demonstrate improved storage bin effectiveness, they could conduct a similar test to that used for SCUs. *Id.* Specifically, Joint Commenters addressed DOE's statements in the NOPR that many IMH and RCU models are advertised as compatible with a list of specific bins, stating they believe that it could make sense in these cases for the manufacturer to test with the least-efficient storage bin of those advertised in their literature. *Id.* If no bin is specified, the manufacturer would instead use the default values. *Id.*

In the December 2021 NOPR, DOE initially determined that the contribution of any standby mode energy use to overall energy use can vary significantly depending on the specific installation and end use of the ACIM. 86 FR 72322, 72348. Because ACIMs may be installed and operated in a range of end uses (*e.g.,* commercial kitchens, offices, schools, hospitals, hotels, and convenience stores), determining the performance based on the metric of energy use per 100 pounds of ice during an ACIM's active mode best reflects energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment

during a representative average use cycle while not being unduly burdensome to conduct, consistent with 42 U.S.C. 6314(a)(2).

DOE also initially determined that IMHs and RCU ice makers are typically paired in the field with a storage bin chosen by the end user, rather than the manufacturer, which can result in IMHs and RCU ice makers paired with storage bins from a different manufacturer. 86 FR 72322, 72348. DOE acknowledges that self-contained ice makers contain a storage bin that is integral to the ACIM. However, the energy use associated with ice storage of all ACIMs, including self-contained ice makers, can vary significantly depending on the specific installation and end use of the ACIM.

DOE acknowledges the comments regarding DOE's utilization factor from the 2015 Final Rule TSD for ACIM standards.[32] The utilization factor estimates the percent of time ice makers actively produce ice. The assumed utilization factor in the 2015 Final Rule TSD for ACIM standards was 42 percent across all equipment classes and efficiency levels and was based on data provided by manufacturers and data obtained from a field study.[33] The assumed utilization factor was used to estimate the annual energy consumption of each equipment class and efficiency level considered in the 2015 Final Rule TSD for ACIM standards and does not represent the utilization factor for an individual test unit. As noted by the field study, ice maker usage can vary dramatically from one installation to another as illustrated by the results of the field study in which the duty cycles of tested units averaged between 34.5 percent and 86.6 percent.

DOE has determined that the measurement of active mode energy use, when an ice maker is actively producing ice, and the metric of energy use per 100 pounds of ice represent a repeatable and reproducible test method that is reasonably designed to produce test results which reflect energy use during a representative average use cycle. Therefore, DOE is maintaining in this final rule to not amend its test procedures to account for standby or ice storage energy use.

7. Calculations and Rounding Requirements

As compared to ASHRAE Standard 29–2009, section 9.1.1 of ASHRAE Standard 29–2015 specifies averaging instructions for calculating the gross weight of product produced. ASHRAE Standard 29–2015 specifies to ''average the quantity for the three samples to determine the ice produced.'' However, this averaging instruction is not specified for the water or energy consumption calculations.

In the December 2021 NOPR, DOE proposed to provide explicitly that the energy use, condenser water use, and potable water use (as described in section III.D.8) be calculated by averaging the measured values for each of the three samples for each respective metric. 86 FR 72322, 72348. DOE added that this clarification would not affect the measured performance of ACIMs but would more explicitly present the calculation approach. *Id.*

In the December 2021 NOPR, DOE requested comment on the proposal to clarify that the energy use, condenser water use, and potable water use (as described in section III.D.8) be calculated by averaging the calculated values for the three measured samples for each respective metric. 86 FR 72322, 72348.

In response to the December 2021 NOPR, AHRI agreed with DOE that these could be valid proposed changes. (AHRI, No. 13, p. 9) However, AHRI and Hoshizaki requested that any clarifications to the ASHRAE 29 be addressed by the ASHRAE 29 standard committee. (AHRI, No. 13, p. 9; Hoshizaki, No. 14, p. 6).

DOE has determined to amend the test procedure in this final rule to clarify that the energy use, condenser water use, and potable water use (as described in section III.D.8) be calculated by averaging the calculated values for the three measured samples for each respective metric.

The regulations in 10 CFR 431.132 specify rounding requirements for the ACIM metrics ''energy use'' and ''maximum condenser water use.'' Specifically, DOE requires energy use to be in multiples of 0.1 kWh/100 lb and condenser water use to be in multiples of 1 gallon per 100 pounds of ice (''gal/100 lb''). 10 CFR 431.132.

AHRI Standard 810–2007, which is currently incorporated by reference in the DOE test procedure, and AHRI Standard 810 (I–P)–2016 with Addendum 1, which was proposed for use in the December 2021 NOPR, specify rounding requirements for the following quantities:

TABLE III.13—SUMMARY OF ROUNDING REQUIREMENTS

Quantity	AHRI standard 810 (both 2007 and 2016, except as noted)
Ice Harvest Rate	1 lb/24 h.
Condenser Water Use Rate.	1 gal/100 lb.
Potable Water Use Rate.	0.1 gal/100 lb.
Energy Consumption Rate.	0.1 kWh/100 lb (2007). 0.01 kWh/100 lb (2016).
Ice Hardness Factor	Not Specified (percent).

In the December 2021 NOPR, DOE proposed to incorporate by reference AHRI Standard 810 (I–P)–2016 with Addendum 1, which would include the rounding requirements shown in Table III.12, with the exception of the provision for harvest rate. 86 FR 72322, 72349. For harvest rate, the specified rounding to the nearest 1 lb/24 h could represent a significant percentage of harvest rates for low-capacity ACIMs. As discussed in section III.D.2, DOE observed low-capacity ACIMs available on the market with harvest rates as low as 7 lb/24 h. For this harvest rate, rounding to the nearest pound would allow a range of measured performance of approximately ±7 percent to have the same harvest rate result. Section 5.5.1 of ASHRAE Standard 29–2015 provides that ice-weighing instruments have accuracy and readability of ±1.0% of the quantity measured. Therefore, to avoid rounding harvest rate to a level that could impact test procedure accuracy, DOE proposed that harvest rate be rounded to the nearest 0.1 lb/24 h for ACIMs with harvest rates less than or equal to 50 lb/24 h. 86 FR 72322, 72349. DOE further discusses rounding requirements in section III.E.2.

DOE has determined to amend the test procedure in this final rule to require the rounding requirements specified in AHRI Standard 810 (I–P)–2016 with Addendum 1 except that for ACIMs with harvest rates less than or equal to 50 lb/24 h, the harvest rate shall be rounded to the nearest 0.1 lb/24 h.

DOE also proposed in the December 2021 NOPR to specifically state that all calculations must be performed with raw measured values and that only the resultant energy use, condenser water use, and harvest rate metrics be rounded. 86 FR 72322, 72349.

In response to the December 2021 NOPR, Hoshizaki and AHRI agreed with this assessment, but requested that any clarification be addressed by the ASHRAE 29 standard committee.

[32] *See https://www.regulations.gov/document/EERE-2010-BT-STD-0037-0136.*

[33] *See https://p2infohouse.org/ref/50/49015.pdf.*

(Hoshizaki, No. 14, p. 6; AHRI, No. 13, p. 9)

DOE has determined to amend the test procedure in this final rule to require that all calculations must be performed with raw measured values and that only the resultant energy use, water use, and harvest rate metrics be rounded.

In addition, ASHRAE Standard 29–2015 specifies stabilization requirements in terms of either percent or absolute weight without specifically referencing a calculation for percent variation. In the December 2021 NOPR, DOE proposed to apply the following equation to calculate the percent difference between any two measurements. 86 FR 72322, 72349. This includes any calculation to determine if the ice production rate has stabilized between cycles or samples, as described in section III.D.2.

$$Percent\ Difference = \frac{|A - B|}{\frac{A + B}{2}} x100\text{percent}$$

The proposed equation for calculating percent difference may affect when a unit meets the stability criteria, but DOE determined it would not affect the stabilization determination for any of the over 50 ice maker tests conducted prior to this rulemaking. 86 FR 72322, 72344.

In the December 2021 NOPR, DOE requested comment on its proposal to clarify that percent difference shall be calculated based on the average of the two measured values. 86 FR 72322, 72349.

In response to the December 2021 NOPR, Hoshizaki agreed that this proposal can help in understanding of how percent difference is calculated and should be spelled out in the Code of Federal Regulation's language but requested that this be addressed by the ASHRAE 29 standard committee. (Hoshizaki, No. 14, p. 7) AHRI agreed with DOE that these could be valid proposed changes. (AHRI, No. 13, p. 9)

To ensure consistency in stability determinations, DOE is amending the test procedure in this final rule to require that percent difference be calculated based on the average of the two measured values.

8. Potable Water Use

The water use of an ACIM includes water used in making the harvested ice; any dump or purge water used as part of the ice making process; and for water-cooled ACIMs, the water used to transfer heat from the condenser. In establishing initial standards for ACIMs, Congress addressed the latter type of water use. For ACIMs that produce cube type ice with capacities between 50 and 2,500 pounds per 24-hour period, EPCA specified maximum condenser water use rates (in gallons per 100 pounds of ice). (42 U.S.C. 6313(d)(1)) In a note to the table establishing initial maximum condenser water use rates, the statute provides that ''Water use is for the condenser only and does not include potable water used to make ice.'' (*Id.*)

In the January 2012 final rule, DOE noted that 42 U.S.C. 6313(d) does not require DOE to develop a water conservation test procedure or standard for potable water use in cube type ice makers or other ACIMs; rather, it sets forth energy and condenser water use standards for cube type ice makers at 42 U.S.C. 6313(d)(1), and allows, but does not require, the Secretary to issue analogous standards for other types of ACIMs under 42 U.S.C. 6313(d)(2). 77 FR 1591, 1605.

DOE further stated that ambiguous statutory language may lead to multiple interpretations in the development of regulations. *Id.* DOE stated that the statutory language is unclear whether the footnote on potable water use that appears in 42 U.S.C. 6313(d)(1) has a controlling effect on 42 U.S.C. 6313(d)(2) and 42 U.S.C. 6313(d)(3)—the statutory direction to review and consider amended standards. *Id.* Potable water use is not referenced anywhere else in 42 U.S.C. 6313(d), and thus it is difficult to determine whether this footnote is a clarification or a mandate in regard to cube type ice makers, and furthermore, whether it would apply to the regulation of other types of ACIMS. *Id.*

DOE also stated that while there is generally a positive correlation between energy use and potable water use, DOE understands that at a certain point the relationship between potable water use and energy consumption reverses due to scaling. *Id.* Based on this fact, and given the added complexity inherent to the regulation of potable water use and the concomitant burden on ACIM manufacturers, DOE did not establish regulations or require testing and reporting of the potable water use of ACIMs. *Id.* Without a clear mandate from Congress on potable water use generally, and given that Congress chose not to regulate potable water use for cube type ice makers by statute, DOE exercised its discretion in choosing not to include potable water use rate in its test procedure for ACIMs. *Id.*

ASHRAE Standard 29–2015 and AHRI Standard 810 (I–P)–2016 with Addendum 1 include measurements and rating requirements for potable water use. The measurement of ''non-condenser'' potable water use (*i.e.,* water used in making the harvested ice and any dump or purge water) is currently not specified by the DOE test procedure, but is required by other programs, such as ENERGY STAR [34] and the AHRI certification program.[35]

As stated in the March 2019 RFI, DOE reviewed the relationship between potable water use with harvest rate and daily energy consumption by analyzing reported ACIM data from the AHRI directory and the ENERGY STAR product database.[36] [37] 84 FR 9979, 9986. DOE observed that all continuous ice makers had reported values for potable water use per 100 pounds of ice between 11.9 and 12.0 gallons because all the water is converted to produced ice. *Id.* In contrast, potable water use varies for batch type ice makers because a portion of the potable water is drained from the sump at the end of each ice making cycle—this portion is different for different ice maker models. *Id.* The relationship between potable water use and daily energy consumption of the AHRI and ENERGY STAR data is not identifiable when considering the entire dataset. *Id.*

Because energy use can be affected by many factors other than potable water use, the lack of a clear trend between energy use and potable water use does not provide a definitive indication of the extent of the relationship between energy use and potable water use. 86 FR 72322, 72350. Although the exact

[34] The ENERGY STAR specification for automatic commercial ice makers is available at *www.energystar.gov/sites/default/files/Final%20V3.0%20ACIM%20Specification%205-17-17_1.pdf.*

[35] *www.ahrinet.org/Certification.aspx.*

[36] Available at *www.ahridirectory.org/NewSearch?programId=31&searchTypeId=3.*

[37] Available at *www.energystar.gov/productfinder/product/certified-commercial-ice-machines/results.*

relationship between potable water use and energy use is not understood, potable water use does impact energy use. *Id.* An ACIM must chill the entering potable water to some extent. *Id.* The extent to which potable water is not directly converted to ice, it still is likely cooled to 32 °F. *Id.* Cooled potable water that is not directly converted to ice and is drained from the unit represents lost refrigeration capacity. *Id.* As such, reducing potable water use may provide the potential for reduced energy consumption. *Id.*

In the December 2021 NOPR, DOE initially determined that ACIMs currently available on the market have a wide range of potable water use, and the relationship between potable water use and energy use and harvest rate is not clear. 86 FR 72322, 72350. Based on its inclusion in the AHRI certification program and ENERGY STAR qualification criteria, potable water use may be a useful measurement as part of characterizing the energy use associated with ACIM performance. *Id.* To align with the AHRI certification program and ENERGY STAR, while allowing for a measurement of potable water use that is consistent with the test requirements proposed in the December 2021 NOPR for energy use, harvest rate, and condenser water use, DOE proposed in the December 2021 NOPR to include measurement of potable water use in the DOE ACIM test procedure at 10 CFR 431.134. *Id.* Because DOE does not regulate ACIM potable water use, testing for the potable water measurements under the proposed approach would be voluntary. *Id.* Specifically, DOE did not propose to require manufacturers to conduct the potable water provisions of the test procedure, and manufacturers would not report the results of the potable water test to DOE, if conducted. *Id.* In addition, DOE stated that manufacturers would not be required to use the voluntary test procedure as the basis of any representations of potable water use. *Id.*

DOE proposed that the measurement of potable water use would generally follow the test methods in AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015, but with the additional test procedure amendments as proposed in the December 2021 NOPR. 86 FR 72322, 72350. This proposed approach is generally consistent with the methods currently used for the AHRI and ENERGY STAR programs; additionally, DOE does not expect that the additional test provisions as proposed in the December 2021 NOPR would impact performance as measured under the existing approaches used by AHRI (AHRI Standard 810 (I–P)–2016 with Addendum 1) or ENERGY STAR (AHRI Standard 810–2007). *Id.*

DOE also proposed to add a definition of ''potable water use'' in 10 CFR 431.132. 86 FR 72322, 72350. DOE proposed to define ''potable water use'' as the amount of potable water used in making ice, which is equal to the sum of the ice harvested, dump or purge water, and the harvest water, expressed in gal/100 lb, in multiples of 0.1, and excludes any condenser water use. *Id.* This definition is generally consistent with the term ''potable water use rate'' in AHRI Standard 810 (I–P)–2016 with Addendum 1, with the clarification that condenser water use is not considered potable water use. *Id.*

In the December 2021 NOPR, DOE noted that AHRI Standard 810 (I–P)–2016 with Addendum 1 specifies under the ''Certified Ratings'' section that potable water use rate is applicable to batch type ice makers only, but that AHRI's Directory of Certified Product Performance includes the potable water use rate for both batch type and continuous type ACIMs.[38] 86 FR 72322, 72350. Thus, the industry standard appears to currently be used for measuring potable water use for both batch and continuous ice makers. *Id.*

In the December 2021 NOPR, DOE requested comment on the proposal to include a voluntary method for measuring potable water use, including the value or drawbacks of such an approach, in 10 CFR 431.134 according to the industry standards and additional test procedure proposals as discussed in the NOPR. 86 FR 72322, 72350.

In response to the December 2021 NOPR, Hoshizaki and AHRI commented that potable water requirements are not covered by the regulation today and added that potable water restrictions should be reviewed against sanitation requirements to ensure no issues or impact on performance. (Hoshizaki, No. 13, p. 9; AHRI, No. 13, p. 9) Hoshizaki added that ASHRAE 29 and AHRI 810 account for the collected water use. (Hoshizaki, No. 14, p. 7)

The Joint Commenters and CA IOUs encouraged DOE to require that potable water use be measured and reported, which would ensure that information about the potable water use of all ice maker models is available to purchasers so that they can make informed decisions. (Joint Commenters, No. 15, p. 3; CA IOUs, No. 16, p. 4) The CA IOUs added that due to the ambiguous relationship between potable water use and efficiency, more reporting from manufacturers will elucidate these impacts. (CA IOUs, No. 16, p. 7) The CA IOUs supported DOE's potable water usage measurement. (CA IOUs, No. 16, p. 4)

The Joint Commenters stated that manufacturers are already measuring potable water use as part of the ENERGY STAR and AHRI certification and programs. (Joint Commenters, No. 15, p. 3) The CA IOUs commented that ASHRAE 29 covers water consumption methodology; however, manufacturers only report water consumption data to ENERGY STAR, which covers approximately 30 percent of the market. (CA IOUs, No. 16, p. 4) The Joint Commenters added that while most ACIM models in the AHRI directory meet the ENERGY STAR potable water use requirements, the three highest water-consuming models consume 120%, 97%, and 72% more potable water than the ENERGY STAR requirements. *Id.* The CA IOUs commented that two major manufacturers represent most models in the ENERGY STAR database, with harvest rates ranging from approximately 200 lb/day to 1800 lb/day. (CA IOUs, No. 16, p. 5–6) The CA IOUs further added that one of the manufacturer's machines consistently use more water, and this water use does not appear to correlate with energy use. *Id.* The CA IOUs stated that there is only a strong relationship between water and energy use for smaller self-contained ice machine categories and did not show a relationship for ice making heads and remote condensed units. *Id.*

The CA IOUs commented that DOE's NOPR cites ''Prohibited Representations,'' to avoid imposing a mandate for representations with regard to potable water use (86 FR 72322, 72350); however, CA IOUs stated that nowhere in this provision does Congress bar DOE from imposing a representation requirement for water use. *Id.*

CA IOUs commented that currently, the ASHRAE 29 test method does not adequately capture water consumption from purge cycles, which may occur every one to twelve harvest cycles and can be adjusted by a technician in the field, and recommended that purge cycle water consumption should be measured for batch machines and integrated into the reported total water consumption of the machine. (CA IOUs, No. 16, p. 4) The CA IOUs added that the results for energy use may differ; energy use may increase as pre-cooled water near the freezing point is lost as purge water, or it may decrease if additional dump and purge water leads to lessened scaling in the ice maker. *Id.*

[38] *www.ahridirectory.org/NewSearch?programId=31&searchTypeId=3.*

Because DOE does not regulate ACIM potable water use and because the DOE test procedures are used to determine compliance with energy and condenser water use (as applicable) standards, the harvest rate, energy use, and condenser water use (as applicable) are the relevant required metrics. DOE acknowledges that potable water use may be a useful measurement as part of characterizing the performance of an ACIM and is providing a repeatable and reproducible test method that allows potable water use to be tested consistently with the other performance metrics. DOE is maintaining in this final rule a voluntary method for measuring potable water use in 10 CFR 431.134 that generally follows the test methods in AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015 with some modifications, consistent with the December 2021 NOPR.

In the December 2021 NOPR, DOE did not propose to adjust potable water use based on ice hardness factor, as is currently required for energy use and condenser water use. 86 FR 72322, 72351. Both energy use and condenser water use correspond to the amount of heat removed from the potable water in producing ice. *Id.* Ice that is more completely frozen will require more energy use and more heat rejection (via condenser water use, if applicable). *Id.* However, potable water use does not similarly vary depending on the ice hardness. *Id.* The same amount of potable water is used to make partially frozen ice as completely frozen ice. *Id.* This is supported by nearly all continuous ice makers showing the same 11.9 to 12 gallons of potable water use per 100 lbs of ice production. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal that potable water use is not adjusted based on ice hardness factor. 86 FR 72322, 72351.

In response to the December 2021 NOPR, Hoshizaki and AHRI agreed that potable water should not be adjusted based on ice hardness. (Hoshizaki, No. 14, p. 7; AHRI, No. 13, p. 9)

DOE has determined in this final rule to not adjust the potable water use based on ice hardness.

Potable water use for portable ACIMs is different than for ACIMs with a fixed water connection. As discussed, portable ACIMs require that the fill reservoir be filled manually with the maximum volume of water that is recommended by the manufacturer. In a portable ACIM, the unused ice collected in the ice storage bin slowly melts. This melt water is recycled back into the potable water reservoir to be reused. Unlike batch type non-portable ACIMs, there is no dump or purge water to be measured. For portable ACIMs, water introduced to the reservoir is typically only removed from the unit as ice (and any corresponding melt water). Therefore, in the December 2021 NOPR, DOE proposed that the potable water use rate for portable ACIMs be defined as equal to the weight of ice and any corresponding melt water collected for the capacity test as specified in section 7.2 of ASHRAE Standard 29–2015. 86 FR 72322, 72351.

In the December 2021 NOPR, DOE requested comment on the proposal that the potable water use rate of portable ACIMs be defined as equal to the weight of ice and water captured for the capacity test, as specified in section 7.2 of ASHRAE Standard 29–2015. 86 FR 72322, 72351.

In response to the December 2021 NOPR, Hoshizaki agreed to the calculation method if the ASHRAE 29–2015 standard is adopted at this time. (Hoshizaki, No. 14, p. 7)

DOE is maintaining in this final rule that the potable water use rate of portable ACIMs be defined as equal to the weight of ice and water captured for the capacity test, as specified in section 7.2 of ASHRAE Standard 29–2015, consistent with the December 2021 NOPR.

E. Representations of Energy Use and Energy Efficiency

In addition to updates to the ACIM test procedure, DOE proposed in the December 2021 NOPR revisions to the provisions related to the sampling plan and the determination of represented values currently specified at 10 CFR 429.45. 86 FR 72322, 72351. DOE also proposed to add equipment-specific enforcement provisions for ACIMs to 10 CFR 429.134. *Id.*

1. Sampling Plan and Determination of Represented Values

In subpart B to 10 CFR part 429, DOE provides uniform methods for manufacturers to determine representative values of energy- and non-energy-related metrics for each basic model of covered equipment. The purpose of a statistical sampling plan is to provide a method to ensure that the test sample size (*i.e.,* number of units tested) is sufficiently large that represented values of energy- and non-energy-related metrics are representative of aggregate performance of the units in the basic model, while accounting for variability inherent to the manufacturing and testing processes.

DOE currently specifies the ACIM-specific sampling plans and requirements for the determination of represented values at 10 CFR 429.45. The sampling plan and method for determining represented values applies to represented values of maximum energy use, or other measures of energy consumption for which consumers would favor lower values.

The reference to ''maximum energy use'' and ''maximum condenser water use'' in 10 CFR 429.45 could be misinterpreted to refer to the energy and water conservation standard levels for that basic model (*i.e.,* the maximum allowable energy and maximum allowable condenser water use), as opposed to the tested performance. Therefore, in the December 2021 NOPR, for consistency and clarity, DOE proposed to replace the term ''maximum energy use'' with the term ''energy use'' and the term ''maximum condenser water use'' with the term ''condenser water use.'' 86 FR 72322, 72351. In addition, values of both energy and condenser water consumption are relevant for ACIMs. As such, DOE proposed to modify the language at 10 CFR 429.45 to specify expressly that the sampling plan at 10 CFR 429.45(a)(2)(i) applies both to measures of energy and condenser water use for which consumers would favor lower values. *Id.*

Similarly, 10 CFR 431.132 includes a definition for the term ''maximum condenser water use.'' This language may also be misinterpreted to refer to the condenser water conservation standard level for a basic model as opposed to the tested condenser water use. Therefore, in the December 2021 NOPR, DOE proposed to modify the term and definition of ''maximum condenser water use'' to instead refer to the term ''condenser water use.'' 86 FR 72322, 72351. This modification is consistent with the existing definition of ''energy use'' in 10 CFR 431.132.

In 10 CFR 429.45(a)(2)(ii), DOE also specifies calculation procedures for energy efficiency metrics, or measures of energy consumption where consumers would favor higher values. As DOE's test procedure does not require determining any values of energy efficiency or other measure of performance for which consumers would favor higher values, DOE proposed to remove this provision in the December 2021 NOPR. 86 FR 72322, 72351.

In addition to energy related metrics, 10 CFR 429.45 mandates the reporting of harvest rate, a key non-energy metric associated with determining energy and condenser water standards for ACIM equipment, as applicable. However, 10 CFR 429.45 does not specify how the represented value of harvest rate for

each basic model should be determined based on the test results from the sample of individual models tested. Similar to the requirements for other covered products and commercial equipment, DOE proposed in the December 2021 NOPR that the represented value of harvest rate for the basic model be determined as the mean of the measured harvest rates for each unit in the test sample, based on the same tests used to determine the reported energy use and condenser water use, if applicable. 86 FR 72322, 72351. Although not specified in 10 CFR 429.45, DOE expected manufacturers are currently certifying ACIM performance based on the tested harvest rates. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal to amend the sampling plan and reporting requirements for ACIMs in 10 CFR 429.45. 86 FR 72322, 72351. DOE sought information on how manufacturers are currently interpreting ''maximum energy use'' and ''maximum condenser water use'' in the context of the sampling and certification report requirements, how manufacturers are currently determining harvest rates, and whether the proposed amendments would impose any burden on manufacturers. *Id.* DOE also requested comment on its proposal to modify the term and definition of ''maximum condenser water use'' to instead refer to ''condenser water use''. *Id.*

In response to the December 2021 NOPR, Hoshizaki and AHRI commented that further clarification is needed for this proposal. (Hoshizaki, No. 14, p. 7; AHRI, No. 13, p. 9) Hoshizaki requested that this be brought to the ASHRAE 29 standard committee for clarification and comment. (Hoshizaki, No. 14, p. 7)

AHRI commented that the definitions used by the method of test and rating standards are accurate today and should be adopted by DOE without modification. (AHRI, No. 13, p. 9–10) AHRI added that there are differences between reporting for some certification programs and DOE reporting although all values are determined per the current method of test and rating standard. (AHRI, No. 13, p. 9–10)

The sampling plan and determination of represented values amendments proposed in the December 2021 NOPR would clarify the terminology and requirements and would not impose any additional burden on manufacturers because DOE believes the clarifications are consistent with how manufacturers are currently testing.

DOE is maintaining in this final rule the amends to the sampling plan and reporting requirements for ACIMs in 10 CFR 429.45, replacing the term ''maximum energy use'' and ''maximum condenser water use'' in 10 CFR 429.45 with the term ''energy use'' and ''condenser water use'', respectively, and modifying the term and definition of ''maximum condenser water use'' at 10 CFR 431.132 to instead refer to ''condenser water use'', consistent with the December 2021 NOPR.

2. Test Sample Value Rounding Requirements

DOE currently requires test results for ACIMs to be rounded, as discussed in section III.D.7; however, the requirements in 10 CFR 429.45 do not specify how values calculated in accordance with 10 CFR 429.45(a) would be rounded. To ensure consistency, DOE proposed, in the December 2021 NOPR, that any calculations according to 10 CFR 429.45 be rounded consistent with the rounding requirements for individual test results. 86 FR 72322, 72351–72352. Specifically, DOE proposed to require that values calculated from a test sample be rounded as follows: energy use to the nearest 0.01 kWh/100 lb, condenser water use to the nearest gal/100 lb, and harvest rate to the nearest 1 lb/24 h (for ACIMs with harvest rates greater than 50 lb/24 h) or to the nearest 0.1 lb/24 h (for ACIMs with harvest rates less than or equal to 50 lb/24 h). 86 FR 72322, 72352.

In the December 2021 NOPR, DOE requested comment on its proposal to require that values calculated from a test sample be rounded as follows: energy use to the nearest 0.01 kWh/100 lb, condenser water use to the nearest gal/100 lb, and harvest rate to the nearest 1 lb/24 h (for ACIMs with harvest rates greater than 50 lb/24 h) or to the nearest 0.1 lb/24 h (for ACIMs with harvest rates less than or equal to 50 lb/24 h). 86 FR 72322, 72352.

In response to the December 2021 NOPR, Hoshizaki and AHRI requested that any changes to the calculation of values be addressed by the AHRI 810 standard committee. (Hoshizaki, No. 14, p. 7; AHRI, No. 13, p. 10) AHRI added that changes made during this rulemaking should be consistent with the current version of AHRI Standard 810, and DOE is welcome to participate in any AHRI standard working groups to provide suggestions for consideration. (AHRI, No. 13, p. 10)

As discussed in section III.D.7, DOE is amending the rounding requirements in this final rule to be consistent with AHRI Standard 810 (I–P)–2016 with Addendum 1, except that for ACIMs with harvest rates less than or equal to 50 lb/24 h, the harvest rate shall be rounded to the nearest 0.1 lb/24 h.

DOE is maintaining in this final rule that values calculated from a test sample are required to be rounded as follows: energy use to the nearest 0.01 kWh/100 lb, condenser water use to the nearest gal/100 lb, and harvest rate to the nearest 1 lb/24 h (for ACIMs with harvest rates greater than 50 lb/24 h) or to the nearest 0.1 lb/24 h (for ACIMs with harvest rates less than or equal to 50 lb/24 h), consistent with the December 2021 NOPR.

3. Enforcement Provisions

Subpart C of 10 CFR part 429 establishes enforcement provisions applicable to covered products and covered equipment, including ACIMs. Product-specific enforcement provisions are provided in 10 CFR 429.134, but that section currently does not specify product-specific enforcement provisions for ACIMs. The DOE requirements in 10 CFR 429.134 provide which ratings or measurements will be used to determine the applicable energy or condenser water conservation standard. Normally, DOE provides that the certified metric would be used for enforcement purposes (*e.g.,* calculation of the applicable energy conservation standard) if the average value measured during enforcement testing is within a specified percent of the rated value (the specific allowable range varies based on product and equipment type). Otherwise, the average measured value would be used.

Section 7.1 of ASHRAE Standard 29–2009, incorporated by reference into the DOE ACIM test procedure, allows for a two percent weight variation between collected ice samples when establishing stability of an ACIM. Additionally, section 5.5.1 of ASHRAE Standard 29–2009 specifies that the ice-weighing instruments are required to be accurate to within 1.0 percent of the quantity measured. Due to the allowable variability in test measurements, a five percent tolerance around the rated capacity value likely is appropriate for ACIMs. This tolerance is consistent with the tolerance for ice harvest rate ratings as specified in section 5.4 of AHRI Standard 810 (I–P)–2016 with Addendum 1. In the December 2021 NOPR, DOE proposed that the certified capacity metric for ACIMs (*i.e.,* the harvest rate) will be used for determination of the maximum allowable energy consumption and maximum allowable condenser water use levels only if the average measured harvest rate during DOE testing is within five percent of the certified harvest rate. 86 FR 72322, 72352. If the

average measured harvest rate is found to be outside of this range when compared to the certified harvest rate, the average measured harvest rate of the units in the tested sample will be used as the basis for determining the maximum allowable energy consumption and maximum allowable condenser water use levels, as applicable. *Id.*

In the December 2021 NOPR, DOE requested comment on its proposal to include a new paragraph in 10 CFR 429.134 to specify how to determine whether the certified or measured harvest rate is used to calculate the maximum energy consumption and maximum condenser water use levels. 86 FR 72322, 72352. DOE also requested comment on whether a five percent tolerance for the average measured harvest rate compared to the certified harvest rate is an appropriate tolerance for such purposes, and if not, what tolerance is appropriate. *Id.*

In response to the December 2021 NOPR, Hoshizaki commented that further clarification is needed to determine a response. (Hoshizaki, No. 14, p. 7) Hoshizaki requested that this be brought to the ASHRAE 29 standard committee for clarification and comment. (Hoshizaki, No. 14, p. 7)

Subpart C of 10 CFR 429.134 establishes product-specific enforcement provisions applicable to covered products and covered equipment. The DOE requirements in 10 CFR 429.134 provide which ratings or measurements will be used to determine the applicable energy or water conservation standard. DOE's enforcement provisions are outside the scope of industry standards and, therefore, ASHRAE 29 does not apply to DOE's enforcement provisions.

DOE is maintaining in this final rule the inclusion of a new paragraph in 10 CFR 429.134 to specify how to determine whether the certified or measured harvest rate is used to calculate the maximum energy consumption and maximum condenser water use levels and to establish a five percent tolerance for the average measured harvest rate compared to the certified harvest rate, consistent with the December 2021 NOPR.

F. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

In this final rule, DOE amends the ACIM test procedure to include low-capacity ACIMs in the scope of the test procedure; references the most recent versions of the test procedures incorporated by reference; clarifies the stability criteria; revises clearances for test installations; includes additional updates to clarify appropriate test measurements, conditions, settings, and setup requirements; establishes provisions for the voluntary measurement of potable water use; and updates calculation instructions. The following paragraphs discuss DOE's determination of any impacts on testing costs or measured performance resulting from these amendments.

a. Testing Cost Impacts

i. Per-Test Cost

In the January 2012 final rule, DOE estimated a per-test cost of $5,000 to $7,500 for the current ACIM test procedure. 77 FR 1591, 1610. In the December 2021 NOPR, DOE initially determined that the low end of that range, or $5,000, is representative of current ACIM per test cost. 86 FR 72322, 72352.

As discussed in section III.D.2, the current test procedure requires multiple cycles to determine stability, after which additional cycles are performed to measure performance. In this final rule, DOE references the updated version of ASHRAE Standard 29–2015, which includes updated stabilization requirements, and expressly requires that the cycles or samples used for the capacity test are stable, thus eliminating the need to perform separate cycles for meeting the stability criteria and for testing performance (*i.e.,* reducing the total number of cycles required for testing). For batch ice makers, this amendment will eliminate the need for testing two cycles prior to the test. For continuous ice makers, this amendment will eliminate the need for measuring three consecutive 14.4 min samples taken within a 1.5-hour period prior to the test.

In the December 2021 NOPR, DOE estimated that total ice maker test duration, including set up, pull-down, and test operation currently requires 8 hours. 86 FR 72322, 72352. Under the amended approach, consistent with the December 2021 NOPR, DOE estimates that the total test time will decrease by approximately 1 hour, representing a 12.5-percent reduction in test duration. Taking overhead costs into account, consistent with the December 2021 NOPR, DOE estimates that the proposed stabilization requirement will decrease the test cost by approximately 6 percent, or $300 per test based on the initial $5,000 per-test estimate. Because DOE requires manufacturers to test at least two units per model to certify performance, testing will cost manufacturers approximately $600 less per basic model for all future basic models tested in accordance with this amended test procedure, resulting in a total test cost of $9,400 per basic model.[39]

In response to the December 2021 NOPR, Hoshizaki commented that the use of test cycles to confirm stability is already done, so no additional cost is associated. (Hoshizaki, No. 14, p. 7)

AHRI commented that stability should be determined in accordance with ASHRAE Standard 29 Provisions to avoid any incurred cost to testing. (AHRI, No. 13, p. 10)

IOM commented that DOE's proposal to further restrict the definition of ''stability'' has the potential to increase burden and cost, as all test cycles must have ice harvest rates within 2% rather than consecutive test cycles. (IOM, No. 11, p. 3)

AHAM commented that DOE deviated from ASHRAE and AHRI standards in some ways in order to create a test procedure that could be applicable to residential products but that the proposed test and its deviations are unworkable, unrealistic, and burdensome given the way residential appliance manufacturers carry out testing and the test facilities residential ice maker manufacturers have. (AHAM, No. 18, p. 9) AHAM also stated that since the proposed test requires complete attention to the test once it starts, the technician must be dedicated to this test due to the time requirements of 15 minutes for the fill, plus-or-minus nine seconds to empty the bin, and the five minute requirement to start the next test. (AHAM, No. 18, p. 13–14) AHAM states that this is a burdensome requirement because it will require active monitoring by the test technician as opposed to a test that can be largely automated, which may require manufacturers to hire additional technicians. *Id.*

DOE acknowledges the comment regarding the potential for the amended stability requirements to increase burden and cost. Although it is possible a test unit will require additional cycles to meet the amended stability requirements, based on investigative testing using the amended stability requirements, DOE observed that the average number of cycles or samples required to reach stability was 3.0 based on a sample of 39 batch ACIM tests and 6 continuous ACIM tests which indicates that unstable operation would represent a minority of tests conducted. DOE estimates that the total test time will decrease by approximately 1 hour, representing a 12.5-percent reduction in

[39] Based on a new per-test cost of $4,700.

test duration, for the majority of tests conducted. The amended stability requirements address unstable operation to ensure repeatable and reproducible test results.

DOE reaffirms its determination that testing will cost manufacturers approximately $600 less per basic model for all future basic models tested in accordance with this amended test procedure, as compared to the existing test procedure. DOE recognizes that testing does require facilities and technician labor, and maintains the cost estimate of $4,700 per individual test or $9,400 when testing to certify performance of a basic model (requiring at least two test units).

ii. One-Time Cost

As discussed in section III.D.3.a, this final rule implements a relative humidity test condition.

In the December 2021 NOPR, DOE estimated the one-time cost for purchasing relative humidity controls to range from $1,000 to $5,000, depending on the method that is chosen. 86 FR 72322, 72353. DOE estimated that the purchase and installation of a humidifier boiler with modulating valves that releases steam on the wall to control relative humidity costs $5,000, although less expensive options could be used, such as a dedicated coil with reheat, steam generators, humidifiers, and dehumidifiers. *Id.* In addition, DOE also estimated that instrumentation to measure relative humidity at an accuracy of ±2 percent costs around $500.[40] *Id.*

Hoshizaki and AHRI stated that upgrading facilities for water hardness and relative humidity could incur significant facility upgrade costs. (Hoshizaki, No. 14, p. 8; AHRI, No. 13, p. 10–11) AHAM stated that the relative humidity requirement is unduly burdensome for manufacturers. (AHAM, No. 18, p. 12–13) AHAM commented that unless the test chamber was initially designed with dehumidification capabilities and appropriately sealed, there is a significant investment to achieve the 35.0 ± 5.0 percent levels required in the proposed test procedure. *Id.* Residential ice maker manufacturers have not built test chambers with these capabilities in mind and, thus, this provision would likely require all manufacturers to overhaul their test facilities. *Id.*

Hoshizaki stated that extending tests for purge water and/or standby energy would require additional test time that would hamper design cycles. (Hoshizaki, No. 14, p. 8)

This final rule does not implement water hardness requirements as proposed in the December 2021 NOPR. Similarly, this final rule does not directly account for energy or water used during intermittent flush or purge cycles nor accounts for standby or ice storage energy use. Regarding humidity controls, DOE has reviewed and maintains its estimates from the December 2021 NOPR regarding the costs associated with purchasing relative humidity controls and instrumentation, as described in this section.

As discussed in section III.A, this final rule expands the scope of the test procedure to include low-capacity ACIMs. This final rule incorporates additional test procedure requirements to ensure appropriate testing of low-capacity ACIMs, as discussed in section III.D.1. In the December 2021 NOPR, DOE requested comment on any expected costs associated with the proposed amendment to expand test procedure scope to include low-capacity ACIMs. 86 FR 72322, 72353. Specifically, DOE requested comment on whether any manufacturers are currently making representations of low-capacity ACIM energy consumption based on test methods that would produce measures of performance that would be inconsistent with the existing DOE test procedure or the test procedure for low-capacity ACIMs as proposed in the December 2021 NOPR. 86 FR 72322, 72353–72354.

DOE stated in the December 2021 NOPR that based on a review of low-capacity ACIMs available on the market, DOE preliminarily determined that manufacturers either make no claims regarding the energy consumption of their low-capacity ACIM models, or currently specify energy consumption in accordance with the existing DOE test procedure (and referenced industry standards). DOE stated that it expects that the manufacturers currently electing to make no claims regarding low-capacity ACIM energy consumption will continue to do so even after a test procedure is established.

In response to the December 2021 NOPR, Hoshizaki commented there are representations of low-capacity ACIM energy consumption. (Hoshizaki, No. 14, p. 8) However, Hoshizaki and AHRI commented that low-capacity ACIMs were not included in the scope for DOE's 2010 or 2018 ACIM energy conservation standards. (Hoshizaki, No. 14, p. 8; AHRI, No. 13, p. 11) AHRI urged DOE to exclude low-capacity units until they are included into the appropriate method of test because including these units would require significant testing to factor the energy use and any changes to meet the current standards designed for units above 50 pounds. (AHRI, No. 13, p. 11)

Hoshizaki requested that this be brought up in the ASHRAE 29 standard committee to discuss test method options for low-capacity ACIMs. (Hoshizaki, No. 14, p. 8)

As discussed, DOE estimates that the amended test procedure has a per-test cost of $4,700, and that testing two basic models for certification purposes would have a total cost of $9,400. To the extent that manufacturers are currently voluntarily making representations of low-capacity ACIM energy consumption based on test methods inconsistent with the DOE test procedure as amended by this final rule, such manufacturers would incur a one-time cost of $9,400 per basic model to make voluntary representations consistent with the DOE test procedure as amended by this final rule.

Low-capacity ACIMs are not currently subject to DOE testing or energy conservation standards. Manufacturers will not be required to test low-capacity ACIMs until such time as the compliance date for any newly established energy conservation standards for such equipment. Under the amended test procedure, were a manufacturer to choose to make representations of the energy efficiency or energy use of a low-capacity ACIM, beginning 360 days after publication of the final rule in the **Federal Register**, manufacturers would be required to base such representations on the DOE test procedure. (42 U.S.C. 6314(d)(1))

b. Impact on Measured Performance

DOE expects that any impact from the other amendments to the measured efficiency of certified ACIMs is *de minimis* as compared to the current test procedure, as discussed in detail for each proposal in section III in this final rule. The amendments will generally improve representativeness, repeatability, and reproducibility of DOE's test procedure. Additionally, certain amendments will also incorporate test requirements consistent with DOE guidance or test procedure waivers already in effect for testing ACIMs.

Specifically, DOE incorporated the following amendments: (1) updating references to the latest versions of the relevant industry standards (see section III.C); (2) clarifying stabilization criteria; (3) incorporating a test condition for relative humidity and a clarification regarding water pressure (see section

[40] For example, see Campbell Scientific model EE181–L at *www.campbellsci.com/ee181-l.*

III.D.3); (4) establishing and clarifying test setup and setting requirements (see section III.D.4); (5) specifying a voluntary measurement of potable water use (see section III.D.8); and (6) including revisions to test sample calculations and enforcement provisions (see section III.E).

In response to the December 2021 NOPR, Hoshizaki and AHRI commented that addressing all the proposed amendments would necessitate retesting most ACIM units, placing undue burden on manufacturers. (Hoshizaki, No. 14, p. 8; AHRI, No. 13, p. 10–11) Hoshizaki added that the proposals would require testing of 190 models with multiple samples of each. (Hoshizaki, No. 14, p. 8)

DOE does not agree with Hoshizaki and AHRI's assertions that the amended test procedure would necessitate retesting most ACIM units. As this final rule discusses within each relevant section, DOE expects that any impact on measured performance from these amendments is expected to be *de minimis* as compared to the current test procedure. Equipment with no measurable change to energy use under the amended test procedure would not need to be retested. To the extent that a manufacturer determines that a particular test procedure amendment would impact the existing measured energy use for a specific basic model, DOE estimates a re-testing cost of $9,400 per basic model.

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. 10 CFR 431.4; section 8(c) of appendix A to subpart C of part 430. 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 and incorporate the modified standard as the DOE test procedure.

The test procedure for ACIMs at 10 CFR 431.134 incorporates by reference certain provisions of AHRI Standard 810–2007 and ASHRAE Standard 29–2009. DOE references 810–2007 for definitions and test procedure requirements. DOE references ASHRAE Standard 29–2009 for test procedure requirements and ice hardness factor calculations. In January 2018, AHRI released an updated version of the 810 Standard which DOE evaluated as part of this rulemaking. In January 2015, ASHRAE released an updated version of the 29 Standard which DOE evaluated as part of this rulemaking. The industry standards DOE is incorporating by reference via amendments described in this final rule are discussed in further detail in section IV.N.

G. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 360 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 360-day period if the manufacturer may experience undue hardship in meeting the deadline. (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 360-day period and must detail how the manufacturer will experience undue hardship. (*Id.*) To the extent the modified test procedure adopted in this final rule is required only for the evaluation and issuance of updated efficiency standards, compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of updated standards.

Upon the compliance date of test procedure provisions in this final rule any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. 10 CFR 431.404(h)(3). Recipients of any such waivers are required to test the products subject to the waiver according to the amended test procedure as of the compliance date of the amended test procedure. The amendments adopted in this document pertain to issues addressed by a waiver granted to Hoshizaki in Case No. 2020–001. 85 FR 68315.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule 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: *www.energy.gov/gc/office-general-counsel.*

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that this rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows: The Small Business Administration (''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 size standards and codes are established by the 2017 North American Industry Classification System (''NAICS'').

ACIM manufacturers are classified under NAICS code 333415, ''Air-conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' which includes ice-making machinery manufacturing.[41] The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business. This employee threshold includes all employees in a business's parent company and any other subsidiaries.

DOE conducted a focused inquiry into small business manufacturers of the equipment covered by this rulemaking. To identify companies that import or otherwise manufacture ACIMs with harvest rates greater than 50 lb/24h, DOE expanded on the analysis conducted for the December 2021 NOPR. This updated analysis included a review of DOE's Compliance Certification Database (''CCD''),[42] California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[43] the Air-Conditioning, Heating, and Refrigeration Institute's (''AHRI's'') Directory of Certified Product Performance,[44] and retailer websites. DOE relied on retailer websites and other public sources to identify companies that import or otherwise manufacture low-capacity ACIMs, consistent with the December 2021 NOPR. Since the December 2021 NOPR, and consistent with the approach detailed in the Preliminary Analysis Technical Support Document published on March 24, 2022,[45] DOE conducted additional research to determine which companies selling ACIMs in the United States are original equipment manufacturers (''OEMs'') of the equipment covered by this rulemaking. Using publicly available information from manufacturer websites, import and export data (*e.g.,* bills of lading from Panjiva)[46] and basic model numbers, DOE identified 22 ACIM OEMs.

DOE then consulted publicly available data, such as individual company websites and subscription-based market research tools (*e.g.,* Dun & Bradstreet)[47] to determine company location, headcount, and annual revenue. DOE screened out companies that do not offer equipment covered by this rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated. Of the 22 OEMs identified, DOE determined that two domestic OEMs qualify as ''small businesses.'' DOE estimates that one small OEM has an annual revenue of approximately $11.2 million and the other has an annual revenue of approximately $186.5 million.

Consistent with its preliminary determination in the December 2021 NOPR, DOE does not expect small domestic ACIM OEMs to incur costs as a result of the amended test procedure. However, in the event that any test facilities require upgrade to meet the amended test conditions for relative humidity, DOE has estimated the costs of this potential upgrade to be $5,500, as discussed in section III.F.1.a of this final rule.[48] DOE estimates that this potential cost would represent less than 0.1 percent of annual revenues for both identified small businesses.

In response to the December 2021 NOPR, Hoshizaki commented that the proposed changes would necessitate re-testing of ACIM models by many manufacturers. Hoshizaki suggested that small entities may not have the means to test their models in house and would have to send units to test at third party labs. (Hoshizaki, No. 14, p. 8) AHRI noted that the changes outlined in the December 2021 NOPR would necessitate retesting of existing models and would therefore ''most definitely place undue burden and additional cost on OEMs.'' Specifically, they stated that the humidity control requirement would require retesting of every model and would also necessitate facility upgrade costs. AHRI also asserted that this requirement may limit the ability to find external test labs with appropriate test chambers and thereby disadvantage small entities who do not have the means to test in house and would be subject to scheduling at third party testing facilities. AHRI noted that the costs associated with the proposal ''would not be miniscule'' and such testing would not be advantageous with all the third-party testing needed to verify safety for ACIM's that are changing to flammable refrigerants. AHRI also noted that the proposed 3-foot side clearance requirement could also impact the ability of small entities participating in this market. (AHRI, No. 13, p. 11)

As detailed in section III.F.1 of this final rule, DOE expects that the impact from these amendments to the measured efficiency of certified ACIMs is expected to be *de minimis* as compared to the current test procedure. DOE expects that it is unlikely that a substantial portion of ACIM units would need to be retested or recertified as a result of this final rule, and therefore that manufacturers will be able to rely on data generated under the existing test procedure. If a manufacturer re-tests models according to the amended test procedure, DOE estimates a testing cost of $9,400 per re-rated basic model.[49] DOE notes that the small OEM with an annual revenue of approximately $11.2 million offers four basic models. The other small OEM

[41] The SBA Size Standards are available at: *www.sba.gov/document/support-table-size-standards* (last accessed June 2, 2022).

[42] U.S. Department of Energy Compliance Certification Database, available at: *www.regulations.doe.gov/certification-data/products.html#q=Product_Group_s%3A** (last accessed November 11, 2021).

[43] California Energy Commission. Modernized Appliance Efficiency Database System. Available at: *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (accessed November 17, 2021).

[44] The Air Conditioning, Heating, and Refrigeration Institute. Directory of Certified Product Performance. Available at: *www.ahridirectory.org/* (accessed November 17, 2021).

[45] ''2022–03 Technical Support Document: Energy Efficiency Program For Consumer Products And Commercial And Industrial Equipment: Automatic Commercial Ice Makers.'' See chapter 12, section 12.3.3 (published on March 24, 2022). Available at: *www.regulations.gov/document/EERE-2017-BT-STD-0022-0009.*

[46] Panjiva. S&P Global Supply Chain Intelligence. Available at: *panjiva.com/import-export/United-States* (last accessed June 5, 2022).

[47] The Dun & Bradstreet Hoovers subscription login is accessible at: */app.dnbhoovers.com/* (last accessed June 2, 2022).

[48] DOE estimates the cost for purchasing relative humidity controls to range from $1,000 to $5,000, depending on the method that is chosen, and an additional cost of $500 for a relative humidity sensor.

[49] Based on the $5,000 per unit test cost estimate and the $300 savings due to the stability criteria, as detailed in this final rule. Each basic model is tested twice: ($5,000 − $300) × 2 = $9,400.

with an annual revenue of approximately $186.5 million offers two basic models.[50] Therefore, DOE expects that any re-testing would account for less than 0.1 percent of each company's annual revenue.[51]

Therefore, DOE concludes that the cost effects accruing from the final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of ACIMs 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 products and commercial equipment, including ACIMs. (*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.

DOE is not amending the certification or reporting requirements for ACIMs in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for ACIMs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

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 final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for ACIMs. 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 (August 4, 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 examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final 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, this final 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. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)). For a regulatory action resulting 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

[50] DOE used the estimated annual revenue figures from the Dun & Bradstreet Hoovers subscription-based market research tool. The Dun & Bradstreet login is accessible at: /*app.dnbhoovers.com*/ (last accessed June 2, 2022).

[51] One small OEM may incur testing costs of $37,600, if they choose to re-test their 4 models according to the amended test procedure. (4 × $9,400 = $37,600) The other small OEM may incur testing costs of $18,800, if they choose to re-test their 2 models according to the amended test procedure. (2 × $9,400 = $18,800)

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 *www.energy.gov/gc/office-general-counsel.* DOE examined this final 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 final rule will 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 regulation will 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%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final 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 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 significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action 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 modifications to the test procedure for ACIMs adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: AHRI Standard 810 (I–P)–2016 with Addendum 1 and ASHRAE Standard 29–2015. 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 has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

DOE incorporates by reference the following standards:

AHRI Standard 810 (I–P)–2016 with Addendum 1. Specifically, the test procedure codified by this final rule references section 3, ''Definitions,'' section 4, ''Test Requirements,'' and section 5.2, ''Standard Ratings''. AHRI Standard 810 (I–P)–2016 with Addendum 1 is an industry-accepted standard that provides a method to rate the performance of automatic commercial ice makers.

AHRI standards are reasonably available from the Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201, 703–524–8800, *ahri@ahrinet.org,* or *www.ahrinet.org.*

ASHRAE Standard 29–2015. ASHRAE Standard 29–2015 is an industry-accepted standard that provides a method of test to measure the performance of automatic commercial ice makers.

Copies of ASHRAE standards are reasonably available from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329, (404) 636–8400, *ashrae@ashrae.org,* or *www.ashrae.org.*

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on October 6, 2022, by Francisco Alejandro Moreno, 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 October 18, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends parts 429 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. Amend § 429.45 by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 429.45 Automatic commercial ice makers.

(a) * * *

(2) For each basic model of automatic commercial ice maker selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of energy use, condenser water use, or other measure of consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(i) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(ii) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95 percent two-tailed confidence interval with n-1 degrees of freedom (from appendix A to this subpart).

(3) The harvest rate of a basic model is the mean of the measured harvest rates for each tested unit of the basic model, based on the same tests to determine energy use and condenser water use, if applicable. Round the mean harvest rate to the nearest pound of ice per 24 hours (lb/24 h) for harvest rates above 50 lb/24 h; round the mean harvest rate to the nearest 0.1 lb/24 h for harvest rates less than or equal to 50 lb/24 h.

* * * * *

■ 3. Amend § 429.134 by adding paragraph (w) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(w) *Automatic commercial ice makers—verification of harvest rate.* The harvest rate will be measured pursuant to the test requirements of 10 CFR part 431 for each unit tested. The results of the measurement(s) will be averaged and compared to the value of harvest rate certified by the manufacturer of the basic model. The certified harvest rate will be considered valid only if the average measured harvest rate is within five percent of the certified harvest rate.

(1) If the certified harvest rate is found to be valid, the certified harvest rate will be used as the basis for determining the maximum energy use and maximum condenser water use, if applicable, allowed for the basic model.

(2) If the certified harvest rate is found to be invalid, the average measured harvest rate of the units in the sample will be used as the basis for determining the maximum energy use and maximum condenser water use, if applicable, allowed for the basic model.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 5. Amend § 431.132 by:

■ a. Adding a definition in alphabetical order for ''Baffle'';

■ b. Revising the definition of ''Batch type ice maker'';

■ c. Adding a definition in alphabetical order for ''Condenser water use'';

■ d. Removing the definition of ''Cube type ice'';

■ e. Revising the definition of ''Energy use'';

■ f. Removing the definition of ''Maximum condenser water use''; and

■ g. Adding definitions in alphabetical order for ''Portable automatic commercial ice maker'', ''Potable water use'', and ''Refrigerated storage automatic commercial ice maker''.

The additions and revisions read as follows:

§ 431.132 Definitions concerning automatic commercial ice makers.

* * * * *

Baffle means a partition (usually made of flat material like cardboard, plastic, or sheet metal) that reduces or prevents recirculation of warm air from an ice maker's air outlet to its air inlet—or, for remote condensers, from the condenser's air outlet to its inlet.

* * * * *

Batch type ice maker means an ice maker having alternate freezing and harvesting periods.

Condenser water use means the total amount of water used by the condensing unit (if water-cooled), stated in gallons per 100 pounds (gal/100 lb) of ice, in multiples of 1.

* * * * *

Energy use means the total energy consumed, stated in kilowatt hours per one-hundred pounds (kWh/100 lb) of ice, in multiples of 0.01. For remote condensing (but not remote compressor) automatic commercial ice makers and remote condensing and remote

compressor automatic commercial ice makers, total energy consumed shall include the energy use of the ice-making mechanism, the compressor, and the remote condenser or condensing unit.

* * * * *

Portable automatic commercial ice maker means an automatic commercial ice maker that does not have a means to connect to a water supply line and has one or more reservoirs that are manually supplied with water.

Potable water use means the amount of potable water used in making ice, which is equal to the sum of the ice harvested, dump or purge water, and the harvest water, expressed in gal/100 lb, in multiples of 0.1, and excludes any condenser water use.

Refrigerated storage automatic commercial ice maker means an automatic commercial ice maker that has a refrigeration system that actively refrigerates the self-contained ice storage bin.

* * * * *

■ 6. Revise § 431.133 to read as follows:

§ 431.133 Materials incorporated by reference.

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE and at the National Archives and Records Administration (NARA). Contact DOE at: the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202)-586–9127, *Buildings@ee.doe.gov, www.energy.gov/eere/buildings/building-technologies-office.* For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the following sources:

(a) *AHRI.* Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Blvd., Suite 500, Arlington, VA 22201; (703) 524–8800; *ahri@ahrinet.org; www.ahrinet.org.*

(1) AHRI Standard 810 (I–P)–2016 with Addendum 1, *Performance Rating of Automatic Commercial Ice-Makers,* January 2018; IBR approved for § 431.134.

(2) [Reserved]

(b) *ASHRAE.* American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329; (404) 636–8400; *ashrae@ashrae.org; www.ashrae.org.*

(1) ANSI/ASHRAE Standard 29–2015, *Method of Testing Automatic Ice Makers,* approved April 30, 2015; IBR approved for § 431.134.

(2) [Reserved]

■ 7. Revise § 431.134 to read as follows:

§ 431.134 Uniform test methods for the measurement of harvest rate, energy consumption, and water consumption of automatic commercial ice makers.

Note 1 to § 431.134. On or after October 27, 2023, any representations, including certifications of compliance for automatic commercial ice makers, made with respect to the energy use or efficiency of automatic commercial ice makers must be made in accordance with the results of testing pursuant to this section. Prior to October 27, 2023, any representations with respect to energy use or efficiency of automatic commercial ice makers must be made either in accordance with the results of testing pursuant to this section or with the results of testing pursuant to this section as it appeared in 10 CFR 431.134 in the 10 CFR parts 200–499 edition revised as of January 1, 2022.

(a) *Scope.* This section provides the test procedures for measuring the harvest rate in pounds of ice per 24 hours (lb/24 h), energy use in kilowatt hours per 100 pounds of ice (kWh/100 lb), and the condenser water use in gallons per 100 pounds of ice (gal/100 lb) of automatic commercial ice makers with capacities up to 4,000 lb/24 h. This section also provides voluntary test procedures for measuring the potable water use in gallons per 100 pounds of ice (gal/100 lb).

(b) *Testing and calculations.* Measure the harvest rate, the energy use, the condenser water use, and, to the extent elected, the potable water use of each covered automatic commercial ice maker by conducting the test procedures set forth in AHRI Standard 810 (I–P)–2016 with Addendum 1, section 3, ''Definitions,'' section 4, ''Test Requirements,'' and section 5.2, ''Standard Ratings'' (incorporated by reference, *see* § 431.133), and according to the provisions of this section. Use ANSI/ASHRAE Standard 29–2015 (incorporated by reference, see § 431.133) referenced by AHRI Standard 810 (I–P)–2016 with Addendum 1 for all automatic commercial ice makers, except as noted in paragraphs (c) through (k) of this section. If any provision of the referenced test procedures conflicts with the requirements in this section or the definitions in § 431.132, the requirements in this section and the definitions in § 431.132 control.

(c) *Test setup and equipment configurations* — (1) *Baffles.* Conduct testing without baffles unless the baffle either is a part of the automatic commercial ice maker or shipped with the automatic commercial ice maker to be installed according to the manufacturer's installation instructions.

(2) *Clearances.* Install all automatic commercial ice makers for testing according to the manufacturer's specified minimum rear clearance requirements, or with 3 feet of clearance from the rear of the automatic commercial ice maker, whichever is less, from the chamber wall. All other sides of the automatic commercial ice maker and all sides of the remote condenser, if applicable, shall have clearances according to section 6.5 of ANSI/ASHRAE Standard 29–2015.

(3) *Purge settings.* Test automatic commercial ice makers equipped with automatic purge water control using a fixed purge water setting that is described in the manufacturer's written instructions shipped with the unit as being appropriate for water of normal, typical, or average hardness. Purge water settings described in the instructions as suitable for use only with water that has higher or lower than normal hardness (such as distilled water or reverse osmosis water) must not be used for testing.

(4) *Ambient conditions measurement*—(i) *Ambient temperature sensors.* Measure all ambient temperatures according to section 6.4 of ANSI/ASHRAE Standard 29–2015, except as provided in paragraph (c)(4)(iv) of this section, with unweighted temperature sensors.

(ii) *Ambient relative humidity measurement.* Except as provided in paragraph (c)(4)(iv) of this section, ambient relative humidity shall be measured at the same location(s) used to confirm ambient dry bulb temperature, or as close as the test setup permits. Ambient relative humidity shall be measured with an instrument accuracy of ±2.0 percent.

(iii) *Ambient conditions sensors shielding.* Ambient temperature and relative humidity sensors may be shielded if the ambient test conditions cannot be maintained within the specified tolerances because of warm discharge air from the condenser exhaust affecting the ambient measurements. If shields are used, the shields must not inhibit recirculation of the warm discharge air into the

condenser or automatic commercial ice maker inlet.

(iv) *Alternate ambient conditions measurement location.* For automatic commercial ice makers in which warm air discharge from the condenser exhaust affects the ambient conditions as measured 1 foot in front of the air inlet, or automatic commercial ice makers in which the air inlet is located in the rear of the automatic commercial ice maker and the manufacturer's specified minimum rear clearance is less than or equal to 1 foot, the ambient temperature and relative humidity may instead be measured 1 foot from the cabinet, centered with respect to the sides of the cabinet, for any side of the automatic commercial ice maker cabinet with no warm air discharge or air inlet.

(5) *Collection container for batch type automatic commercial ice makers with harvest rates less than or equal to 50 lb/24 h.* Use an ice collection container as specified in section 5.5.2(a) of ANSI/ASHRAE Standard 29–2015, except that the water retention weight of the container is no more than 4.0 percent of that of the smallest batch of ice for which the container is used.

(d) *Test conditions*—(1) *Relative humidity.* Maintain an average minimum ambient relative humidity of 30.0 percent throughout testing.

(2) *Inlet water pressure.* Except for portable automatic commercial ice makers, the inlet water pressure when water is flowing into the automatic commercial ice maker shall be within the allowable range within 5 seconds of opening the water supply valve.

(e) *Stabilization*—(1) *Percent difference calculation.* Calculate the percent difference in the ice production rate between two cycles or samples using the following equation, where A and B are the harvest rates, in lb/24 h (for batch type ice makers) or lb/15 mins (for continuous type ice makers), of any cycles or samples used to determine stability:

$$Perent\ Difference = \frac{|A - B|}{\frac{A + B}{2}} x100\text{percent}$$

(2) *Automatic commercial ice makers with harvest rates greater than 50lb/24 h.* The three or more consecutive cycles or samples used to calculate harvest rate, energy use, condenser water use, and potable water use, must meet the stability criteria in section 7.1.1 of ANSI/ASHRAE Standard 29–2015.

(3) *Automatic commercial ice makers with harvest rates less than or equal to 50 lb/24 h.* The three or more consecutive cycles or samples used to calculate harvest rate, energy use, condenser water use, and potable water use, must meet the stability criteria in section 7.1.1 of ANSI/ASHRAE Standard 29–2015, except that the weights of the samples (for continuous type automatic commercial ice makers (ACIMs)) or 24-hour calculated ice production (for batch type ACIMs) must not vary by more than ±4 percent, and the 25 g (for continuous type ACIMs) and 1 kg (for batch type ACIMs) criteria do not apply.

(f) *Calculations.* The harvest rate, energy use, condenser water use, and potable water use must be calculated by averaging the values for the three calculated samples for each respective reported metric as specified in section 9 of ANSI/ASHRAE Standard 29–2015. All intermediate calculations prior to the reported value, as applicable, must be performed with unrounded values.

(g) *Rounding.* Round the reported values as follows: Harvest rate to the nearest 1 lb/24 h for harvest rates above 50 lb/24 h; harvest rate to the nearest 0.1 lb/24 h for harvest rates less than or equal to 50 lb/24 h; condenser water use to the nearest 1 gal/100 lb; and energy use to the nearest 0.01 kWh/100 lb. Round final potable water use value to the nearest 0.1 gal/100 lb.

(h) *Continuous type automatic commercial ice makers*—(1) *Ice hardness adjustment*—(i) *Calorimeter constant.* Determine the calorimeter constant according to the requirements in section A1 and A2 of Normative Annex A Method of Calorimetry in ANSI/ASHRAE Standard 29–2015, except that the trials shall be conducted at an ambient air temperature (room temperature) of 70 °F ± 1 °F, with an initial water temperature of 90 °F ± 1 °F. To verify the temperature of the block of pure ice as provided in section A2.e in ANSI/ASHRAE Standard 29–2015, a thermocouple shall be embedded at approximately the geometric center of the interior of the block. Any water that remains on the block of ice shall be wiped off the surface of the block before being placed into the calorimeter.

(ii) *Ice hardness factor.* Determine the ice hardness factor according to the requirements in section A1 and A3 of Normative Annex A Method of Calorimetry in ANSI/ASHRAE Standard 29–2015, except that the trials shall be conducted at an ambient air temperature (room temperature) of 70 °F ± 1 °F, with an initial water temperature of 90 °F ± 1 °F. The harvested ice used to determine the ice hardness factor shall be produced according to the test methods specified at § 431.134. The ice hardness factor shall be calculated using the equation for ice hardness factor in section 5.2.2 of AHRI Standard 810 (I–P)–2016 with Addendum 1.

(iii) *Ice hardness adjustment calculation.* Determine the reported energy use and reported condenser water use by multiplying the measured energy use or measured condenser water use by the ice hardness adjustment factor, determined using the ice hardness adjustment factor equation in section 5.2.2 of AHRI Standard 810 (I–P)–2016 with Addendum 1.

(2) [Reserved]

(i) *Automatic commercial ice makers with automatic dispensers.* Allow for the continuous production and dispensing of ice throughout testing. If an automatic commercial ice maker with an automatic dispenser is not able to continuously produce and dispense ice because of certain mechanisms within the automatic commercial ice maker that prohibit the continuous production and dispensing of ice throughout testing, those mechanisms must be overridden to the minimum extent which allows for the continuous production and dispensing of ice. The automatic commercial ice maker shall have an empty internal storage bin at the beginning of the test period. Collect capacity samples according to the requirements of ANSI/ASHRAE Standard 29–2015, except that the samples shall be collected through continuous use of the dispenser rather than in the internal storage bin. The intercepted ice samples shall be obtained from a container in an external ice bin that is filled one-half full of ice and is connected to the outlet of the ice dispenser through the minimal length of conduit that can be used.

(j) *Portable automatic commercial ice makers.* Sections 5.4, 5.6, 6.2, and 6.3 of ANSI/ASHRAE Standard 29–2015 do not apply. Ensure that the ice storage bin is empty prior to the initial potable water reservoir fill. Fill an external container with water to be supplied to

the portable automatic commercial ice maker water reservoir. Establish an initial water temperature of 70 °F ± 1.0 °F. Verify the initial water temperature by inserting a temperature sensor into approximately the geometric center of the water in the external container. Immediately after establishing the initial water temperature, fill the ice maker water reservoir to the maximum level of potable water as specified by the manufacturer. After the potable water reservoir is filled, operate the portable automatic commercial ice maker to produce ice into the ice storage bin until the bin is one-half full. One-half full for the purposes of testing portable automatic commercial ice makers means that half of the vertical dimension of the ice storage bin, based on the maximum ice fill level within the ice storage bin, is filled with ice. Once the ice storage bin is one-half full, conduct testing according to section 7 of ANSI/ASHRAE Standard 29–2015. The potable water use is equal to the sum of the weight of ice and any corresponding melt water collected for the capacity test as specified in section 7.2 of ANSI/ASHRAE Standard 29–2015.

(k) *Self-contained refrigerated storage automatic commercial ice makers.* For door openings, the door shall be in the fully open position, which means opening the ice storage compartment door to an angle of not less than 75 degrees from the closed position (or the maximum extent possible, if that is less than 75 degrees), for 10.0 ± 1.0 seconds to collect the sample. Conduct door openings only for ice sample collection and returning the empty ice collection container to the ice storage compartment (*i.e.,* conduct two separate door openings, one for removing the collection container to collect the ice and one for replacing the collection container after collecting the ice).

[FR Doc. 2022–22927 Filed 10–31–22; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 87 Tuesday,

No. 210 November 1, 2022

Part III

Department of Education

34 CFR Parts 600, 668, 674 Et. al.

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Federal Perkins Loan Program; Federal Family Education Loan Program; and William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, 674, 682, and 685

[Docket ID: ED–2021–OPE–0077]

RIN 1840–AD53, 1840–AD59, 1840–AD70, 1840–AD71

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Federal Perkins Loan Program; Federal Family Education Loan Program; and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary establishes new regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program to establish a new Federal standard and a process for determining whether a borrower has a defense to repayment on a loan based on an act or omission of their school. We also are amending the Direct Loan Program regulations to prohibit participating schools from using certain contractual provisions regarding dispute resolution processes and to require certain notifications and disclosures by institutions (institutions or schools) regarding their use of mandatory arbitration. Additionally, we are amending the Direct Loan regulations to eliminate interest capitalization in instances where it is not required by statute. We are also amending the regulations governing closed school discharges and total and permanent disability (TPD) discharges in the Federal Perkins Loan (Perkins), Direct Loan, and Federal Family Education Loan (FFEL) programs. We are also amending the regulations governing false certification discharges in the Direct Loan and FFEL programs. Finally, we are amending the regulations governing Public Service Loan Forgiveness (PSLF) in the Direct Loan program to improve the application process, and to clarify and expand definitions for full-time employment, qualifying employers, and qualifying monthly payments. The changes would bring greater transparency and clarity and improve the administration of Federal student financial aid programs to assist and protect students, participating institutions, and taxpayers.

DATES: These regulations are effective July 1, 2023. For the implementation dates of the regulatory provisions, see the Implementation Date of These Regulations in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For further information related to interest capitalization, contact Vanessa Freeman at (202) 987–1336 or by email at *vanessa.freeman@ed.gov.* For further information related to borrower defenses to repayment (BD) or pre-dispute arbitration, contact Rene Tiongquico at (202) 453–7513 or by email at *rene.tiongquico@ed.gov.* For further information related to TPD, closed school, and false certification discharges, contact Brian Smith at (202) 987–1327 or by email at *brian.smith@ed.gov.* For further information related to PSLF, contact Tamy Abernathy at (202) 453–5970 or by email at *tamy.abernathy@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Secretary amends the regulations in seven areas affecting the Direct Loan Program and several areas that also affect the Perkins Loan Program or the FFEL Program. First, we amend the regulations governing the Direct Loan Program to establish a new Federal standard and process for determining whether a borrower has a defense to repayment of a loan. We also limit the use of certain contractual provisions regarding dispute resolution processes by participating institutions and require certain notifications and disclosures by institutions regarding their use of mandatory arbitration. Additionally, we amend the Perkins, Direct Loan, and FFEL program regulations to improve the process for granting TPD discharges by eliminating the income monitoring period, expanding the circumstances in which borrowers can qualify for discharges based on a finding of disability by the Social Security Administration, expanding allowable documentation, and allowing additional health care professionals to provide a certification that a borrower is totally and permanently disabled. We further amend the closed school discharge provisions in the Perkins Loan, Direct Loan, and FFEL programs to expand borrower eligibility for automatic discharges and eliminate provisions pertaining to reenrollment in a comparable program. Additionally, we amend the Direct Loan and FFEL regulations to streamline the regulations governing false certification discharges. We also amend the Direct Loan regulations to eliminate interest capitalization in instances where it is not required by statute. Finally, we amend regulations governing PSLF in the Direct Loan program to improve the application process and to clarify and expand the definitions of full-time employment, employee or employed, and qualifying monthly payments. The changes will bring greater transparency and clarity and improve the administration of Federal student financial aid programs to assist and protect students, participating institutions, and taxpayers.

Purpose of This Regulatory Action

Summary of the Major Provisions of This Regulatory Action

The final regulations—

- Amend the Direct Loan regulations to establish a new Federal standard for BD claims applicable to applications received on or after July 1, 2023. Applications pending on July 1, 2023, will also be considered under the new standard. In addition, this final rule expands the existing definition of misrepresentation, provides an additional basis for a BD claim based on aggressive and deceptive recruitment practices, and allows claims based on State law standards for loans first disbursed prior to July 1, 2017.
- Provide that the Department will use a preponderance of the evidence standard to determine whether the institution committed an actionable act or omission and, as a result, the borrower suffered detriment, such that the circumstances warrant BD relief and the borrower's BD claim should be approved. In determining whether relief is warranted the Secretary will consider the totality of the circumstances, including the nature and degree of the acts or omissions and of the detriment caused to borrowers.
- Provide for a full discharge of all remaining loan balances and a refund of all amounts paid to the Secretary for loans associated with an approved BD claim.
- Establish processes for group BD claims that may be formed in response to evidence provided by third-party requestors or at the Secretary's discretion, including based on prior Secretarial Final Actions. We define Secretarial Final Actions as fine, limitation, suspension, or termination actions taken by the Department against the institution, denying the institution's application for recertification, or revoking the institution's provisional program participation agreement.
- Stop interest accrual on the borrowers' loans beginning 180 days after the initial grant of forbearance or

stopped collections in the case of an individual BD claim and immediately upon formation for a group BD claim.

- Issue decisions on claims within a certain period or the loans will be deemed unenforceable.
- Establish a reconsideration process for review of denied BD claims.
- Establish a process for recouping the cost of approved discharges.
- Prohibit institutions that wish to participate in title IV programs from requiring borrowers to agree to mandatory pre-dispute arbitration agreements or waiver of class action lawsuits.
- Require institutions to disclose publicly and notify the Secretary of judicial and arbitration filings and awards pertaining to a BD claim.
- Eliminate interest capitalization on Direct Loans where such capitalization is not required by statute.
- Modify the Perkins, FFEL, and Direct Loan regulations to streamline the application process for a TPD discharge by expanding the Department's use of Social Security Administration (SSA) continuing disability review codes beyond ''Medical Improvement Not Expected'' when deciding if a borrower qualifies for TPD discharge.
- Revise the Perkins, FFEL, and Direct Loan regulations to eliminate the 3-year post-discharge income monitoring period for borrowers eligible for TPD discharge to allow borrowers to retain their discharges without unnecessary paperwork burden.
- Allow borrowers to receive a TPD discharge if the established onset date of their disability as determined by SSA was at least 5 years prior to the application to better align the regulations with statutory requirements for a TPD discharge.
- Expand the list of health professionals who may certify that a borrower is totally and permanently disabled to include licensed nurse practitioners (NPs), physician's assistants (PAs), and clinical psychologists to help borrowers more easily complete the application for a TPD discharge.
- Amend the Perkins, FFEL, and Direct Loan regulations to simplify the closed school discharge process by expanding access to automatic discharges and clarify the circumstances when borrowers who reenroll in a comparable program are not eligible for a discharge.
- Streamline the FFEL and Direct Loan false certification regulations to provide one set of regulatory standards that will cover all false certification discharge claims.
- Clarify that, to determine eligibility for a false certification discharge, the Department relies on the borrower's status at the time the Direct loan was originated, and at the time the FFEL loan was certified.
- Revise the regulations for PSLF to improve the application process, expand what counts as an eligible monthly payment, expand the definition of ''full-time'' employment, and provide additional clarifying definitions of public service employment to reduce confusion and to clearly establish the definitions of qualifying employment for borrowers.
- Expand the definition of ''employee'' or ''employed'' to include someone who works as a contracted employee for a qualifying employer in a position or provides services which, under applicable State law, cannot be filled or provided by a direct employee of the qualifying employer.

Background

Affordability of postsecondary education and student loan debt have been significant challenges for many Americans. Total outstanding student loan debt has risen over the past 10 years as student loan repayment has slowed, while the inability to repay student loan debt has been cited as a major obstacle to entry into the middle class.[1]

This final rule provides several significant improvements to existing programs authorized under the Higher Education Act of 1965, as amended (HEA)[2] that grant loan discharges to borrowers who meet specific eligibility conditions. Despite the presence of these discharge authorities for years, the Department is concerned that too many borrowers have been unable to access loan relief authorized by statute. In some situations, this has been due to regulatory requirements that created unnecessary or unfair burdens for borrowers.

The final rule makes changes related to discharges available to borrowers in the three major Federal student loan programs: Direct Loans, FFEL, and Perkins Loans. The most significant effects are in the Direct Loan program, which has been the predominant source of all new Federal student loans since 2010. In this program, the Department makes loans directly to the borrower and then contracts with private companies known as student loan servicers to manage the borrower's repayment experience on behalf of the Department. Several components of these regulations, such as interest capitalization, BD, the prohibition on the use of mandatory pre-dispute arbitration and class action waivers, and the PSLF program only apply to Direct Loans. Other provisions addressed in these regulations, such as closed school discharge, and TPD discharges, affect Direct Loans as well as loans previously made under the FFEL Program and the Perkins Loan Program.[3] False certification discharges only affect Direct Loans and FFEL Program loans. In the FFEL program, private lenders made Federally insured and subsidized student loans using their own funds. The lender was protected from the risk of default or loss by Federal insurance. In the Perkins program, institutions issued Federal student loans using a combination of Federal and institutional funds.

The negotiated rulemaking committee (Committee) that considered the draft regulations on these topics reached consensus on the proposed regulations relating to interest capitalization, false certification discharges, and TPD; they did not reach consensus on BD, pre-dispute arbitration agreements and class action waivers, closed school discharge, or PSLF.

On July 13, 2022, the Secretary published a notice of proposed rulemaking (NPRM) for these parts in the **Federal Register**.[4] The NPRM included proposed regulations on which the Committee reached consensus and the Department's proposed rules for those issues where consensus was not reached. These final regulations reflect the results of those negotiations and respond to the public comments received on the regulatory proposals in the NPRM. The final regulations also contain changes from the NPRM, which are fully explained in the *Analysis of Comments and Changes* section of this document. These final rules do not speak to one issue raised by commenters in response to the NPRM—whether and in what circumstances private for-profit employers, including those that provide early childhood services, should be treated as qualifying employers for the purposes of PSLF. That issue, and the responses to comments related to it, will be addressed in a future final rule. The

[1] R. Chakrabarti, N. Gorton & W. van der Klaauw, ''Diplomas to Doorsteps: Education, Student Debt, and Homeownership,'' Federal Reserve Bank of New York, *Liberty Street Economics* (blog), April 3, 2017, *http://libertystreeteconomics.newyorkfed.org/2017/04/diplomas-to-doorsteps-education-student-debt-and-homeownership.html.*

[2] 20 U.S.C. 1001, *et seq.*

[3] There have been no new FFEL Program loans originated since June 30, 2010, and no new Perkins Loans since September 30, 2017.

[4] *https://www.regulations.gov/document/ED-2021-OPE-0077-1350.*

Department is separating this issue for a future final rule because we received significant and detailed comments in response to our questions around the possible treatment of for-profit companies that provide early childhood education as qualifying employers for PSLF. These comments included a number of proposals that address operational, legal, and policy considerations, which the Department needs additional time to consider.

Costs and Benefits: As further detailed in the *Regulatory Impact Analysis,* the benefits of the final regulations include: (1) a clarified process for BD discharge applications assisted by the creation of a primary Federal standard to streamline the Department's consideration of applications, while affording institutions an opportunity to respond to allegations contained in BD claims; (2) increased opportunities for borrowers to seek relief from institutional misconduct by prohibiting the use of mandatory pre-dispute arbitration and class action waivers; (3) improved school conduct and offsetting some of the costs of discharges to the Federal government and taxpayers as a result of holding individual institutions financially accountable for BD discharges and deterring misconduct; (4) increased automated discharges for borrowers, with the option to opt out; and (5) improved access to and expanded eligibility for, where appropriate, PSLF, closed school, TPD, and false certification discharges.

The costs to taxpayers in the form of transfers include BD claims that are not reimbursed by institutions; additional relief through closed school, PSLF, TPD, and false certification discharges to borrowers through programs to which they are legally entitled under the HEA; and the foregone interest where capitalizing interest is not required. The paperwork burden associated with reporting and disclosure requirements necessary to ensure compliance with these regulations represents an additional cost to institutions.

Implementation Date of These Regulations: Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply. That section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier and the conditions for early implementation.

Consistent with the Department's objective to improve the implementation of PSLF, the Secretary intends to exercise his authority under section 482(c) to designate the simplified definition for full-time employment in PSLF as a provision that an entity subject to the provision may, in the entity's discretion, choose to implement prior to the effective date of July 1, 2023. The Secretary may specify in the designation when, and under what conditions, an entity may implement the provision prior to the effective date. The Secretary will publish any designation under this subparagraph in the **Federal Register**.

The Secretary does not intend to exercise his authority to designate any other regulations in this document for early implementation. The final regulations included in this document are effective July 1, 2023.

Public Comment: In response to our invitation in the July 13, 2022, NPRM, 4,094 parties submitted comments on the proposed regulations. In this preamble, we respond to those comments.

Analysis of Comments and Changes

We developed these regulations through negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary must obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. The negotiated rulemaking Committee considered each issue separately to determine consensus and reached consensus on the proposed regulations addressing interest capitalization, TPD, and false certification discharges. The Committee did not reach consensus on the remaining proposed regulations that we published on July 13, 2022.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address minor, non-substantive changes (such as renumbering paragraphs, adding in a word, or typographical errors). Additionally, we do not address recommended changes that the statute does not authorize the Secretary to make (such as forgiving all student loans, setting interest rates to 0 percent, or providing forgiveness under PSLF after 60 payments instead of 120) or comments pertaining to operational processes. We also do not address comments pertaining to issues that were not within the scope of the NPRM. An analysis of the public comments received and of the changes in the regulations since publication of the NPRM follows.

Negotiated Rulemaking

Comments: A few commenters suggested the negotiated rulemaking table must include representatives from civil rights organizations as well as student representation, stating that communities and people of color are disproportionately impacted by postsecondary education and need to be included in rulemaking discussions. These commenters further urged the Department to include more than two student representatives in negotiated rulemaking, noting that student representatives were outnumbered more than two to one by higher education and lending industry representatives. Other commenters suggested that for-profit institutions are significantly impacted by these regulations and should have had more representation at negotiated rulemaking. Finally, numerous commenters said the negotiated rulemaking process felt rushed because of the number of issues involved and holding the meetings virtually. They suggested the Department return to in-person negotiated rulemaking.

Discussion: On August 10, 2021, the Department published a notice in the **Federal Register** announcing its intention to establish a negotiated rulemaking Committee to prepare proposed regulations for these issues.[5] The notice set forth a schedule for the Committee meetings and requested nominations for individual negotiators to serve on the committee. As we stated in that solicitation and request for nominations for negotiators, we select individual negotiators who reflect the diversity among program participants, in accordance with Sec. 492(b)(1) of the HEA. Our goal was to establish a Committee and a Subcommittee that allowed significantly affected parties to be represented while keeping the Committee size manageable.

As the Federal negotiator explained in the first negotiated rulemaking session, the Department deliberately placed students front and center in the discussion by including constituencies for dependent students, independent students, and student loan borrowers.[6] As with all other Committee representatives, each of these constituencies had primary representatives and alternates. The Department believes the negotiated

[5] 86 FR at 43609.

[6] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/104am.pdf,* page 61.

rulemaking Committee captured the diverse universe of students.

While the Department did not identify civil rights organizations as a stand-alone constituency for this negotiated rulemaking table, representatives from that group had several opportunities to be involved with negotiated rulemaking, including during the public comment period after each rulemaking session and by submitting written comments on the proposed rule. In fact, several civil rights organizations submitted comments to the Department. With respect to the request for greater representation of proprietary schools, the Department believes it correctly identified proprietary institutions as a single constituency group. None of the negotiated topics discussed during these sessions related solely to the proprietary sector. Moreover, these institutions represent a smaller share of students than those in the private nonprofit sector, which also had only a single representative.

The full negotiated rulemaking Committee reached agreement on its protocols, including the constituencies represented on the committee and committee membership.

Finally, the Department disagrees that the negotiated rulemaking process was rushed. We conducted three public hearings to comment on the rulemaking agenda.[7] We also held three negotiated rulemaking sessions that ran for five days each from 10 a.m. to 4 p.m. EST, which included a half hour of public comment every day except the final day of the last session. The Department gave stakeholders and members of the public the opportunity to weigh in on the development of the language reflected in the regulations through a public comment period.

Changes: None.

Public Comment Period

Comments: Several commenters requested a 45- or 60-day comment period on the proposed rules. Some of these commenters asserted that under the principles of Executive Orders 12866 and 13563, the Department must adhere to at least a 60-day comment period.

Discussion: The Department shares commenters' belief in the importance of giving the public a robust opportunity to publicly comment on the Department's regulations. The Department received thousands of written comments and considered every comment it received in response to the NPRM. We note that the negotiated rulemaking process provides significantly more opportunity for public engagement and feedback than notice-and-comment rulemaking without a negotiated rulemaking component. The Department began this process of developing regulations more than a year ago by inviting public input through a series of public hearings in June 2021. We selected negotiators to represent a range of constituencies. During the negotiated rulemaking sessions, the Department provided opportunities for the public to comment throughout the process, including after seeing draft regulatory text—some of which was available prior to the first session and all of which was available prior to the second and third sessions. Each of these opportunities took place before the formal comment period on the proposed rules. Considering these efforts, the Department believes that the 30-day public comment period was sufficient time for interested parties to submit comments. The 30-day comment period on the NPRM is not unique, and the Department has fully complied with the appropriate Executive Orders regarding public comments. First, the Department notes that over the last several years and under multiple Administrations, the Department has relied on a 30-day comment period for many regulations including: BD;[8] distance education and innovation;[9] and rescission of the gainful employment regulations.[10]

Second, while the Executive Orders cited by the commenters direct each agency to afford the public a meaningful opportunity to comment, those Executive Orders do not require a 60-day comment period.

Unlike simple notice-and-comment rulemaking, the negotiated rulemaking process affords ample opportunities for the public to not only comment but also to understand the Department's proposed rules and policies. We livestreamed the complete negotiated rulemaking sessions on our website, posted recordings of the livestreams, as well as the transcripts of the rulemaking sessions for later review. In addition, we provided an opportunity for public comment at the end of each day the committee met, and posted each iteration of draft proposed regulatory text that the committee reviewed. Thus, the Department has met the requirements provided in those Executive Orders to afford the public a meaningful opportunity to comment and participate in the Department's rulemaking process.

Changes: None.

Borrower Defense to Repayment—General (§ 685.401)

General Support for Regulations

Comments: The Department received many comments in support of the proposed regulations on BD accompanied by testimonial accounts of borrowers' experiences at institutions and the loan debt they incurred. One commenter, for example, felt that institutions need to better inform students about their academic programs, as well as employment prospects after graduation. Many commenters supported the proposed regulations because they felt the 2019 BD regulations required borrowers to meet an unrealistic standard that made it extremely difficult to prove harm. Commenters further cited the anticipated low approval rates for BD claims under the 2019 BD regulations compared to the 2016 BD regulations as further support for creating a new set of regulations that are more balanced toward students. Commenters also expressed support for many specific elements of the NPRM, including a strong upfront Federal standard, the addition of aggressive and deceptive recruitment as a type of act or omission that could give rise to an approved claim, the ability to adjudicate group claims, the opportunity for State requestors to submit applications for considering group claims, the clearer inclusion of FFEL loans, codifying procedures such as stopping the accumulation of interest, and establishing deadlines for reviewing claims. Other commenters supported the proposed regulations citing that they are more streamlined, easier to administer, less confusing, and they eliminate unreasonable burdens on borrowers.

Discussion: We appreciate the comments in support of our proposals. We believe these final regulations strike the right balance of creating a process that will result in BD discharges, where appropriate, while denying claims without merit. In doing so, the Department believes these regulations will clarify the claims process for borrowers and institutions, create transparent and realistic timelines, and make the process easier to administer.

These regulations also provide a path for recouping the cost of approved discharges from institutions when warranted and after significant due process opportunities. We address commenters' arguments with respect to specific provisions of the regulations in the sections of this preamble specific to those provisions.

Changes: None.

[7] May 6, 2021, 86 FR at 28299.

[8] 83 FR at 37242 (July 31, 2018).

[9] 85 FR at 18638 (April 2, 2020).

[10] 83 FR at 40167 (August 14, 2018).

General Opposition to Regulations

Comments: Many commenters expressed general concerns about the regulations. These commenters believe that the regulations would lead to frivolous claims and greater costs to institutions, both in terms of defending against recoupment efforts associated with what commenters described as claims that should not have been approved, but also reputational harm for institutions, the potential for actions by other regulators, loss of private financing, and the possibility of borrower lawsuits. Similarly, some former students expressed concern that their degrees would be devalued if the institution they attended had BD claims approved against it.

Commenters also argued that the Department lacks the legal authority to issue these regulations, that components of the regulations were too vague, that institutions are not afforded sufficient due process under the proposed rules, and that the regulations represented impermissible Departmental involvement in matters of State law. Commenters also expressed displeasure with other specific components of the regulations, such as the proposed group process.

Discussion: As we explained in the NPRM, despite the presence of the BD discharge authority for decades, the Department is concerned that too many borrowers who were subjected to an act or omission by their institution that should give rise to a successful defense to repayment have not received appropriate relief, at least in part because the regulatory requirements have created unnecessary or unfair burdens for borrowers.[11] In these rules, the Department crafted a BD framework that strikes a balance between providing transparency, clarity, and ease of administration while simultaneously giving adequate protections to borrowers, institutions, the Department, and the public monies that fund Federal student loans.

The Department believes that the proposed rule included procedures that would allow it to deny claims that lacked sufficient evidence or that did not meet the standard for a BD claim. In particular, under the proposed rules, the Department would obtain information from institutions and, in the case of a claim alleging misrepresentation by the institution, require a showing of reasonable reliance by the borrower. Nevertheless, in this final rule we have adopted additional changes suggested by commenters to clarify the standard that must be met for a claim to be approved and to specify how the Department will ensure claims include sufficient detail to permit consideration by the Department. The final regulations require that, to approve a claim, the Department must conclude that the institution's act or omission is an actionable ground for BD that caused detriment to the borrower that warrants relief (the Federal standard definition for a BD in § 685.401). This general standard incorporates enumerated categories of conduct (''actionable act or omission'') that affect the fairness of the transaction underlying the borrower's loan obligation. (Unless otherwise indicated hereinafter, ''act or omission'' refers to an ''*actionable* act or omission'' within the meaning of the BD standard and is shortened to aid with readability.) This standard provides that a borrower must suffer detriment as a result of the conduct, which incorporates the conventional elements of injury and causation. It also requires that the outcome of the borrower's loan-and-enrollment transaction was financial harm, lost value, or other cognizable injury caused by the actionable conduct. Finally, it requires that the circumstances of the borrower's resulting detriment warrant the form of relief—discharge of the entire remaining loan balance, refund of all payments made to the Secretary, and other remedial measures such as removing the borrower from default and updating credit reports. There will be a rebuttable presumption that such relief is warranted in cases involving closed schools, which reflects past experience. This standard thus establishes the concept that the institution's act or omission and the detriment they cause must be of such a nature that the remedy provided would be appropriate—specifically, a discharge of all remaining loan obligations, refund of all past amounts paid to the Secretary, and curative steps related to default, credit-reporting, and eligibility, if applicable. An act or omission resulting in borrower detriment that is marginal or attenuated from the decision to borrow or enroll would thus not be grounds for an approval because the relief of a full discharge, refund, and associated steps would not be an appropriate remedy. In considering whether an institution's acts or omissions caused detriment that warrants this form of relief, the Department would consider the totality of the circumstances, including the nature and degree of the act or omission and of the harm or injury along with other relevant factors. The standard also reflects the Department's experience that the circumstances warranting such relief are likely to exist in cases involving closed schools shown to have committed actionable acts or omissions, and the standard thus provides a rebuttable presumption that relief is warranted in those cases.

Under this standard and its accompanying regulations, the Department will have flexibility in determining the universe of evidence to be considered, while ensuring that relief-worthy claims are supported by sufficient evidence of the institution's wrongdoing. The Department is also providing greater clarity regarding what constitutes a materially complete application that can then be adjudicated (§§ 685.402(c) and 685.403(b)), which will ensure that applications include a sufficient degree of detail and, where applicable, evidentiary support.

These regulations should have a deterrent effect dissuading institutions from engaging in conduct that would give rise to a defense to repayment. To be clear, however, the Department does not consider recoupment for the amounts of BD discharges to be a sanction or punishment for the acts or omissions that impugn the underlying transaction involving a borrower's enrollment, tuition, and loan. The deterrent effect that flows from the risk of punishment is applied by operation of the Department's regulations providing for fine, suspension, termination, and other sanctions.

The regulations should, however, have the type of deterrent effect that proceeds from predictably ensuring parties fulfill the commitments they have made. By setting forth a clearer and more robust Federal standard for BD claims and a rigorous group claim process, institutions that might otherwise engage in questionable behavior will change their practices and act more ethically and truthfully. That is, the Department believes the standards and processes in this rule will mitigate the risk of moral hazard if unfulfilled commitments are ignored. The Department believes there will be a future deterrent effect even in the situations where the institution is not held liable for the expense of the approved discharge because there would be a higher likelihood of successful recoupment on more recently disbursed loans.

In this context, the Department notes that the circumstances in which an institution is most likely to face considerable costs related to BD claims are likely the strongest indication of actionable wrongdoing. BD applications filed by State regulators following

[11] 87 FR at 41879.

investigations that find acts or omissions, and cases with a significantly large volume of independently filed individual applications with common claims, are two such examples. Furthermore, we believe that the regulations requiring borrowers to submit materially complete individual applications will increase the quality and detail of claims without posing unnecessary barriers for borrowers.

The Department also does not agree that the commenters' concerns about reputational harm for institutions, the potential for actions by other regulators, and the possibility of borrower lawsuits solely stemming from approved claims are reasons to make significant changes to the proposed rules. To the extent commenters refer to the risk of erroneous BD decisions causing harm to the institution, we will only grant a discharge when adequate evidentiary support exists—a finding that will occur only after considering evidence and arguments submitted by the institution. Additionally, we only assess liabilities against the institution if we initiate a recoupment action. That action will afford schools the same procedural rights and protections available in any other situation in which an institution is assessed a monetary liability associated with title IV.[12]

Regarding potential risks for institutions independent of actual liability determinations, the Department notes that the HEA clearly provides borrowers the right to assert a defense to repayment based on an alleged wrongdoing by an institution in the same way any consumer may invoke legal remedies against a seller or service provider. The Department is obligated to consider those claims. The Department does not conclude that concerns about hypothetical institutional harms, independent of actual liability determinations, override the concern for students harmed by institutional misconduct and the Department's obligation to consider claims alleging such harm.

To the extent commenters are concerned with risks flowing from the sole act of the Department granting claims, irrespective of recoupment or any determination of actual liability on the school's part, the Department does not consider the marginal risk of such harm to warrant conditioning borrower relief on a finding of school liability or changing the sequence of those determinations. Were the Department to make borrower relief and school liability coextensive or to make each adjudicatory step an adversarial process between the borrower and the school, it would create unrealistic barriers for borrowers and an insurmountable administrative burden for the Department.

Furthermore, although the Department must disclose certain records upon request, it does not publicize the outcomes of individual BD applications. Commenters did not point to specific or particularized harm that any open school has suffered as a result of the Department granting any individual applications in the past. At least one comment from an institution referenced inquiries it had received from a State regulator and a lender because the settlement agreement that, at the time of this final rule, has received preliminary approval.[13] The commenter said the part of the settlement agreement to automatically discharge all claims associated with that school was an indicator of reputational harm. That example simply mentioned inquiries, however, and no actual harm suffered. We believe those concerns are unwarranted. The relief for class members described in that proposed settlement was agreed to in order to resolve that particular litigation and undertaken in exercise of the Secretary's settlement and compromise authority. It does not reflect ''approved'' BD claims or involve the process contemplated by the proposed regulation.

To the extent that harm from solely granting a borrower's claim could be shown, either now or in the future, that is simply a by-product of the statute and structure of title IV. First, by its terms, the defense to repayment under the HEA is invoked against the Department, not schools. For that reason, regulations giving context to the HEA's BD provision must principally address the circumstances in which borrowers invoke that defense. Properly separating the BD discharge decisions from liability determinations provides a process that is administratively feasible for the Department and allows borrowers to have claims based on that defense asserted and resolved in a realistic way.

Second, the risk of harm from relief determinations between the borrower and the Department, to the extent there is any, is simply a by-product of participation in title IV that schools are aware of when they seek eligibility. Indeed, the processes set forth in the HEA and Department regulations, including Department BD relief determinations, are expressly incorporated into schools' program participation agreements (PPAs). Title IV funding is structured such that schools receive federal funds that can be used to pay tuition and fees up front and leave the subsequent details of repayment, including defenses thereto, to borrowers and the Department. If the Department's resolution of borrower claims implicates some attenuated risks, without any determination of actual liability, then that is simply a by-product of title IV's inherent structure.

The Department also notes that institutional participation in the Direct Loan program is voluntary, and the BD rules, including possible BD liability, have been part of the program almost since its inception. The proposed regulation has incorporated safe harbors so as not to enlarge schools' liability for past conduct beyond what was included in past versions of the regulation and provided robust procedural rights in cases where the Department assesses actual liability against the school. If, going forward, institutions find the risk of hypothetical collateral risks too great, they can easily avoid those risks by choosing not to participate in title IV loan programs.

Finally, regarding the potential for regulatory scrutiny from other agencies or borrower lawsuits, the Department does not dictate evidentiary standards applicable to other regulators, nor do our regulations impact the pleading rules or evidentiary standards for borrower lawsuits.

Changes: We revised the Federal standard for BD applications received on or after July 1, 2023, and for applications pending with the Secretary on July 1, 2023, in § 685.401(b) to provide that a borrower with a balance due on a covered loan will be determined to have a defense to repayment if we conclude that the institution's act or omission caused detriment to the borrower that warrants relief. We also added language in § 685.401(e) noting that in determining whether a detriment caused by an institution's act or omission warrants relief under this section, the Secretary will consider the totality of the circumstances, including the nature and degree of the acts or omissions and of the detriment caused to borrowers. For borrowers who attended a closed school shown to have committed actionable acts or omissions that caused the borrower detriment, there will be a rebuttable presumption that the detriment suffered warrants relief under this section. We also revised the definition of a materially complete

[12] *See, e.g.,* 34 CFR part 668, subpart G (proceedings for limitation, suspension, termination, and fines).

[13] *See Sweet* v. *Cardona,* No. 3:19–cv–03674 (C.D. Cal. filed June 25, 2019).

individual application in § 685.403(b) and the requirements for third-party requestor applications in § 685.402(c) to ensure the Department obtains the information it needs to make appropriate determinations under the Federal standard.

Comments: In the NPRM, the Department noted that one of its concerns about the 2019 regulation was how it addressed the issue of common evidence—the Department's term for evidence that could be applied to similarly situated borrowers. In the NPRM, we also stated that the 2019 regulations limited the Department's ability to consider common evidence held in its possession. A few commenters asserted that we mischaracterized the 2019 regulation, pointing to a section of that final rule that states the Department was allowed to consider common evidence during adjudication so long as it was shared with both the borrower and the institution and that they are given the opportunity to respond to it. Other commenters argued that it would be difficult for a borrower to show individualized harm under the 2019 regulation.

Discussion: We appreciate the commenters' perspective and reiterate that the Department remains concerned about burdens placed on applicants under the 2019 regulations. The commenters are correct that, under the 2019 regulations, the Department may employ common evidence for consideration of individual claims. But the Department's greater concern is that the 2019 regulations do not allow for the consideration of group claims, for which employing common evidence across the group is important. Our statement about limits on use of common evidence was primarily made in that context.

The 2019 regulations also required the borrower to prove individualized harm. Our experience in processing claims has shown that certain calculations used to determine the amount of relief in the 2019 regulations would be an inappropriate barrier to relief for the borrower, not because harm did not occur, but because the process to show individualized harm required the borrower to have knowledge about regional and national employment opportunities. We believe that a borrower is unlikely to know how to locate regional or national unemployment rates and connect those data to their own experience.

Changes: None.

Legal Authority

Comments: Several commenters asserted that the Department lacks statutory authority to regulate on BD. Specifically, several commenters stated the Department does not have the statutory authority to design a process that facilitates the discharge of loans. Commenters further argued that the proposed regulations and BD framework will result in the unallowable discharge of loans that in turn will cause increased inflation. Commenters argued that the Department is limited to specifying which institutional acts or omissions may form the basis of a BD claim. The commenters further stated the proposed rule will result in an unprecedented and unlawful mass discharge of student loans.

Discussion: We disagree with these commenters who state that the Department lacks the statutory authority to regulate on BD. Throughout the NPRM, we explain that Sec. 455(h) of the HEA requires the Secretary to specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to the repayment of a Direct Loan (*i.e.,* a borrower defense).[14] In addition to Sec. 455(h), Sec. 410 of the General Education Provisions Act (GEPA) gives the Secretary authority to make, promulgate, issue, rescind, and amend rules and regulations governing the applicable programs administered by the Department and the manner in which they are operated.[15] Under Sec. 414 of the Department of Education Organization Act, the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.[16] These general provisions, together with the HEA provision noted above, authorize the Department to promulgate regulations that govern defense to repayment standards, process, adjudication, and institutional liability. We note that the Department has had regulations on this issue since the inception of the Direct Loan Program in 1994 and the Department's authority to issue those regulations has not been questioned by Congress or the courts.[17]

Collectively, the authorities granted to the Secretary in the HEA and other general provisions provide the statutory basis to develop a BD framework. In response to the comment that this regulatory scheme is unprecedented and unlawful, the Department reminds commenters that the collapse of the Corinthian Colleges (Corinthian) and the flood of claims submitted by Corinthian students stemming from the institution's misconduct necessitated the need for a more robust BD regulatory framework. Prior to Corinthian's precipitous closure, BD was a rarely used discharge despite the fact that those regulations existed since 1995. And the number of BD applications has not meaningfully abated in the years since Corinthian's closure, further supporting the continued need for clear regulations to address claims from hundreds of thousands of borrowers. Here, based on the Department's broad statutory authority, we are building upon the lessons learned from past BD frameworks to ensure borrowers have full access to the discharge provided by law.

Changes: None.

Comments: A few commenters suggested the proposed rule is unconstitutional because the separation of powers doctrine precludes the Department from adjudicating liability between students and institutions. The commenters further stated the Department proposes to delegate to itself the authority to adjudicate traditional common law actions and defenses. The commenters noted that there is a ''public rights'' exception to the separation of powers doctrine that applies when the sole source of recovery is a Federal statute, but that such exception does not apply here where some of the underlying bases supporting a BD claim are more typically the province of the courts. Along similar grounds, some commenters argued that the inclusion of breaches of contract based upon State law also violated the separation of powers.

Discussion: We disagree with the commenters. As an initial matter, BD adjudications do not involve determinations of private rights as between schools and borrowers. As we explain in several sections of this document and as we explained in the 2016 final rule, borrowers have certain rights regarding the obligation to repay a loan made by the Federal Government, including the right to raise defenses to collection of the loan. Additionally, the Federal Government has the right to recover liabilities from the school for losses incurred as a result of the act or omission of the school participating in the Federal loan program.[18] That is, a defense to repayment against the Department does not involve schools, and should the Department seek recoupment, any issues of school liability are separately determined in independent proceedings—a distinction

[14] 20 U.S.C. 1087e(h).

[15] 20 U.S.C. 1221e–3.

[16] 20 U.S.C. 3474.

[17] 81 FR 75926, 75932.

[18] 81 FR at 75929.

that is even clearer under these regulations' approach. In that context, the Department's BD adjudication process is not resolving disputes that would otherwise be litigated between schools and borrowers in an Article III court or state court of general jurisdiction.

Additionally, with very limited exceptions, BD adjudications do not involve the enforcement of common law causes of action at all. That is, they apply a federal standard that differs from that of actions for common law fraud or contract. Although a BD claim may incorporate common law principles, it differs with respect to the claim's scope, application, and available remedies. The limited exception is for claims based on loans disbursed before July 1, 2017, which if denied may invoke state-law causes of action in a request for reconsideration. But even in such cases, the dispute does not involve claims between two private parties in the same way as cases that implicate separation-of-powers concerns.[19]

To the extent that entertaining state-law claims on reconsideration implicates ''private rights'' limitations, those rights are asserted against or by a Federal agency and have the character of public rights, even if the resolution of those rights invokes some common law principles because it turns on application of State law.

Finally, there is no separation-of-powers issue here because BD claims and potential subsequent recoupment actions are adjudicated through processes to which both the borrower and participant school have consented.

Changes: None.

Comments: Several commenters contend that the proposed BD regulation violates the Administrative Procedure Act (APA) and that the proposed regulations are arbitrary and capricious. These commenters claimed the Department does not ''examine the relevant data,'' nor does it rest its conclusions on ''factual findings,'' or a ''reasoned explanation'' for these BD regulations as required by the APA. Commenters argued that the Department did not sufficiently explain the basis for its changes from the 2019 regulation. Commenters argued that because the Department has not enforced the 2019 regulation, it could not have conducted an analysis of the 2019 regulation's impact. Commenters also argued that citing estimates from regulatory impact analyses issued with prior regulations was not sufficient justification for making a change.

Discussion: We disagree with these commenters. In taking this regulatory action, we have considered relevant data and factors, considered and responded to comments, and articulated a reasoned basis for our actions. The Department gathered substantial evidence to support the positions taken in these regulations, as described in painstaking detail in the NPRM and in this document.

As a threshold matter, the absence of adjudications under the 2019 rule is not a ''refusal to administer it,'' as one comment claims, and instead simply reflects practical circumstances. That is, the 2019 regulation went into effect on July 1, 2020. This fell between two important events. The first occurred roughly three months earlier when the pause on student loan repayment, interest, and collections stemming from the COVID–19 national emergency began. Because this pause affected all new loans, loan issued on or after July 1, 2020, have not entered repayment. Without an ongoing loan payment, a borrower may not yet fully appreciate the effects of enrolling in a program or institution and incurring student loans due to one of the bases for borrower defense.

The second event occurred about three months after the regulation's effective date, when in October 2020, the Department entered a stipulation in the then-titled case *Sweet* v. *DeVos* agreeing not deny any claims of class members—which, until the settlement agreement, was defined as any borrower with a pending borrower defense claim—until the court reached a final judgment on the merits.[20] It would have been effectively impossible for a new borrower to have a claim reviewed under the 2019 regulation prior to that October stipulation, since they would have had to take the loan out roughly three months prior, file a claim almost immediately, and get a decision.

Nonetheless, the Department did perform initial reviews of some claims that would have been covered by the 2019 regulation in connection with borrowers consolidating older loans but found that all of them would have been barred by the regulation's statute of limitations. However, because it had stipulated that it would not issue denials, it could not adjudicate those claims and issue a final agency decision.

It would also make little practical sense to address the relatively sparse volume of pending claims subject to the 2019 regulation (approximately 3 percent of claims filed since July 1, 2020) in light of the large volume of pending claims it does not cover. The Department has a significant number of pending claims stemming from the lack of decisions being rendered on claims for multiple years. The number of claims filed has only increased since then. To address that backlog without violating the commitment on denials, the Department has prioritized claims that fall into large groups with compelling evidence supporting approval. Based on time alone, those claims are much more likely to fall under the 1994 and 2016 regulations. They are unlikely to fall under the 2019 regulation, which only took effect several months before the Department agreed to halt denials. To say that adjudications have not proceeded under the 2019 regulation reflects that reality rather than a refusal to apply it.

We disagree with the comments arguing that the Department's experience adjudicating claims under the 1995 and 2016 regulation cannot inform its conclusions of the need for changes from the 2019 regulation. Courts have long acknowledged that changed circumstances and experience provide a permissible basis for improving existing regulations, noting ''it is not arbitrary and capricious for an agency to change its mind in light of experience''.[21] Likewise, ''the mere fact that an agency interpretation contradicts a prior agency position is not fatal.''[22] An agency need only give ''good reasons'' for a new policy,[23] which the Department has done at length during the rulemaking.

Here, the Department's experience evaluating claims under the 1995 and 2016 regulations provides a valuable reference for how that process would unfold for the 2019 regulation.[24] After all, the 2019 regulation involves applying many of the same fundamental principles that animate its earlier iterations: all three versions of the

[19] *See Stern* v. *Marshall,* 564 U.S. 462, 473 (2011) (widow's claim for tortious interference); *Commodity Futures Trading Comm'n* v. *Schor,* 478 U.S. 833, 836 (1986) (contract claims between broker and investor).

[20] *Sweet* v. *Cardona,* No. 3:19–cv–03674 (N.D. Cal.), ECF Nos. 163 at 1, 150–1 ¶ 5; *see also* ECF No. 46 at 14 (defining class).

[21] *New Eng. Power Generators Ass'n, Inc.* v. *FERC,* 879 F.3d 1192, 1201 (D.C. Cir. 2018).

[22] *Smiley* v. *Citibank (S. Dakota), N.A.,* 517 U.S. 735, 742 (1996).

[23] *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

[24] For details on the numerous cases that the Department has recently addressed, *see* FSA, *Borrower Defense Updates, StudentAid.gov, https://studentaid.gov/announcements-events/borrower-defense-update.* Summaries of some examples include Westwood Coll. Exec. Summary (Aug. 30, 2022); ITT Tech. Inst. Exec. Summary (Aug. 16, 2022); Kaplan Career Inst. Exec. Summary (Aug. 16, 2022); Corinthian Colls. Inc. Exec. Summary (June 2, 2022); Marinello Sch. of Beauty Exec. Summary (Apr. 28, 2022); DeVry Univ. Exec. Summary (Feb. 16, 2022).

regulation involve similar determinations about schools' acts or omissions, their impact on borrowers' enrollment and borrowing decisions, and the detriment borrowers may suffer as a result. Thus, the 2019 regulation shares many of the earlier regulations' core features and differs by further requiring a multitude of additional findings and procedural steps that would require considerably more time and resources from the borrowers, institutions, and the Department.[25] It is reasonable for the Department to draw on its expertise in administering title IV and on its experience applying similar concepts under the other existing standards and processes. Indeed, considerable deference is given to an agency's administrability-related conclusions and predictive judgments about matters on which the agency is uniquely knowledgeable, such as a rule's practical impact.[26] The Department's knowledge and experience inform its judgments here on an approach that will facilitate addressing BD claims in the most effective way.

Finally, in the time since the 2019 rule's promulgation, the Department has learned that there are implementation challenges with administering the 2019 regulation and with reviewing claims under the standard and processes it would require. The issue relates to the requirement that the Department share not just the borrower's application for relief but also a copy of all other evidence related to the claim in the Department's possession. The Department is currently unable to comply with those record-sharing requirements, nor have we identified a workable platform to do so. In some cases, the evidence relevant to one applicant's claim may flow from information that includes other borrowers' personally identifiable information, which cannot be shared with the applicant without violating those other borrowers' privacy rights. In other situations, the Department has received large amounts of evidence related to the claim (some of which might not be relevant to the final determination). The Department does not have a mechanism for transmitting such large amounts of information and it would likely overwhelm the borrower as well as many institutions. The Department has also found that it does not have the capacity to provide the necessary evidentiary redactions on a borrower-by-borrower basis as anticipated by the 2019 regulation. These experiences thus inform our decision to improve upon the 2019 regulation's approach in this rule.

The Department thus fully considered the likely effect of the 2019 regulations on the adjudication of claims and is making appropriate changes to counter those effects.

Changes: None.

Comments: Several commenters argued that the proposed BD regulations lack equitable standards and due process protections and will facilitate erroneous discharges that harm students, taxpayers, institutions, and borrowers. These commenters warned of tuition increases and increased costs to the taxpayers as a result of the implementation of this BD framework.

Discussion: We disagree with these commenters. The Department carefully crafted a BD framework that will ensure that borrowers have the opportunity to provide the details sufficient to justify the BD application without establishing barriers too complicated for borrowers to meet and that will ensure institutions have ample opportunity to respond to a BD claim as described in detail in § 685.405. Collectively, these regulations provide an equitable standard for all parties. The Department reminds the commenters that institutions will have an opportunity to submit a response to claims before they are adjudicated or before the final Secretarial action occurs, and will not be held liable for approved borrower defense claims until after a separate process that gives institutions the opportunity to present their evidence and arguments before an independent hearing official in an administrative proceeding. As the Department explained in the NPRM, we will initiate such liability proceedings through the appeal procedures for audit and program review determinations in 34 CFR part 668, subpart H. This provides robust due process protections to institutions during the recoupment proceedings. The institutions will be presented with the findings and evidence against them. They will have an opportunity to challenge that evidence by filing an appeal with the Office of Hearings and Appeals where they can challenge the evidence and findings and present relevant evidence to bear that they identify. The hearing officer's decision can be appealed to the Secretary, who would not have been involved in the decision to pursue the liability or the decision by the hearing officer. These are the same protections institutions receive in other similar proceedings. Thus, while we pursue liabilities from the responsible institutions to avoid burdening taxpayers with the cost of these discharges, we will also provide a full opportunity to institutions to respond.

We acknowledge that regulations have added costs, and we explain how those costs may be offset in the *Regulatory Impact Analysis* section of this document.

Changes: None.

Comments: A few commenters asserted that schools may have liberty and property interests in continued eligibility for benefits (program participation) under the HEA that are subject to due process protections. The commenters asserted that institutions have a right to retain the title IV benefits they previously received, and that the proposed regulations allegedly deprive them of these interests without adequate due process. Specifically, the commenters assert that the group approval loan discharges and the process of evaluating and approving group discharges does not provide institutions with sufficient notice and opportunity to respond.

Discussion: We disagree with the commenters' assessment of both the interests at stake and the process provided under the regulations. As an initial matter, the commenters appear to suggest that the BD regulations implicate a property or liberty interest in continued participation in the title IV programs. They do not. Rights acquired by the institution under agreements already executed with students remain fully enforceable on their own terms. The BD regulations only address loan discharge for borrowers and potential recoupment of discharged amounts from the institutions that engaged in the acts or omissions that prompted the discharge. These borrower defense regulations do not directly impact an institution's continued eligibility, but findings of substantial misrepresentation or other serious violations that resulted in approved BD claims could impact an institution's title IV eligibility. In other words, the Department's approval of BD claims for borrowers has no direct impact on the institution's title IV eligibility. However, the improper actions by the institution that provide the basis for approving a BD claim also will likely violate the statutory and regulatory requirements of the title IV programs. The Department could determine that the institution's violation of those rules could affect title IV eligibility if the claims were

[25] For example, the 2019 and 2016 regulations both include a misrepresentation as a basis for relief. *Compare* § 685.206(e)(3) (2019 regulation), *with* § 685.222(d) (2016 regulation). The same concept is commonplace under State law causes of action that the 1994 regulation incorporates. § 206(c)(1).

[26] *Nat'l Tel. Co-op. Ass'n* v. *F.C.C.,* 563 F.3d 536, 541 (D.C. Cir. 2009); *BNSF Ry. Co.* v. *Surface Transp. Bd.,* 526 F.3d 770, 781 (D.C. Cir. 2008).

approved due to a finding of a violation of the HEA that merits additional adverse actions. Even if the regulations did implicate continued eligibility, however, the institution has no property right to continue to participate in the title IV programs on the terms under which the institution previously participated. Section 452(b) of the HEA states, ''No institution of higher education shall have a right to participate in the [Direct Loan] programs authorized under this part [part D of title IV of the HEA].'' [27]

Because the commenters misconstrue the scope and impact of the regulations, they also misapply the due process analysis. The regulations provide ample due process at all stages and with respect to all interested parties. Fundamentally, the commenters failed to distinguish between the BD loan discharge process and the BD recoupment process. As clearly stated in the regulations and discussed throughout this document, the loan discharge process is between the borrower and the Secretary. The regulations include extensive processes tailored to that relationship, which includes the opportunity for institutional response. In response to public comment, the Department enhanced the proposed procedures to provide more notice to affected parties, to require BD discharge applications to be submitted under penalty of perjury, and to add an additional opportunity for institutional response prior to the decision on whether to form a group for adjudication.

The loan discharge process is separate from any recoupment proceeding that the Secretary elects to pursue against an institution. The recoupment efforts contemplated are recoveries of financial liabilities, not sanctions. The recoupment process involves a number of procedural steps, including many of the protections the commenters claimed were missing from the regulations, such as motions practice, interlocutory challenges, and multiple levels of appeals. *See* 34 CFR part 668, subpart H. The Department's hearing procedures provide ample due process, which is confirmed by the conclusions in caselaw cited by commenters.[28] As clearly stated in the regulations, moreover, any recoupment proceeding under these regulations will only be undertaken prospectively, with respect to loans disbursed after July 1, 2023. The Department's final regulations in § 685.409 were revised to make that even clearer than before. If recoupment is occurring on claims associated with loans disbursed prior to July 1, 2023, that is because the actions or omissions that led to that approval would also have violated the borrower defense regulations in effect when those loans were first disbursed.[29]

Changes: None.

Comments: A few commenters suggested that erroneous BD discharges could prompt mandatory financial responsibility triggers, which we discussed during a spring 2022 negotiated rulemaking session involving separate student loan issues, that could cause the Department to determine inappropriately that an institution is not financially responsible.

Discussion: We disagree with these commenters. Erroneous discharges are unlikely to occur given the adjudicative framework we crafted, which gives the institution and the requestor an opportunity to present evidence and provides that, to approve a discharge, the Department must conclude that the institution's act or omission caused detriment to the borrower that warrants relief. The bifurcated process, separating claim adjudication from recovery of the amounts discharged, further minimizes the risk of any hypothetical collateral effect on institutions.

As of the publication of these final regulations, the financial responsibility regulations referred to by the commenters are proposals, not binding regulations. Current regulations at § 668.171(c)(1)(i)(A) require the Department to establish liability against an institution under an administrative proceeding in which the institution has an opportunity to present its position before a hearing official. That structure addresses the concerns raised by the commenters. The public will have an opportunity to provide comments on any future regulations related to financial responsibility triggers when they are published in an NPRM.

Changes: None.

Comments: Commenters stated that HEA Sec. 455(h) does not grant power of adjudication to circumscribe presumptions or assign liability to institutions. Several commenters argue that the proposed BD improvements exceed the Department's authority based on principles articulated in the Supreme Court's recent decision in *West Virginia* v. *EPA*.[30]

Discussion: The rule falls comfortably within Congress's statutory directive that the Secretary specify in regulations the acts or omissions by schools that provide borrowers a defense to repayment.[31] One commenter argued the rule falls outside the statute's grant of authority because it will account for ''highly-complex'' and ''fact-specific borrower claims.'' But those complexities and the need for fact-specific review stem from the increased number of claims that rest on acts or omissions found by court judgments or regulatory investigations, which invoke the defense to repayment specifically referenced in the HEA. Indeed, another commenter argues that such increased volume suggests the Department lacks authority to improve the existing rule, but the volume of applications and the acts or omissions that motivated them are precisely why the rule needs improvement. That is, foregoing the improvements included in these rules would do nothing to change the number of borrowers invoking the statutory remedy.

With respect to the comment that the HEA does not grant power of adjudication to circumscribe presumptions, we again refer commenters to the general provisions granting authority to the Secretary in GEPA, authority extended in the Department's organization act, and numerous provisions in the HEA. Along with a statutory directive to define which acts and omissions provide a defense to repayment, those statutory provisions grant the Department authority to promulgate regulations giving content to the statutory BD provision, including an adjudication framework like the one this rule prescribes. We discuss the issues pertaining to liabilities more fully and elsewhere in this document.

The Department disagrees that the Supreme Court's *West Virginia* decision undermines the Department's authority

[27] 20 U.S.C. 1087b(b); *see Ass'n of Priv. Sector Colls. & Univs.* v. *Duncan,* 110 F. Supp. 3d 176, 198 (D.D.C. 2015).

[28] *See Cont'l Training Servs., Inc.* v. *Cavazos,* 893 F.2d 877, 893–94 (7th Cir. 1990) (school's ability to submit written and oral statements was ''quite a lot of predeprivation process'' and ''all the process constitutionally required''); *see also id.* at 892 (that schools may have certain liberty or property interests entitles them to ''*some* predeprivation process,'' but ''does not determine *how much* predeprivation process should be required'').

[29] At least one comment invokes schools' liberty and property interests with reference to *Continental Training Services.* The Department notes that the interests acknowledged in *Continental Training* were tied to the school's eligibility for title IV funding, *id.* at 892, which is not at stake as part of the BD process—either for claim adjudication or recoupment. Nonetheless, schools are afforded meaningful opportunities to be heard during both phases under the updated rule and, to the extent the same facts cause schools to face other eligibility-related determinations, they have robust procedural protections as part of that process too. To that point, we also note that the *Continental Training* court concluded the process afforded the school in that case was adequate to survive constitutional scrutiny. *See id.* at 894.

[30] 142 S. Ct. 2587 (2022).

[31] *See* 20 U.S.C. 1087e(h).

to promulgate the proposed rule's BD improvements.[32] That decision described ''extraordinary cases'' in which an agency asserts authority of an ''unprecedented nature'' to take ''remarkable measures'' for which it ''had never relied on its authority to take,'' with only a ''vague'' statutory basis that goes ''beyond what Congress could reasonably be understood to have granted.'' [33] The rule here does not resemble the rare circumstances in *West Virginia.* First, there is nothing unprecedented or novel about the Department relying on the ''Borrower defenses'' subsection of 20 U.S.C. 1087e to authorize a BD regulation with standards and procedures to effectuate that subsection. That section, in fact, requires the Secretary to issue regulations specifying the actions or omissions a borrower may assert as a defense to repayment. Indeed, the Code of Federal Regulations has included multiple versions of regulations governing BD claims since 1995.[34]

Thus, contrary to the commenters' arguments, the rule does not reflect ''unheralded'' action only loosely tethered to a congressional grant of authority.[35] To the contrary, the rule gives context to the defenses that Congress instructed the Department to define,[36] and does so in a way that accounts for all involved parties' rights.

Changes: None.

Comments: A few commenters stated that the BD regulations violate the separation of powers doctrine. These commenters state that the rule impermissibly assigns the Department an adjudicatory role for claims and defenses that are constitutionally required to be decided by courts.

Discussion: We disagree that these regulations violate the separation of powers doctrine. Administrative agencies commonly combine both investigatory and adjudicative functions, *see Winthrow* v. *Larkin,*[37] and due process does not require a strict separation of those functions as long as adequate process is provided.[38] The Department is no different and performs both investigative and adjudicative functions in other contexts, including those that involve borrower debts [39] and institutional liabilities.[40]

Changes: None.

Comments: A few commenters argued that there is no legal ground in the HEA for affirmative BD claims, which in the 2019 regulation was defined as claims from borrowers who were in repayment as opposed to defensive claims, which are for borrowers in default.

Discussion: We disagree with the commenters. Section 455(h) of the HEA requires the Secretary to ''specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part.'' This language in no way limits the remedy to a defense asserted in collection proceedings. Rather, the concept of ''repayment'' is widely understood to encompass not just borrowers in default but also those actively repaying their loans. As we note elsewhere, BD relief, though unique, bears features of remedies like rescission, avoidance, restitution, and certain forms of out-of-pocket or reliance costs. Those remedies are appropriate as a defense to the obligation to repay, not simply as backstops for contingencies like default. In that context, we do not see these comments' distinction between ''affirmative'' and ''defensive'' claims to be a meaningful one considering a defense to repayment is only relevant in the context of an existing obligation to repay.

Moreover, limiting BD only to loans in default would be illogical. Only allowing claims from loans in default would place borrowers in an unfair situation of either intentionally defaulting in the hopes that a BD claim is successful or repaying a loan that potentially should be discharged due to the acts or omissions of an institution. Given that institutions must keep their default rates below certain thresholds established in statute and regulations, creating an incentive for default could end up inadvertently hurting an institution that has large numbers of BD claims.

Changes: None.

Comments: Some commenters raised concerns about how the inclusion of new items in part 668, subpart F as well as the new part 668, subpart R would be used for other Department oversight or enforcement activity. They raised concerns about institutions potentially facing adverse actions for past conduct now covered by these additions.

Discussion: The Department notes that some of the changes to Part 668, subpart F represent items that are not new but have simply been moved to other locations or slightly restated. Other elements in that subpart, as well as part 668, subpart R are new. For the items that are new, the Department could bring adverse actions in relation to conduct that occurs on or after July 1, 2023.

Changes: None.

Effective Date of Regulations, Claims Covered Under Regulations

Comments: The Department received several comments related to the treatment of borrowers who have already paid off their loans. A few commenters requested clarification as to whether these individuals are eligible for BD. Others argued that a borrower who has paid off their loan should be prohibited from filing a BD claim because there would be no repayment to defend.

Discussion: A borrower who submits a BD claim is asserting that they should no longer be required to repay the loan they owe to the Department. BD claims are thus limited to loans that are still outstanding and are associated with the institution whose alleged act or omission could give rise to the defense to repayment. This concept is embedded in the definition of ''borrower defense to repayment,'' which makes the defense available for ''all amounts owed to the Secretary on a Direct Loan.'' § 685.401(a). The next paragraph of the definition provides for reimbursement of all payments ''previously made to the Secretary on the Direct Loan,'' which is a direct reference back to the loan identified in the first paragraph (on which amounts must still be outstanding). Thus, if a borrower no longer has a loan outstanding, they do not have a defense to repayment as there would no longer be any loans to repay.

Changes: None.

Comments: Commenters recommended that the regulatory text expressly state that new BD standards

[32] One commenter suggested that the NPRM's omission of a case-specific discussion of *West Virginia* requires that the Department abandon and reconsider this proposed rule because, according to the commenter, that decision signals a ''restive'' judicial attitude toward major regulatory actions that the NPRM was required to address. The comment cites no authority, nor is the Department aware of any, requiring agencies to foresee hypothetical changes in law based on signals of restiveness. In any event and for the reason explained herein, the Department does not read the Court's decision in *West Virginia* as reason to reconsider the rule.

[33] *West Virginia,* 142 S. Ct. at 2608–09.

[34] 59 FR at 61664 (Dec. 1, 1994); 81 FR at 75926 (Nov. 1, 2016); 84 FR at 49788 (Sept. 23, 2019).

[35] *See West Virginia,* 142 S. Ct. at 2608.

[36] 20 U.S.C. 1087e(h).

[37] 421 U.S. 35 (1975).

[38] *See Hortonville Joint Sch. Dist. No. 1* v. *Hortonville Educ. Ass'n,* 426 U.S. 482, 493 (1976).

[39] For example, the Department provides both schools and borrowers the opportunity to request and obtain an oral evidentiary hearing in both offset and garnishment actions against a borrower and in an offset action against a school. *See* 34 CFR 30.25 (administrative offset generally); 34 CFR 30.33 (Federal payment offset); 34 CFR 34.9 (administrative wage garnishment).

[40] *See* 34 CFR 668.24 and part 668, subparts G and H (proceedings for limitation, suspension, termination and fines, and appeal procedures for audit determinations and program review determinations).

will not retroactively apply to institutions for alleged misconduct that occurred prior to the effective date of these regulations. They also noted that, while the preamble to the NPRM stated that retroactive application would not occur, such statements were not reflected in the accompanying regulatory text.

Discussion: BD is fundamentally a process between the borrower and the Department. It is a claim brought by the borrower that they should no longer have to repay an outstanding debt owed to the Secretary. The reason for such a claim is due to an alleged act or omission by the institution. The Department must review that allegation to determine whether the borrower should be relieved of their obligation to repay. Whether the Department chooses to seek recoupment from the institution for the cost of approved discharges is a separate question and subject to a separate set of procedures. This is in keeping with how the Department handles discharges for closed school and false certification discharges as well.

In this regulation, the Department simplifies the standard that governs whether the borrower should be relieved of their loan repayment obligation. The Department's approach ensures that a single standard is used to evaluate BD claims arising from the same acts or omissions, regardless of whether the borrower has multiple loans that were obligated in multiple years or whether a borrower's loans were consolidated. This approach ensures more consistent decision-making and treatment of borrowers.

The Department is not applying this approach to recoupment. Institutions will only be subject to recoupment actions for claims that would be approved under the standard in place at the time the act or omission occurred. In other words, a claim that is approved due to a misrepresentation, omission, breach of contract, aggressive and deceptive recruitment, judgment, or final Secretarial action that occurred prior to July 1, 2023, would only result in recoupment if the claim would have been approved under the 1994, 2016, or 2019 regulations, whichever is applicable. We appreciate the feedback from commenters who noted that this concept was not sufficiently expressed in the NPRM and have updated the final amendatory text to make this point clearer.

Changes: While claims that are pending on or received on or after July 1, 2023 will be adjudicated under this standard, we have added language in § 685.409(b) noting that the Secretary will not collect any liability to the Secretary from the school for any amounts discharged or reimbursed to borrowers for an approved claim under § 685.406 for loans first disbursed prior to July 1, 2023, unless the claim would have been approved under the standards for what constitutes an approved claim under the three different borrower defense regulations. The standards are contained within § 685.206(c), the 1994 regulation, for loans first disbursed before July 1, 2017; under § 685.206(d), the 2016 regulation, for loans first disbursed on or after July 1, 2017, and before July 1, 2020; or under § 685.206(e), the 2019 regulation, for loans first disbursed on or after July 1, 2020, and before July 1, 2023.

Comments: Many commenters wrote in saying that the proposed regulations are impermissibly retroactive. They cited a body of case law supporting a presumption against retroactive regulations.

Discussion: Courts have regularly rejected retroactivity challenges to regulations that operate like these. As with statutes,[41] newly promulgated regulatory measures are not improperly retroactive, ''so long as the Department's regulations do not alter the past legal consequences of past actions.'' [42] That is, a regulation raises concerns of unconstitutional retroactivity if it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'' [43] Thus, whether a regulation ''operates retroactively'' turns on ''whether the new provision attaches new legal consequences to events completed before its enactment.'' [44] It is, however, well settled that ''[a] statute is not rendered retroactive merely because the facts or requisites upon which its subsequent action depends, or some of them, are drawn from a time antecedent to the enactment.'' [45] Nor is a statute impermissibly retroactive simply because it ''upsets expectations based in prior law.'' [46] Under these regulations, while all claims pending on or received on or after July 1, 2023 will be reviewed under the standards in this final rule, an institution will not be liable for the amount of the BD claim paid by the Department unless the claim would have been approved under the standards in the regulations in place at the time the claim arose. Thus, these regulations are not retroactive for institutions.

Changes: None.

Comments: Several commenters recommended the Department continue to process pending BD claims, regardless of any new regulation, and urged the Department to process claims under the 2019 regulations. The commenters further suggested the Department should revisit claims approved for partial discharges to reconsider the amount of discharge that is appropriate; assess whether all available evidence was considered with respect to claims that have been denied; investigate and process claims from institutions for which no student has yet received relief; and establish processes to more quickly adjudicate new claims as they come in while regulations are ongoing.

Discussion: The Department continues to process BD claims as well as abiding by commitments the agency has made in ongoing litigation. As we specified in the NPRM, we proposed new regulations to establish a new Federal standard for BD claims applicable to applications received on or after July 1, 2023, and to those pending before the Secretary on July 1, 2023. To date, all approved claims have been for full discharges, so the need to contemplate past instances of partial discharge is not needed. As noted, this new standard will apply to all claims that are pending on or received on or after July 1, 2023.

Changes: None.

Eligible Loan Types

Comments: A few commenters commended the Department for providing FFEL borrowers with access to the BD claim process through loan consolidation, including by giving borrowers the option on their application to request consolidation of their loans into a Direct Loan if their claim is approved. A few commenters,

[41] Courts routinely apply the same principles to statutes and regulations to evaluate concerns about impermissibly retroactive applications. *See St. Louis Effort for AIDS* v. *Huff,* 782 F.3d 1016, 1023 (8th Cir. 2015) (''Although we examine regulations, not statutes, the[ ] same principles apply.''); *Little Co. of Mary Hosp. & Health Care Ctrs.* v. *Shalala,* 994 F. Supp. 950, 960 (N.D. Ill. 1998) (stating that the same principles ''suppl[y] the test to decide when a statute (or by natural extension a regulation) operates retroactively'').

[42] *Ass'n of Priv. Sector Colls. & Univs.,* 110 F. Supp. 3d at 196 (internal marks and emphasis omitted).

[43] *Ass'n of Proprietary Colls.* v. *Duncan,* 107 F. Supp. 3d 332, 356 (S.D.N.Y. 2015). *See also Ass'n of Accredited Cosmetology Schs.* v. *Alexander,* 774 F. Supp. 655, 659 (D.D.C. 1991), *aff'd,* 979 F.2d 859 (D.C. Cir. 1992), and *order vacated in part on other grounds sub nom. Delta Jr. Coll., Inc.* v. *Riley,* 1 F.3d 45 (D.C. Cir. 1993); *Ass'n of Accredited Cosmetology Schs.* v. *Alexander,* 979 F.2d 859, 864 (D.C. Cir. 1992) (no retroactivity-based infirmities with determining eligibility based on pre-rule data of cohort default rates).

[44] *Ass'n of Priv. Sector Colls. & Univs.,* 110 F. Supp. 3d at 196.

[45] *Id.*

[46] *Id.*

however, were concerned that by limiting the definition of BD to the making of a Direct Loan, the provision could be read to exclude claims that pertain to the making of a FFEL loan, even if such FFEL loan is later consolidated into a Direct Loan. These commenters suggested some regulatory changes to ensure FFEL borrowers have access to relief.

Commenters also raised concerns that some FFEL borrowers are ineligible to consolidate into Direct Loans, thus making it impossible for them to receive a BD discharge if their claim was approved. As examples of FFEL borrowers who cannot consolidate into Direct Loans, these commenters pointed to borrowers who are current on a FFEL Consolidation Loan and do not have any additional loans to consolidate, as well as FFEL borrowers who are subject to enforced collection orders, such as wage garnishment, or who have a judgment on their FFEL loans. These commenters suggested that the Department promulgate final regulations that make borrower defense discharges available to borrowers with FFEL Loans, including FFEL Consolidation loans, even if they cannot or do not consolidate.

Commenters also expressed concerns that a FFEL borrower whose defense to repayment claim is only partially approved may be left worse off if the resulting Direct Consolidation Loan is not fully discharged and urged the Department to ensure that a Direct Consolidation loan would not be automatically effectuated if doing so would adversely affect the borrower. These commenters noted that consolidation is one of the few avenues that borrowers can use to get their loans out of default but borrowers whose loans are already consolidated generally lose the option to consolidate. Commenters stressed that these borrowers should not lose the option to get out of default, arguing that many borrowers with approved borrower defense claims are also likely to be at high risk of delinquency or default.

Commenters requested that the Department clarify whether it will refund amounts paid on FFEL loans before they were consolidated.

Other commenters did not support the inclusion of FFEL borrowers. They argued that a BD claim is based on the acts or omissions of an institution at the time the loan was issued, which for any FFEL loan would precede the issuance of any Direct Loan through consolidation. That is, because Sec. 455 of the HEA only applies to Direct Loans, the commenters argued that conduct that occurred while the loan was in the FFEL Program should not qualify for a BD discharge. These commenters argued that FFEL loans should be ineligible for a BD discharge.

Discussion: The Department affirms its position that FFEL borrowers should retain a pathway to BD discharges. The HEA directs that, generally, Direct Loans are made under the same ''terms, conditions, and benefits'' as FFEL Loans.[47] In 1994 and 1995, the Department interpreted that Direct Loan authority as giving the Department authority to hold schools liable for BD claims under both the FFEL and Direct Loan programs, and stated that, for this reason, it was not pursuing more explicit regulatory authority to govern the BD process.

We also want to assure commenters who were concerned that the regulatory language might not provide adequate protection for FFEL borrowers who consolidated into a Direct Loan. Through a Direct Consolidation Loan, FFEL borrowers will have a pathway to BD.[48] Specifically, § 685.401(a) states that relief for actionable conduct includes a ''defense to repayment of all amounts owed to the Secretary on a Direct Loan including a Direct Consolidation Loan that was used to repay a Direct Loan, [and] a FFEL Program Loan[.]'' Additionally, § 685.401(b) makes clear that a BD claim is available to a ''borrower with a balance due on a covered loan[,]'' which includes ''a Direct Loan or other Federal student loan that is or could be consolidated into a Federal Direct Consolidation Loan.'' § 685.401(a). With these references, we believe that viewing the BD framework in the totality should allay any concerns about a FFEL borrower receiving a pathway to BD.

Operationally, the Department will streamline the claims process for FFEL borrowers by having the BD claim application also function as a Direct Consolidation Loan application, which would only be executed if the claim is approved. In 2009, the Department issued Dear Colleague letter FP–09–03 in which we told FFEL lenders that they cannot decline to complete a Loan Verification Certificate solely because the borrower is attempting to consolidate only a FFEL Consolidation Loan without any additional loans.[49] The question of whether to complete the consolidation thus rests with the Department. Improvements to the loan consolidation process will be reflected when the Department redesigns the BD form, which will separately go through public comment. The Department will also provide other sub-regulatory guidance on how it will treat borrowers with covered loans that are not Direct Loans. Moreover, the Department notes that since approved claims will receive a full discharge the question of whether a consolidation is in the borrower's best interest will be simpler to assess.

The Department appreciates the commenters' concern for borrowers with an involuntary collection order such as wage garnishment or a judgment through a court order but notes the statutory constraints and the Department's limitations. As provided in Sec. 428C(a)(3)(A)(i) of the HEA, borrowers will need to take preliminary steps, such as having those wage garnishment orders lifted or those judgements vacated, in order to facilitate consolidation. Finally, with respect to refunds, the Department will refund amounts previously paid to the Department. We cannot refund amounts the Department did not receive.

Changes: None.

Definitions

Changes: None.

Comments: Commenters provided several different suggestions on the proposed ''Department official'' definition. A few commenters suggested that the Department should preclude staff from Federal Student Aid (FSA) from serving as a Department official. These commenters stated that FSA is responsible for oversight and monitoring and that if the Department had exercised appropriate oversight, we would not have issued the loans related to a BD claim in the first place. The commenters argued that allowing FSA to determine the outcome of BD claims raises the appearance of a conflict of interest. Other commenters argued for a similar change, asserting that the Department official lacks neutrality, because they review and make a recommendation on the merits of a claim. These commenters stated that a borrower defense claim should be adjudicated by an administrative law judge (ALJ), arbitrator, or some other neutral party. On the other hand, a few commenters argued that even an ALJ could not be a neutral party, because they are still a Department employee.

Other commenters argued that the Department official should be an ''officer'' rather than a career employee, suggesting further that ideally this individual would be a principal officer who is named by the President and confirmed by the U.S. Senate. Commenters argued for this change

[47] 20 U.S.C. 1087a(b)(2), 1087e(a)(1).

[48] *See* 87 FR at 41886.

[49] *https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2009-04-03/fp-09-03-subject-completion-loan-verification-certificates.*

because the decision of whether to approve or deny a BD claim is a final agency decision made on behalf of the Federal government and such decisions cannot be made by career staff.

Discussion: We disagree with the commenters and see no need for such limitations on which employees could serve as a Department official. We have, however, clarified the roles fulfilled by the Department official versus those of the Secretary to make clear that the Secretary is the final decision maker.

The role of the Department official is to review the BD claim, consider the evidence, and recommend approval or denial of the claim. The Department official also recommends whether a group should be formed where applicable. The Secretary or the Secretary's delegate may accept or reject the recommendations and is the final decision maker. The Department has clarified this through changes to § 685.406.

We do not agree with the commenters who believe that the Department official cannot be part of FSA, or must be a third-party, such as an ALJ. These FSA staff members handle BD processes, which is separate from the institutional compliance work performed by FSA program reviewers and enforcement staff.

After the collapse of Corinthian in 2016, the then-Under Secretary of Education appointed a BD Special Master to advise the Department on BD issues.[50] The Special Master agreed with Department leadership that the best way to create a fair, transparent, and efficient process for handling BD claims was to establish an infrastructure that was flexible and scalable. By dedicating a team with the human capital and resources to handle BD claims, as we have in FSA's BD Group, led by a director, the Department believes that it has created a nimble framework that accommodates an efficient and fair resolution of BD matters. We plan to continue with this framework.

The Department further believes that requiring the Department official to be a certain type of individual—such as a special master or ALJ—would impermissibly tie the agency's hands with respect to future Congressional appropriations. Requiring that claims only be considered by a certain type of employee would constrain the Department in how to best use Congressional appropriations for salaries and expenses and would limit the Secretary's flexibility to address changing circumstances and appropriations. The definition of Department official in these regulations provides necessary flexibility to allocate staff to review and make recommendations on BD claims.

Furthermore, under Sec. 412 of the Department of Education Organization Act,[51] the Secretary may delegate the authority to perform the functions and duties of the position. A BD claim represents a defense to repaying all amounts owed to the Secretary, and the initial adjudication and resolution of those claims is a function that the Secretary may delegate to an inferior officer or other Department official.

Changes: We revised the regulatory text in § 685.406 to clarify the role of the Department official, who makes a recommendation to the Secretary and that the Secretary, or his delegate will make final decisions.

Comments: Commenters suggested that the Department replace ''Direct Loan'' in § 685.401 with ''Direct Loan or other Federal student loan that is consolidated into a Federal Direct Consolidation Loan,'' as the Department states in § 685.401(b)(2) through (5), to ensure FFEL borrowers have access to relief. These commenters feared that without an explicit reference to ''other Federal student loan that is consolidated into a Federal Direct Consolidation Loan,'' FFEL borrowers would be unable to access the BD discharge.

Discussion: We assure these commenters that the regulations will give FFEL borrowers access to a BD discharge. Although we did not adopt the specific language the commenters suggested, we created a new definition of a ''covered loan'' in § 685.401(a). This change does not substantively change the types of loans eligible for relief, because we cannot change the statutory definition of ''Direct Loan'' (see Part D of title IV of the HEA). These regulations make clear, however, that FFEL borrowers may access the BD process through a Direct Consolidation Loan. A covered loan remains a Direct Loan or other Federal student loan that is or could be consolidated into a Federal Direct Consolidation Loan.

Changes: We added a new definition of ''covered loan'' in § 685.401(a), which includes a Direct Loan or other Federal student loan that is or could be consolidated into a Federal Direct Consolidation loan.

Comments: Many commenters expressed disappointment that the Department excluded legal assistance organizations from the parties eligible to request consideration of group claims, as we allow for State requestors in these BD regulations. These commenters stated that excluding legal assistance organizations will disadvantage borrowers who attend smaller institutions that are less likely to attract the attention of State officials. Similarly, these commenters were concerned about borrowers in States that do not have the capacity to investigate predatory institutions and pursue group discharges or have decided not to do so for lack of resources or policy reasons. The commenters stated that legal assistance organizations are well-versed in the application of States' laws and the nuances of States' higher education regulatory systems, which would make them well-positioned to request consideration of group discharges under State law. Additionally, the commenters asserted that these organizations may possess greater awareness of institutions using predatory conduct against low-income students than government agencies. Other commenters agreed with the NPRM's limitation of the entities eligible to bring forth group claims.

A few commenters suggested the Department permit representatives of certified classes of borrowers to submit group BD applications. These commenters further stated the Department repeatedly acknowledges the value of lawsuits, particularly class action lawsuits, to promote the purposes of the Direct Loan program. They noted that permitting only State requestors to submit group applications will likely result in differential treatment of student borrowers based solely on where they live. In addition, the commenters stated that counsel representing classes of harmed borrowers can assemble a wealth of relevant evidence.

Discussion: During negotiated rulemaking session 3, the Department initially considered allowing legal assistance organizations to submit group requests. Upon further consideration, however, the Department concluded that limiting the group formation request to State requestors would facilitate a more efficient process. The Department has consistently and repeatedly received valuable information from States that played a key role in the adjudication of BD applications. For example, we received evidence from State attorneys general that we used to approve claims related to several institutions across the country. The Department received evidence from the California Attorney General that helped document that Corinthian Colleges misrepresented its job placement rates. Evidence from the

[50] *https://www2.ed.gov/documents/press-releases/report-special-master-borrower-defense-1.pdf.*

[51] 20 U.S.C. 3472.

New Mexico Attorney General helped establish that ITT Technical Institute misled students about obtaining accreditation for its associate degree in nursing programs. More than two dozen State attorneys general submitted evidence related to ITT giving students false, erroneous, or misleading statements about the value of its education. The Department received evidence from the Illinois and Colorado attorneys general that demonstrated Westwood College lied to students about the ability for criminal justice students to get a job as a police or corrections officer in Illinois and that it made false promises at all of its campuses about guaranteed prospects for students who could not find a job. The Department likely would have been unable to approve many of the claims associated with those schools without that evidence.

After careful reconsideration, we are persuaded by the commenters' arguments that allowing legal assistance organizations to request a group formation could give borrowers who would otherwise not have a pathway to relief the ability to file a BD claim. Allowing these additional organizations to request the consideration of group claims affords another channel for the Department to receive valuable information that we can use to assess BD claims. The commenters' point that legal assistance organizations may have potentially greater awareness regarding some institutional conduct than States is important, given that we have received claims pertaining to thousands of institutions.

The Department also initially cited concerns about the potential added burden of allowing legal assistance organizations to make group requests. The overall requirements for a group request will mitigate this concern, particularly the requirement that a group request must include evidence beyond sworn borrower statements to be considered for a decision. Though not an exhaustive list, in the past the Department has found that additional evidence such as an institution's internal training materials and communications, the documentation used to calculate job placement rates, and copies of misleading advertisements have all been helpful in adjudicating BD claims. Group requests without additional evidence and information will be deemed incomplete. That means a group request will require additional evidence from the third-party requestor.

To make this change operationally manageable, the Department is adding a new definition of a ''third-party requestor,'' which will encompass State requestors and ''legal assistance organizations'' (also newly defined in the regulations) and will allow such third-party requestor the ability to request group formation, subject to certain conditions. The definition of ''legal assistance organization'' in the regulations is drawn, in part, from Sec. 428L(b)(1) of the HEA which defines a civil legal assistance attorney with the exception of where their employer receives their funding as outlined in Sec. 428L(b)(1)(A)(ii) of the HEA. Beyond being a nonprofit organization, we do not believe a legal assistance organization's funding source should have any bearing on their request to form a group under § 685.402. We believe relying on a modified definition created by Congress is better than trying to craft a new one.

The regulations also add a requirement that third-party requestors that are legal assistance organizations may only request to form a group in which all borrowers have entered into a representation agreement with the legal assistance organization. In this respect, legal assistance organizations significantly differ from State requestors. This legal distinction is required for several reasons. First, confidential borrower-related information must be exchanged as part of BD determinations. The Department is permitted to exchange that information with the offices of State attorneys general but must obtain borrower-specific privacy waivers to share such information with private counsel. It is far more likely that the Department will be able to exchange such borrower-related information for borrowers that legal assistance organizations represent. Second, State attorneys general may act as their constituents' public legal representative based on the nature of their role. Non-governmental groups, on the other hand, generally have no comparable right to assert claims on behalf of non-clients. Class counsel who represent plaintiffs in a civil class action lawsuit are one exception to this general bar, but only following specific determinations about class counsel and the class representatives, their clients.[52] The Department lacks the resources or procedures to recreate a similar process for group BD requests from legal assistance organizations that the Department is able to do so for State attorneys general. For these and other practical reasons, requests submitted by a legal assistance organization to form a group must contain a certification that the requestor has legal representation authority for each borrower identified as a member of the group, which must be based on individual representation agreements or on a court appointing the legal assistance organization to represent a certified class that includes all members of a requested group in connection with claims substantially similar to BD. As we explain later in the *Group Process and Group Timelines* section, the Department will retain the flexibility to approve a group that is broader or narrower than the one requested by a third party based upon a review of the evidence.

The Department declines to allow representatives of certified classes of borrowers to submit requests to form a group seeking BD if they do not fall under the definition of a legal assistance organization. While we appreciate these external entities' interest, the Department believes that expanding the scope of third-party requestors presents administrative issues that are not feasible for the Department to address at this time. We also note that the ability to use judgments to support BD claims means that representatives of certified classes can obtain relief for their clients if they secure a judgment that meets the requirements under § 685.401(b)(5). And, of course, nothing prevents these entities from independently sharing general information with the Department.

Changes: We added definitions of ''legal assistance organization'' and ''third-party requestor'' in § 685.401(a). Throughout the document, we also revised any reference to ''State requestor'' to be ''third-party requestor'' to reflect inclusion of legal assistance organizations. We also amended § 685.402(c) to state that third-party requestors that are legal assistance organizations may not request to form a group that includes any borrower who has not entered into a representation agreement with the legal assistance organization. We also added a corresponding new paragraph § 685.402(c) that requires a legal assistance organization submitting a group claim to certify that it has entered into a legal representation authority with each borrower identified as a member of the group.

Comments: Many commenters supported allowing States to request a consideration of a group claim. Those commenters noted the importance of State attorneys general in identifying important evidence and the overall importance of having group claims. We

[52] *See, e.g.,* Fed. R. Civ. P. 23(a) (requiring representative plaintiffs to have claims typical of the class and to be adequate class representatives); Fed. R. Civ. P. 23(g) (setting forth various requirements, duties, and obligations of class counsel).

also received many comments that opposed this provision. Commenters argued that the Department did not sufficiently justify why it was including State requestors and that it lacked the legal authority to include them. Commenters also argued that the Department was adopting this position to circumvent limitations on its own investigatory power and that it can already share information and does not need this provision. Commenters also alleged that this provision would involve the Department in internal matters between attorneys general and State authorizing agencies that may not want to take action. Commenters also raised concerns that State requests could be used to try and influence ongoing settlement negotiations. Commenters also asked if State requestors would have to limit their requests to only cover borrowers in their states. Finally, a few commenters argued that the Department would struggle to sift through the material from states.

Discussion: We appreciate the support from commenters who are in favor of including State requestors.

We disagree with commenters opposed to the inclusion of State requestors. As discussed in the NPRM as well as in this final rule, the Department has benefited repeatedly from information provided by State attorneys general in its adjudication of claims. The Department has also received many requests for consideration of group claims from attorneys general. Creating a formal process for the handling of these group requests is better for States, the Department, affected borrowers, and institutions. For States, the regulations provide more clarity around what is needed in an application and lays out timelines for when to expect decisions. Borrowers who may not understand how to file a BD claim or who may not have the information necessary to support all elements of a claim on their own will benefit from the expertise and support of state officials who regularly act on behalf of consumers in their states in many contexts. For institutions, they will also have a clearer role in responding to both the request to form the group, as well as whether the group should be approved. These regulations also give the Department a clear process to follow for the handling of group claims and will ensure consistent treatment and consideration of claims. We also note that third-party requestors are only involved in the submission of claims by borrowers; they are not involved in any proceeding brought by the Department against the institution.

We disagree with the concerns raised that allowing any third-party requestor—whether from a State or legal assistance organization—would result in attempts to influence the Department or influence litigation or oversight matters within a state. The Department's concern is ensuring it receives evidence that can help it make fair decisions about the merits of BD claims. The Department does not have a role in the resolution of matters at the State level between an attorney general and an institution or other State entities.

With regard to which borrowers a State may request a group around, the Department does not believe it needs to add any language specifying the extent of a group. We note that to date all requests for group consideration from State attorneys general have only covered borrowers within their states.

Finally, the Department believes it will have the capacity to review material from States. It has already done so for several group requests and the requirements for what is needed in a group application will help ensure the Department will receive additional useful evidence when reviewing requests for group claims.

Changes: None.

Comments: One commenter requested that the Department add State authorizing agencies to the list of State requestors under § 685.401, noting that in at least one State the authorizing agency has responsibility for reviewing title IV aid issues and eligibility requirements that incorporate title IV aid elements.

Discussion: The Department agrees with the commenter. In adopting a definition of State requestor, the Department sought to include entities that have authority from the State to oversee institutions of higher education, including reviewing and approving institutional conduct. We modified the language of State requestor to include State entities that are responsible for approving educational institutions in the State.

Changes: We have added a State entity responsible for approving educational institutions in the State to the definition of a ''State requestor'' in § 685.401.

Comments: A few commenters believed the definition of ''school'' and ''institution'' in § 685.401(a) was duplicative and too broad. Commenters stated that inclusion of the cross-reference to § 668.174(b) in this definition can be read to mean that, for the purposes of adjudicating a BD claim, the conduct of an institution could be imputed to any other institutions that are under common ownership.

Discussion: We concur with the commenters. The Department contemplated covering in the definition of ''school'' or ''institution'' a person affiliated with the institution as described in § 668.174(b). This was done for purposes of recovery from the institution in § 685.409.[53] The Department already retains the authority to assess a past performance liability for individuals associated with the institution under the financial responsibility regulations, however. Therefore, a cross-reference to § 668.174(b) in the definition of school or institution is unnecessary.

Changes: We revised the definition of ''school'' or ''institution'' (which are used interchangeably) by removing the sentence ''*School* or *institution* also includes persons affiliated with the institution as described in § 668.174(b) of this section.''

Federal Standard

Comments: Many commenters supported the establishment of a strong Federal BD standard that better captures the full scope of institutional misconduct relevant for a BD claim. These commenters noted that, to date, the BD claims review process has been burdensome, with different regulatory standards depending on loan disbursement date. Commenters said the different Federal standards and processes contributed to inequities among similarly situated borrowers, resulted in a backlog, and delayed adjudication while borrowers were left in the dark. The commenters praised the new Federal standard, noting it established clearer and expanded grounds for BD claims and was a tremendous step in protecting consumers and ensuring the integrity of the Federal financial aid programs.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: Many commenters indicated that the Department should be required to find some or all of the following elements to approve a claim: reliance by the borrower, detriment to the borrower, materiality, adverse effect, financial damages or harm to the borrower, and intentionality by the institution. They raised these comments with respect to each component of the BD standards: substantial misrepresentation, substantial omission of fact, breach of contract, aggressive and deceptive recruitment, judgments, and final Secretarial actions.

Commenters argued that the absence of some or all of these elements would

[53] *See* 87 FR at 42009–42010.

result in the approval of claims that they described as having minimal allegations or documentary evidence or that did not result in any harm and thus should be denied. Commenters also said the proposed Federal standard would encourage the filing of what commenters described as frivolous claims. These commenters indicated that under the proposed rules the Department could approve claims as a result of errors by the institution in good faith, as a result of acts or omission in which the borrower did not in fact suffer any injury, or with virtually no factual allegations or documentary support. Commenters said the NPRM's approach is impermissibly broad and noted that the absence of some elements such as reliance appears to be inconsistent with the definition of a substantial misrepresentation in § 668.71. Commenters also noted that without the inclusion of some or all of these elements, it is unclear how institutions could successfully challenge liability during the institutional response stage, contributing to concerns about the due process rights of institutions. Similarly, many commenters raised concerns that an institution could be held accountable for inadvertent mistakes unless intent is required for a BD claim.

Discussion: We agree with the commenters in part. Upon consideration of each of the items suggested by commenters, we modified the proposed Federal standard to provide that, to approve a claim, the Department must find that the institution committed ''an actionable act or omission and, as a result, the borrower suffered detriment of a nature and degree warranting the relief provided by a borrower defense to repayment as defined in this section.'' § 685.401(b). The final clause (''warranting the relief provided by a borrower defense to repayment as defined in this section'') refers to the steps set forth in § 685.401(a)'s definition that comprise the remedy that BD provides, which are (i) relief from future repayment obligations of covered loans, (ii) reimbursement of all amounts paid to the Secretary, and, where applicable, curing consequences related to (iii) default or eligibility and (iv) adverse credit reporting. This general standard supplies a claim's primary elements of actionable conduct, injury, causation, and conditions justifying the remedy.

The Federal standard goes on to enumerate the different categories of conduct that, if shown, may serve as a sufficient basis for satisfying the general definition's first prong (''actionable act or omission''). That is, the following subsections enumerate the ''acts or omissions'' that fall within the scope of what is ''actionable'' for purposes of BD, which are: substantial misrepresentation, substantial omission of fact, breach of contract, aggressive and deceptive recruitment, judgments, and final Secretarial actions. By structuring the standard with general elements proceeding from the BD definition, claims must satisfy each of those general elements to be approved under any of the different conduct-related grounds for BD.

This simplified approach sets forth the shared elements of a claim: actionable acts or omissions by the institution; detriment to the borrower from having taken out a loan and enrolled; a causal link between the school's conduct and the borrower's injury; and that the appropriate remedy for such conduct and resulting injury is to discharge the borrower's remaining repayment obligations, refund payments already made to the Secretary, and take curative steps for any prior consequences related to credit reporting or default. The first three elements involve a factual determination about school's conduct and its impact on the borrower. The final prong ties those elements to the unique remedy that a defense to repayment provides. The section below on ''*Amounts to be Discharged/Determination of Discharge*'' provides a more comprehensive discussion of the remedy that BD provides.

The changes to the definition of a BD make several improvements that clarify the standard and address various commenters' concerns. Principally, a general definition accompanied by enumerated actionable acts or omissions clarifies the shared elements without shoehorning them into each specific way of establishing a defense to repayment.[54] A definition of general elements also considers commenters' requests to require that the act or omission be accompanied by one or more variations of the elements of causation and detriment to the borrower.

For causation, the Department chose a straightforward general element of causation instead of specific articulations such as reliance and materiality. First, a general causation element fulfills the function that reliance and materiality play in many actions for common law fraud, but in a way that more appropriately reflects the unique context of BD and student loans generally. Indeed, the decision to take out Federal loans to pay tuition in exchange for education, training, and credentials differs from the conventional context of common law fraud. The core concern for BD is ensuring it is a remedy for injuries caused by the identified acts and omissions, which is a concern that a general causation standard more appropriately addresses.

General causation can also be expressed in terms that will make more sense to a borrower. As numerous commenters observed, requiring applicants to use specific phrases risks filtering out applicants who do not understand terms with specific legal meanings instead of focusing on the borrower's actual entitlement to relief. The Department was also persuaded by concerns from commenters that reliance is a complicated element to rebut because only the borrower will truly know if they relied upon an act or omission. Causation, meanwhile, requires describing factual circumstances that show a connection between the act and the detriment to the borrower.

Detriment to the borrower is also a general element of a defense to repayment. The Department opted for this element rather than the suggestion of a few commenters to require borrowers to establish harm in specific forms or financial quantities. As noted in the NPRM, the Department is concerned that past requirements to establish harm have set unrealistic bars for borrowers, such as ruling out factors like regional or national recessions and a poor job-search process as causes for a borrower's inability to find employment or denying relief to borrowers who succeed despite their program. Requiring specific forms or values of harm would present an unrealistic barrier for many borrowers likely entitled to relief.

Furthermore, some comments on this topic appear to conflate the *fact* of detriment with the *measure* of resulting harm for remedial purposes.[55] The ''detriment'' element ensures that an applicant or group of applicants did, in fact, suffer harm caused by the relevant act or omission. In the BD context, that will frequently take the form of lost

[54] In addition to bringing the shared claim elements one step higher on the definitional tree, the modifier ''actionable'' also defines the phrase ''actionable act or omission'' as a BD-specific term that means one of the categories of conduct enumerated in § 685.401(b)(1)–(5). That is intended to clarify that other instances of the term ''act or omission'' in CFR, Title 34 may overlap with the enumerated BD categories but are not necessarily coextensive.

[55] *See* Dan Dobbs & Caprice Roberts, Law of Remedies § 3.1 (3d ed. 2018) (explaining the distinction between the fact of legal injury and measures of harm caused for purposes of calculating damages remedy).

value or economic loss as a result of the transaction to take out a loan and enroll. Limits on the form or degree of that injury are more appropriately treated as remedy-related issues, as explained in the paragraphs that follow and in the ''*Amounts to be Discharged/Determination of Discharge*'' section.

A claim's final general element proceeds from the remedy for BD, and involves a determination that the nature of the relevant acts or omissions and resulting detriment warrant the remedy available in BD. This feature of the updated definition and Federal standard, among others, addresses many of the concerns raised by commenters representing institutions or the interests of institutions. Regarding the concerns these comments raise, an approved claim requires the Department to conclude that the act or omission caused detriment to the borrower such that the circumstances warrant the relief of removing the borrower's obligation to repay the loan's remaining balance, refunding amounts paid to the Secretary, and other benefits like changes to credit reporting and determining that the borrower is not in default. In making that determination, the Secretary will weigh the totality of the circumstances, including the nature and degree of the acts or omissions and of the detriment caused to borrowers, along with any other relevant facts. As explained below, when making that determination for cases involving closed schools, there will be a rebuttable presumption that relief is warranted, which reflects the Department's experience that the circumstances warranting such relief are likely to exist in cases involving closed schools shown to have committed actionable acts or omissions.

As we explain elsewhere, BD relief, though unique, bears features of remedies like rescission, restitution, avoidance, reliance costs, and an obligor's claims and defenses against the enforcement of an unsecured loan. As rules and principles for those remedies reflect, whether rescissionary relief is appropriate often depends on the facts and circumstances of a particular case.[56] Although we did not adopt precise standards from these related areas of law, the Department expects to draw on principles and reasoning underlying the application of rescissionary remedies that BD resembles, where factual circumstances call for it, and will make explanations of important remedy-related determinations public. The relief available under BD and determinations on whether certain circumstances warrant relief are explained in greater detail in the ''*Amounts to be Discharged/Determination of Discharge*'' section.

The Department considers this flexible inquiry superior to specific benchmarks of cognizable harm requested by numerous commenters. Principally, it corresponds more closely to the remedy of a discharge and refund. As noted, the remedies that BD resembles generally call for a weighing of equities and case-specific circumstances. Because of the variety of interests involved in BD and the nature of the remedy it provides, a similar approach is appropriate to incorporate into the Federal standard. It also provides a limiting principle that addresses the comments concerned that full discharges and refunds would be warranted for trivial misstatements or borrowers with negligible harm.

As part of this determination, the standard provides for a rebuttable presumption that applicants who attended closed schools and otherwise establish a claim to relief are presumed to have suffered detriment that warrants BD relief. This presumption is based on the Department's experience that the circumstances in which BD has been the appropriate remedy to date are in cases involving closed schools. This does not mean that every alleged act or omission by a closed school will warrant relief, nor does it mean that borrowers who attended a closed school should expect the Department to automatically grant applications for BD. In cases where a school closes but there is no evidence of an act or omission that could give rise to a BD claim, the HEA still provides a path for borrowers who are otherwise harmed by the closure itself to get relief through the closed school discharge process. Applicants for BD who attended closed schools will still have to show, by a preponderance of the evidence, that the school committed actionable acts or omissions that caused them detriment. Although there is a presumption that such circumstances warrant BD remedies, it may be rebutted by evidence or reasons suggesting that the circumstances do not warrant the remedy of discharge and refund. The Department opted for this presumption because it acknowledges the context and challenges with obtaining additional evidence that often accompanies closed schools, while also allowing the Department to exercise its discretion based on the specific circumstances of each case.

Finally, the Department disagrees with the suggestion that the regulations require a finding of intent or knowledge by the institution for a BD claim to be approved. Requiring intent would place too great a burden on an individual borrower, who would need to have some way to know why the institution, or its representative committed the improper act or omission. Moreover, if the action resulted in detriment to the borrower that warrants relief, the Department does not believe whether it was taken with knowledge or intent should be relevant. The borrower still suffered detriment that warrants relief and so, if proven, should be relieved of their repayment obligation. The inclusion of a requirement that the action caused detriment to the borrower that warrants the relief of a full discharge and refunds means that harmless and inadvertent errors are unlikely to be approved. It is unlikely that a trivial action caused detriment and the Department will most likely not reach that conclusion. An error of consequence that causes detriment to a borrower that warrants relief should result in relief, however, regardless of whether it was made with knowledge.

Changes: We revised § 685.401(b), the Federal standard for a BD, to require the Department to conclude that the institution committed ''an actionable act or omission and, as a result, the borrower suffered detriment of a nature and degree warranting the relief provided by a borrower defense to repayment as defined in this section.''

We also added, in § 685.401(e), the general parameters that the Department will consider when determining whether detriment caused by a school's act or omission warrants relief. This involves the Secretary considering the totality of the circumstances, including the nature and degree of the acts or omissions and of the detriment caused to borrowers. The standard also provides that for borrowers who attended a closed school shown to have committed actionable acts or omissions that caused the borrower detriment, there will be a rebuttable presumption that the detriment suffered warrants relief under this section.

Comments: The Department received many comments with differing opinions on whether to presume reasonable reliance for an individual claim, as well as a group one. A few commenters requested a more explicit statement from the Department that we would presume reasonable reliance for an individual claim. Others, however, argued that the Department did not have

[56] *See, e.g.,* Restatement (Third) of Restitution & Unjust Enrichment § 54 (2011) (''Rescission is appropriate when the interests of justice are served by allowing the claimant to reverse the challenged transaction instead of enforcing it.''); Restatement (Second) of Contracts § 344 cmt. a (1981)(relief flexibly tailored ''as justice requires'' to protect reliance and restitutionary interests).

the statutory authority to use a presumption of reliance and did not provide sufficient evidence for this proposal. These commenters also argued that a presumption of reliance, coupled with the absence of requirements such as showing harm, and the broad definitions of terms like aggressive recruitment, would lead to the approval of frivolous claims. Commenters also argued that concerns that borrowers fail to state reliance do not provide legal grounds for adopting a presumption in regulation. They argued that when agencies establish a presumption, they typically do so using a rational nexus between the proven and presumed facts and that the Department has not showed that would be the case.

Commenters also disagreed with the Department's citation to authority held by the Federal Trade Commission (FTC). The commenters argued that the FTC can only employ its presumption when there is proven widespread violations, which include material and widely disseminated misrepresentations. The commenters argued that the Department's proposed standard represented a lower bar than what the FTC uses. The commenters also said the presumption does not comport with Supreme Court rulings related to the application of presumptions and stated that some misrepresentations as outlined in § 668.72 must require a showing of individual reliance. Finally, a few commenters stated that borrowers should bear the burden of proving reliance. They noted that only the borrower knows if they relied upon a particular act or omission, and it would be difficult for an institution to rebut a presumption of reliance.

Discussion: We take seriously the concerns the comments express, and have revised the amendatory text, where appropriate, but we disagree with much of the commenters' reasoning.

Regarding concerns about applying a presumption of individual reliance, the final regulation includes a general causation element in the definition of BD that addresses this concern in some ways. In this respect, approved claims must be based on a showing that a school's actionable act or omission caused the borrower detriment. That showing may be based on an inference of causation that does not meet the strictures of a conventional common law fraud claim, but the Department will not presume causation based on a borrower establishing an actionable act or omission, standing alone. The general causation requirement and the reasons for adopting it are explained in response to other comments in this section.

The updated regulation does, however, retain the feature that adopts a rebuttable presumption that identified acts or omissions impacted each borrower in a group recommended for consideration under the proposed § 685.402. This is a logical feature of a process that considers claims collectively.

Contrary to a few commenters' suggestions, this feature does not permit a presumption where there is no rational nexus between the established and presumed facts. Rather, the regulation contemplates that a recommendation to consider certain borrowers' claims as a group will stem from facts supporting a logical inference that certain acts or omissions impacted members of the group in similar ways. For that reason, the rebuttable presumption accompanying a formed group will reflect a rational nexus between the proven facts and the presumed facts.[57]

Likewise, a rebuttable presumption does not change the burden of persuasion, which will still require that the evidence show an entitlement to relief by a preponderance of the evidence. For purposes of schools' liabilities, the presumption will simply operate to shift the evidentiary burden to the school, while still allowing the school to rebut the presumption as to individuals in the identified group, or as to the group as a whole. In any recoupment action related to such a case, the members of the group will be identified. Although the group may include borrowers who did not file an individual application, the members of the group will be known as part of the fact-finding process. Because the Federal standard now focuses on causation rather than reliance, there is no need for the changes regarding presumptions for individual claims that commenters requested.

We disagree that the Secretary lacks the authority to provide for presumptions in the procedures for resolving BD claims. It is a well-established principle that administrative agencies may establish adjudication procedures that include evidentiary presumptions based on logical inferences drawn from certain facts.[58]

We also disagree with commenters' attempts to distinguish the principles underlying presumptions drawn from FTC jurisprudence. The presumptions that the FTC uses are not limited to contempt proceedings and also apply in actions for restitution under Sec. 19 of the FTC Act.[59] What is more, commenters ignore key differences between FTC enforcement and BD that underscore the Department's authority here. First, the FTC actions that commenters reference involve civil enforcement proceedings meant to encourage compliance with general commercial standards and deter practices that financially harm consumers in general. In contrast, the Department's BD-related recoupment actions against schools involve the collection of discharged loan amounts so that the party that caused the loss reimburses the Government and taxpayers. That is, unlike the civil remedies that the FTC deploys, the Department's BD-related proceedings with schools simply involve the Department seeking reimbursement for liabilities owed to the Department as a result of the schools' voluntary participation in the title IV programs. Second and relatedly, the FTC's enforcement authority stems from more than 70 different laws and covers an extensive range of consumer interactions that make commercial actors subject to the FTC's consumer-oriented jurisdiction simply by virtue of engaging in economic activity with consumers. The scope of BD, on the other hand, only encompasses Federal loans paid to schools through the Department-administered title IV programs in which schools affirmatively and voluntarily sought eligibility to participate. To be eligible to participate in these programs, a school must also expressly agree to be subject to the Department's regulations, which includes assuming responsibility and liability for losses the Department incurs from relevant discharges. *See* 34 CFR 685.300. Not only do the regulations explicitly provide for such reimbursements, but they also have included features like the presumption commenters reference long before this rule. The 2016 regulation specifically provides for such presumptions.[60] Similarly, the 1994 regulation empowered the Department to apply State law, which would include presumptions applied in many jurisdictions. As we explained when the final 2016 regulations were published, the presumption that those regulations codified did not ''establish[ ] a different standard than what [wa]s required under the . . . [1995] regulations'' in place at that time.[61] Indeed, as noted,

[57] *See Cole* v. *U.S. Dep't of Agric.,* 33 F.3d 1263, 1267 (11th Cir. 1994).

[58] *Chem. Mfrs. Ass'n* v. *Dep't of Transp.,* 105 F.3d 702, 705 (D.C. Cir. 1997).

[59] *See, e.g., F.T.C.* v. *Figgie Int'l, Inc.,* 994 F.2d 595, 605 (9th Cir. 1993).

[60] 34 CFR 222(f)(3).

[61] 81 FR at 75971.

agencies retain the discretion to apply presumptions in the adjudication process that are not codified in regulations at all so long as a rational nexus exists between the relevant evidence and presumptive inferences to be drawn from it.[62]

The upshot of these differences is that the procedural steps required for FTC presumptions are based on many reasons that do not apply to the BD context. That obviates the need to recreate similar procedures as a prerequisite to applying presumptions in BD-related proceedings. That is particularly the case because recreating such procedures would meaningfully hinder the efficient administration of BD proceedings, which are an integral part of the Department's role as the administrator of title IV Federal loan programs. The Department has authority to administer those programs in a way that honors borrowers' right under the HEA to raise a defense to collection of their loan and that ensures schools satisfy the financial commitments and obligations they undertake as a condition of title IV participation. Thus, the interagency differences that the comments mention support the Department's authority to craft a context-specific process for resolving claims for BD.

Changes: The Department revised § 685.401(b) to provide that, to approve a claim, the Department must conclude the institution made an actionable act or omission that caused detriment to the borrower that warrants the relief provided under BD.

Comments: A few commenters argued that the Department should adopt a plausible basis requirement for BD claims similar to the Federal pleading standard. In this situation, the Department would assume that well-articulated factual allegations are true and then determine whether they give rise to relief. The commenters also argued that the claimant should be required to state the claim with particularity as required under certain elements of the Federal Rules of Civil Procedure.

Discussion: We agree in part with the comments but disagree that it would be appropriate to adopt specific pleading standards—whether heightened or relaxed—drawn from civil litigation. Without adopting specific standards, the Department has made revisions that address many of the concerns expressed in these comments.

With regard to pleading standards, revisions to the regulations set forth basic requirements for a materially complete individual claim application. These requirements are discussed in greater detail in the section in *Process to Adjudicate Borrower Defense Claims,* but their core purpose is to increase the quality of and content in individual applications by requiring an adequate description of the alleged acts or omissions, along with their relevant circumstances, impact, and resulting detriment. This differs from a particularity requirement such as Federal Rule of Civil Procedure 9(b) but addresses some commenter concerns.

The Department declines to adopt a plausibility requirement. Principally, the BD adjudication process does not implicate the plausibility standard's goal of resolving claims early to avoid expensive and burdensome discovery costs.[63] Nor does the BD process implicate other pleading-related concerns of providing a defendant adequate notice,[64] because the Department is the party against which borrowers assert a defense to repayment. Otherwise, we think the updated guidelines for a materially complete application will adequately address concerns about applications lacking sufficient information.

Accordingly, we clarify the definition of a materially complete application to require that borrowers provide certain details that form the basis of a claim, but we are not asking borrowers to provide factual support for claim elements that they are unlikely to know or have the ability to obtain, such as centralized corporate practices, advertising plans, or the calculation formulas behind institutional job placement rates.

Changes: We clarified the definition of a materially complete application in §§ 685.402(c) and 685.403(b) to require that borrowers provide certain details that form the basis of a claim.

Comments: Some commenters raised concerns about whether the Department would terminate or otherwise sanction institutions for past behavior based upon new items in part 668, subpart F or the new part 668, subpart R. They raised concerns about institutions potentially facing adverse actions for past conduct now covered by these additions.

Discussion: The Department notes that some of the changes to Part 668, subpart F represent items that are not new but have simply been moved to other locations or slightly restated. Other elements in that subpart, as well as part 668, subpart R are new. For the items that are new, the Department could bring adverse actions in relation to conduct that occurs on or after July 1, 2023 that violates those new provisions.

Changes: None.

Comments: Some commenters argued that the Federal standard and its relation to other prior standards would confuse borrowers and adds unnecessary complexity.

Discussion: We disagree. As noted in the NPRM, the Department is concerned that the fact that the current framework of associating a regulation with a disbursement date can be very confusing for borrowers, especially if their borrowing spans multiple regulations or they consolidate. The single upfront Federal standard will reduce that confusion. This approach avoids the possibility that different loans held by the same borrower and related to the same allegations could otherwise result in different adjudication outcomes, which would be confusing.

Changes: None.

Substantial Misrepresentation

Comments: A commenter made several suggestions regarding the definition of misrepresentations related to job placement rates in § 668.74. These included clarifying that these are misrepresentations related to the use of placement rates in marketing materials, not what is reported to accreditors or State agencies; allowing paid internships of a certain minimal length to be considered a placement; saying that placement rates can align with the methodology historically accepted by an accreditor or State agency; counting borrowers who were placed prior to graduation as part of a clear disclosure; and, allowing for the exclusion of non-respondents after a good faith attempt to contact them and alongside a disclosure. The commenter also provided regulatory text to execute their suggested changes.

Discussion: § 668.74 (g)(1) already states that a misrepresentation exists if the actual employment rates are materially lower than the rates included in the institution's marketing materials, website, or other communications, so we do not believe further clarification is needed there. However, after reviewing § 668.74(g)(1)(ii) we believe the phrasing there was not sufficiently clear. Accordingly, we have revised § 668.74(g)(1)(ii) to clarify that the rates in question are the ones disclosed to students. In reviewing the request for greater clarity we also concluded that the language in 668.74(g)(1)(ii)(C) did

[62] *See Chem. Mfrs. Ass'n,* 105 F.3d at 705.

[63] *See Bell Atl. Corp.* v. *Twombly,* 550 U.S. 544, 558 (2007); *Pension Benefit Guar. Corp. ex rel. St. Vincent Catholic Med. Ctrs. Ret. Plan* v. *Morgan Stanley Inv. Mgmt. Inc.,* 712 F.3d 705, 719 (2d Cir. 2013).

[64] *See* Fed. R. Civ. P. 8.

not fully capture the issues that the Department has seen in that space. Accordingly, we clarified that language to say ''assessments of employability'' in addition to difficulty with placement. This addresses two issues the Department has seen. One is institutions excluding borrowers from a placement rate solely because they did not follow a strictly defined job search process as laid out by the institution. The other is excluding students because the institution thinks the person would have a hard time finding a job, which can include someone who is pregnant. Regarding the other suggestions, we believe it is important for the placement rates provided to borrowers to be as straightforward as possible, and the comment did not provide reasons for further limiting the grounds for misrepresentation set forth in § 668.74(g)(1)(ii)(A) through (C). We have, however, deleted § 668.74(g)(1)(ii)(D). The commenter noted that the treatment of non-respondents could potentially also deflate placement rates if someone who is placed does not respond. Given the potential for the treatment of non-respondents to increase or decrease the placement rate, we believe this provision is not as consistent in resulting to rates that are overstated as paragraphs (A) through (C).

The Department also notes that the Federal standard for BD incorporates misrepresentations as defined in § 668.71(c), which include representations to accrediting agencies, State agencies, and others. Whether any such statement amounts to a substantial misrepresentation will depend on whether it is false or misleading. For purposes of BD, the Department would have to further conclude that the misrepresentation misled a particular borrower and caused the borrower detriment such that it warrants a full discharge and refund. Thus, not every substantial misrepresentation under part 668, subpart F will support a defense to repayment and the remedies it entails. In addition to this flexibility, the regulations permit the Department to seek additional evidence from requestors, when appropriate, and permit schools with various opportunities to be heard. Given these features, the Department disagrees that the definition of substantial misrepresentation should be changed.

Changes: We have revised § 668.74(g)(1)(ii) to clarify it applies to rates disclosed to students. We have clarified § 668.74(g)(1)(ii)(C) to note this also includes assessments of employability. We have also deleted § 668.74(g)(1)(ii)(D).

Comments: One commenter stated that the Department's proposal to add false, erroneous, or misleading statements concerning institutional selectivity rates or rankings as a form of misrepresentation was confusing and pointed out possible inconsistencies in that approach. Another commenter requested clarification on the Department's approach to ''highly ranked and highly selective programs.''

Discussion: We appreciate the questions raised by the commenters. The goal behind § 668.72(m) is to capture misrepresentations in which the institution misleads students into thinking the school itself or a program it offers has selective entrance requirements when that is not the case. The Department had attempted to capture this concept by pointing to two different types of misrepresentations. The first type would have been when the school's actual selectivity or admissions profiles or requirements are materially different than how they were presented by the school, such as representations making it seem to students that a school is highly selective when it is in fact open access. The other type would have been when an institution's actual rankings are materially different from those advertised.

After reviewing the proposed language following questions from the commenters, the Department has simplified the phrasing in § 668.72(m) concerning selectivity rates to state: ''Institutional or program admissions selectivity if the institution or program actually employs an open enrollment policy.'' This language better captures the concept in the first type of misrepresentation, which involves the false presentation of an institution as selective when it is in fact open access. We added ''program'' to this definition as well, to acknowledge that some open-access institutions have individual programs that are selective and thus would not trigger a misrepresentation under this section.

In making this change, the Department deleted the components related to admissions profiles and requirements, which are vague and difficult to follow. We have also deleted the references to presenting rankings that are materially different from those presented to others. The Department is not aware of instances where an institution has presented a ranking different than what a rankings organization published. Instead, the Department has seen instances in which institutions have presented incorrect data that resulted in the ranking assigned being higher than it would otherwise have been and that ranking is then advertised accurately. Accordingly, we have simplified this type of misrepresentation to reflect past misbehavior observed at institutions.

In response to the commenter who requested clarification on the Department's approach to ''highly ranked and highly selective programs,'' we decline to further elaborate as we have revised the definition of this type of misrepresentation under § 668.72(m).

Changes: We revised § 668.72(m) to provide that misrepresentation concerning the nature of an eligible institution's educational program includes, but is not limited to, false, erroneous or misleading statements concerning institutional or programmatic admissions selectivity if the institution or program employs an open enrollment policy.

Omission of Fact

Comments: The Department received numerous comments alleging instances where institutions omitted facts about their academic program. For example, a commenter stated that they discovered that they needed additional certifications and training to be employed in the field but only learned about this well after enrollment. This commenter claimed that their institution did not inform them of the additional requirements needed beyond the degree program, including subsequent training or education, and had they known, they would not have pursued the degree.

Discussion: The Department appreciates hearing about the commenters' experiences. These reports, along with the Department's oversight and compliance work, validate the Department's determination to include an omission of fact as one of the bases for a defense to repayment claim. Had institutions not omitted material information about the nature of their educational programs, but instead disclosed such information upfront, this could have resulted in a different outcome for the student and negated the need for a defense to repayment claim.

Changes: None.

Comments: Commenters requested that omission of fact be revised so that an omission be considered a defense to contract performance only when there is knowledge that omission makes it fraudulent, or contrary to good faith and fair dealing, or trust and confidence.

Discussion: We disagree with comments requesting that actionable omissions be required to meet conventional elements of common law fraud or defenses to contract performance. Many of those elements

are intended to ensure proof that the omission caused the harm asserted or formation of the relevant contract, respectively. We consider the general causation element added to the definition of BD and the Federal standard to adequately ensure a causal link between a potential omission and the detriment to a borrower. We also note that the breach-of-contract basis for showing an actionable act or omission does not require fraud, but rather failure to perform an obligation promised in exchange for the borrower's decision to enroll or take out a loan or to accept a disbursement of the loan.

As for the omission-related element commenters sought, we note that actionable omissions incorporate the definition of misleading conduct from part 668, subpart F, which requires that the omission make the school's interaction with a borrower misleading under the circumstances. Otherwise, we disagree that an omission must be accompanied by a specific duty to disclose or scienter requirement to be actionable. Not only would those requirements be unrealistic for borrowers to prove without the tools of civil discovery, but it would overlook the realities of transactions at the core of student loans and BD. In circumstances where the school's failure to disclose certain facts causes the borrower to be misled, such circumstances should be actionable. The updated regulations reflect that reality, but by adding a general causation element, it also ensures that defense to repayment is only available when such omissions are shown to have caused the borrower detriment.

Changes: None.

Comments: Commenters representing the legal aid community expressed support for the proposed condition in § 668.75(a) about omissions related to ''[t]he entity that is actually providing the educational instruction, or implementing the institution's recruitment, admissions, or enrollment process.'' These commenters noted that in their work they have frequently found that borrowers report being dismayed when they find out that someone, they thought was a school employee was in fact a contractor. The commenters noted that these borrowers indicated that they would have approached the conversation with a higher degree of skepticism had they understood that they were speaking with a contractor. Similarly, the commenters stated they heard concerns from students who enrolled in online programs where the organization that designed the curriculum and provided the instruction was not the same as the institution under whose branding the program appeared. Other commenters raised concerns that this condition would confuse borrowers who may not understand the relationship between service providers and the institution, and that organizations with trusted contractors do not commonly require employment disclosures before discussions with students or prospective students. A commenter also noted that institutions sometimes use contractors to assist them during the busiest parts of the financial aid year and asked if such a situation would require disclosure that such a person is a contractor. That commenter also asked why the requirement that contractors be identified as third-party servicers with the Department is not sufficient to address this concern.

Discussion: The Department appreciates the comments noting support for its proposed rule on this issue. As commenters noted through testimony from borrowers, had the student known they were talking to an employee of the institution versus someone employed to recruit on behalf of the school, that student would have changed their perception of the transaction. While that does not necessarily mean they would not still have enrolled, the borrowers did report that they would have exercised a greater degree of skepticism than they otherwise employed. Similarly, borrowers should be clear about who will be providing the education in which they are investing. When a borrower enters into a financial transaction as significant as attending college, they should have sufficient clarity into the source of the education they are purchasing. That means understanding if they will be receiving instruction provided by employees of the institution or something that is fully or partially outsourced. Knowing this information allows them to more properly evaluate what they should be receiving at the outset and should reduce concerns later that the education was not what was promised.

With regard to the commenters who are concerned that requiring employment disclosures would confuse borrowers, adding the requirement in the Federal standard that the Department must conclude the act or omission caused detriment to the borrower that warrants relief gives an institution a framework to consider whether failing to disclose the role of a contractor could meet such a standard. If failure to provide such a disclosure does not meet this standard, then it would not result in an approved borrower defense claim.

The reporting of third-party servicers to the Department is insufficient to address this concern. The regulations at § 668.25 provide the general framework governing the situations in which schools may contract with entities to help with administering the title IV programs but this relationship is largely unknown to students or borrowers; these students and borrowers view the third-party servicer and the institution as one and the same. Moreover, the regulations are intended to address the responsibilities of the institution and third-party servicer to the Department within the context of the title IV programs. While both the school and the third-party servicer are liable for any related actions by the third-party servicer, the school is ultimately held accountable if a third-party servicer mismanages the title IV programs. As noted by the commenters, a borrower's understanding of whether they are talking to an employee or contractor when making judgments about whether to enroll is important for making a decision. Such information thus needs to be provided to the borrower if failing to tell them could cause detriment to the borrower that warrants borrower defense relief.

Changes: We revised § 685.401(b), the standard for a borrower defense to repayment, to provide that, to approve a BD claim, the Department must conclude that the institution committed ''an actionable act or omission and, as a result, the borrower suffered detriment of a nature and degree warranting the relief provided by a borrower defense to repayment as defined in this section.''

Comments: A few commenters requested that the Department make the list of omissions exhaustive while deleting § 668.75(e) (which makes actionable any omission of fact regarding the nature of the institution's educational programs, the institution's financial charges, or the employability of the institution's graduates), saying that category would lead to an overwhelming number of disclosures for borrowers. Commenters noted that an exhaustive list of omissions would give institutions more clarity. Similarly, a few commenters made general requests for greater clarity and specificity. Some also proposed a safe harbor for institutions if they provide documentation that shows students received all disclosures already required under other Department regulations. Other commenters asked the Department to either include a list of required disclosures or incorporate by reference the disclosures imposed by State and accrediting agencies so that borrowers will know what they need to

receive, and institutions will know how to meet agency expectations. Other commenters cited the types of statements they have in their enrollment agreements that require students to acknowledge the information received and that they understood it as a way of showing the kind of evidence they would want to submit to disprove a borrower's allegations.

Discussion: The concerns of the commenters are best addressed by the Department's changes to the overall Federal standard that require the act or omission to cause detriment to the borrower that warrants relief. Adopting those elements will protect against the concerns raised by commenters, such as that the omission of an unimportant piece of information could lead to an approved claim. We believe our changes give institutions clarity in thinking about whether an act or omission may give rise to an approved borrower defense claim and eliminates the need for additional specificity within the elements in § 668.75. The Department declines to make the list exhaustive, as the list of misrepresentations is similarly non-exhaustive as a way of giving the Department flexibility to identify other concerning acts or omissions that may arise over time. The proposed safe harbor or list of disclosures would be inappropriate because institutions are already required to abide by the disclosure requirements in 34 CFR part 668, subpart D (institutional and financial assistance information for students), and such a safe harbor or list would mean just following the Department's regulations even if the institution does so while still failing to inform borrowers of other critical information that is not explicitly provided. The Department appreciates the examples raised by commenters of how some institutions ask borrowers to acknowledge the receipt of certain information provided to them. That type of information would be considered during the fact-specific review of a BD claim.

Changes: We revised § 685.401(b), the standard for a borrower defense to repayment, to provide that, to approve a claim, the Department must conclude that the institution committed ''an actionable act or omission and, as a result, the borrower suffered detriment of a nature and degree warranting relief provided by a borrower defense to repayment as defined in this section.''

Breach of Contract

Comments: Many commenters wrote in expressing support for the inclusion of a breach of contract standard.

Discussion: The Department thanks the commenters for their support and agrees with the importance of including this as an element of an approved borrower defense claim.

Changes: None.

Comments: Many commenters opposed the inclusion of breach of contract and asked for its removal. They said that the Department lacked the statutory authority to include it. Some argued that a breach of contract would either be a misrepresentation or an instance where a college closed and that anything in between was too vague to include. A few commenters also argued that the Department lacked the ability to properly interpret State contract law and did not specify how it would reconcile State contract law with Federal law. Commenters also argued that the Department should not preempt State remedies for breaches of contract and noted that the lack of a limitations period for filing a borrower defense claim was contrary to limitations that may apply to contracts.

Discussion: We disagree with the commenters who said that we lacked the statutory authority to include breach of contract as an act or omission. As we've explained throughout the NPRM and this final rule, Sec. 455(h) of the HEA requires the Secretary to specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to the repayment of a Direct Loan and the Department is asserting, and explains in detail,[65] that a breach of contract is an appropriate act or omission to include in the borrower defense Federal standard.

The commenters mischaracterize the Department's regulations. Under these regulations the Department will only determine whether the borrower has stated a basis for a BD claim on their Direct Loan based on the alleged breach of contract by the school. This determination resolves the borrower's qualification for a Federal benefit and does not make any determination of the rights of the parties under the contract itself or under the State laws which apply to those contracts.

While we acknowledge that a breach of contract could be a misrepresentation, in some instances a breach of contract claim may very well not fit into the Department's substantial misrepresentation standard. Where a breach of contract does not meet the elements of substantial misrepresentation, borrowers would have a basis for a BD claim based on the institution's failure to deliver educational services per the contract. We also explain in the NPRM why we were convinced to include breach of contract in the Federal standard and concluded that borrowers may be able to allege breach of contract more readily.[66]

We further dismiss any notion that the Department's inclusion of breach of contract would be too vague to include in the Federal standard. A breach needn't be an extreme case such as, for example, a closed school. Because a breach of contract is a cause of action that is well established with the same basic elements in the laws of all States, territories, and the District of Columbia, codifying breach of contract in the Federal standard in the area of contracts between the student-institution would ensure consistency and predictability in this area. Furthermore, it is a common practice for the standards in Federal regulations draw on common law concepts and principles.[67]

Changes: None.

Comments: A few commenters requested that the Department clarify what constitutes a contract for purposes of a borrower asserting a defense to repayment under a breach of contract. They said otherwise the proposed standard is too vague and overbroad.

Discussion: For purposes of BD, the terms of a contract between the school and a borrower will largely depend on the circumstances of each claim. As we stated in the NPRM for the 2016 regulations, a contract between the school and a borrower may include an enrollment agreement and any school catalogs, bulletins, circulars, student handbooks, or school regulations.[68] 81 FR at 39341. We decline to clarify the elements of what constitutes a contract because that is a fact-intensive determination best made on a case-by-case basis. We also acknowledge that

[65] 87 FR at 41893.

[66] 87 FR at 41893.

[67] *See, e.g.,* 12 CFR 51.7(c) (authority of receiver of uninsured bank; includes powers under ''the common law of receiverships''); 12 CFR 109.24(c) (privileges in agency proceeding; includes those that ''principles of common law provide''); 20 CFR 404.1007(a) (existence of employer-employee relationship; based on ''common-law rules''); 26 CFR 1.385–1 (tax treatment of interests in a corporation as stock or indebtedness; ''determined based on common law''); 38 CFR 13.20 (veterans benefits; spousal relationships include ''common law marriage''); 45 CFR 160.402(c) (organizational liability for civil penalties; ''Federal common law of agency'').

[68] *See Ross* v. *Creighton Univ.,* 957 F.2d 410, 416 (7th Cir. 1992). In describing the limits of a contract action brought by a student against a school, the *Ross* court stated that there is '' 'no dissent' '' from the proposition that '' 'catalogues, bulletins, circulars, and regulations of the institution made available to the matriculant' '' become part of the contract. *See* 957 F.2d at 416 (citations omitted). *See also Vurimindi* v. *Fuqua Sch. of Bus.,* 435 F. App'x 129, 133 (3d Cir. July 1, 2011) (quoting *Ross*).

State law generally guides what constitutes a contract and that such laws vary among States. Similar to our position in 2016, the Department intends to make these determinations of what constitutes a breach of contract consistent with generally recognized principles applied by courts in adjudicating breach of contract claims. To the extent that Federal and State case law has resolved these issues, we will be guided by that precedent. Application of the standard will thus be guided but not controlled by State law. Moreover, the Department will continue to evaluate claims as they are received and may issue further guidance on this topic as necessary.[69]

Changes: None.

Comments: One commenter stated it was unclear if an act or omission in § 685.401(a) must directly relate to or give rise to the breach of contract or must itself constitute the breach of contract.

Discussion: Consistent with the Department's interpretation of its authorizing statute, the act or omission by the school must be the breach of contract itself. We are clarifying, however, that the breach of contract must be related to the BD claim.

Changes: We revised § 685.401(b)(3) to state that a borrower has a defense to repayment if the institution failed to perform its obligation under the terms of a contract with the student and such obligation was undertaken as consideration for the borrower's decision to attend, or to continue attending, or for the borrower's decision to take out a covered loan.

Comments: One commenter expressed concern that the breach of contract standard fails to protect institutions for situations out of their control. They pointed to the COVID–19 pandemic, the need to move classes online, and the resulting lawsuits.

Discussion: We believe that the changes we have made to the proposed regulations address the commenter's concern. A breach of contract is a defense to repayment only if the institution failed to perform its obligations under the contract and the obligation was consideration for the borrower's decision to attend or continue attending the institution or for the borrower's decision to take out a covered loan. We believe that this additional language will largely limit the approval of BD claims based on a breach of contract to those within the institution's control or those that the institution could have avoided.

[69] 81 FR at 75944.

Changes: We revised § 685.401(b)(3) to state that a borrower has a defense to repayment if the institution failed to perform its obligation under the terms of a contract with the student and such obligation was undertaken as consideration for the borrower's decision to attend, or to continue attending, or for the borrower's decision to take out a covered loan.

Aggressive and Deceptive Recruitment

Comments: Many commenters approved of the Department's definition of aggressive and deceptive recruitment tactics or conduct (hereafter ''aggressive recruitment'') and supported the inclusion of this category. They shared examples from borrowers of aggressive recruitment. Other commenters expressed concern that the proposed definition and its terminology were vague. Commenters said this could result in the Department approving claims even if the information the institution presented to the borrower was accurate and without omission; such commenters suggested that the Department be required to make a determination of reasonable, actual reliance and material harm to the borrower's detriment with respect to aggressive recruitment. These commenters alleged that the terms ''take advantage,'' ''pressure,'' ''immediately,'' ''repeatedly,'' and ''unsolicited contact'' are ambiguous and further definitions are necessary to educate institutions and clarify what evidence would be required to allege or defend such a claim. Commenters raised similar concerns about the reference to ''threatening or abusive language or behavior.'' Commenters asked for more guidance on what it would take to disprove allegations under each prong. Commenters also raised concerns about what it would mean to ''take advantage'' of a student's lack of knowledge or experiences in postsecondary education if they were unaware of a given student's background or circumstances. Other commenters claimed the definition of aggressive recruitment is not supported by statute and does not provide reasonable clarity to students, institutions, or the public. Many commenters called for removing aggressive and deceptive recruitment from the Federal standard. Others did not call for the removal of the standard but did express concerns about how to distinguish aggressive recruitment from typical institutional contact, such as notifying students about impending deadlines. Along similar lines, a commenter identified situations where there are in fact hard deadlines for students where communicating urgency is important. Others also raised concerns about how § 668.501(a)(1) would affect situations where the program does in fact have limited spots. Similarly, other commenters argued that the acts or omissions covered under subpart R would not be prohibited by any existing State laws. Other commenters argued that any elements that led to an approved borrower defense claim under subpart R would already be captured under misrepresentations or omissions.

Several commenters expressed confusion about the phrasing in § 668.500(a) that says aggressive and deceptive recruitment is prohibited in all forms, including ''the effects of those tactics or conduct'' that are reflected in the institution's marketing or promotional materials, among other things. They said it is unclear how the effect of a tactic can be expressed in marketing materials. Other commenters suggested that § 685.501(a)(3) be rewritten to require the institution took ''unreasonable'' advantage instead of just advantage of the student. Many commenters also expressed concerns about § 685.501(a)(5) saying it was unclear how failing to respond to information could be considered aggressive recruitment and expressing concerns about how to handle excessive requests for information from borrowers. One commenter asked for a safe harbor tied to this provision if they could show that an institution provided necessary information at some point during the enrollment process. Several commenters in the cosmetology sector also provided examples of mandated disclosures required by their accreditor in which students sign agreements noting that they understood provisions about an institution's programs and courses, among other things. They asked how that would interact with aggressive recruitment.

Discussion: Section 455(h) of the HEA requires the Secretary to specify the acts or omissions that would give rise to a successful BD claim. As with misrepresentations and omissions of fact, the concepts underpinning aggressive and deceptive recruitment resemble many causes of action under State law,[70] with the common attribute of being practices that prevent the consumer from making an informed decision free of manipulation and misinformation. The items laid out in the definition of aggressive recruitment provide more detailed examples of conduct that would fall under this

[70] *See, e.g.,* Kan. Stat. § 50–627; Ohio Rev. Code § 1345.03; Mich. Comp. Laws § 445.903; N.J. Stat. § 56:8–2.

category, however, because States typically do not have consumer protection laws that are specific to postsecondary education. As the NPRM explained, this reflects the Department's experience that certain practices are particularly likely to mislead prospective borrowers, especially borrowers that are targeted for recruitment because of specific vulnerabilities.

We disagree with commenters who state that our definition of aggressive recruitment is not supported by statute and does not provide reasonable clarity to students, institutions, or the public.[71] Section 432 of the HEA states that the Secretary has the authority to issue regulations deemed necessary to carry out the purposes of the program and to establish minimum standards for sound management and accountability of the programs. Furthermore, Sec. 498 of the HEA (20 U.S.C. 1099c) provides that the Secretary determines and institution's administrative capability. These authorities give the Secretary adequate basis for defining aggressive recruitment for oversight purposes and as an act that would give rise to a defense to repayment claim.

In keeping with the other grounds for BD that emphasize the importance of borrowers making enrollment and borrowing decisions uncorrupted by misinformation and manipulation, the specific conduct in the definition of aggressive recruitment is derived from what the Department has seen in its own oversight work as well as in State and other Federal investigations into conduct by postsecondary institutions.[72] Indeed, regulators at the State and Federal level have long recognized that consumers may be misled not just by a seller's communications, but by the pressure a recruiter or salesperson can create.[73] As we explain in the NPRM, we incorporated some of the negotiators' proposals on aggressive recruitment, consulted with the FTC, and analyzed other Federal laws on unfair, deceptive, and abusive acts or practices (UDAP).[74]

We disagree with commenters who state that a BD claim that is approved under subpart R would be captured as a substantial misrepresentation or substantial omission of fact. In the NPRM, we cite our reason for including this new designation of acts or omissions as its own category. To those same points, aggressive and deceptive tactics capture a category that is in keeping with the other types of acts or omissions that are actionable, because based on the Department's experience, the combination of deceptive statements and aggressive tactics may coerce borrowers in such a way that in their enrollment or borrowing decisions they are similarly deprived of the right to make such consequential choices free of misinformation and manipulation. While these misrepresentations or omissions might not, on their own, amount to an act or omission that causes detriment warranting relief, when combined with aggressive sales tactics, it may deprive borrowers of the right to make a full and informed choice.[75] Borrowers who are misled by this combination of aggressive and misleading conduct may otherwise be unable to successfully make out a BD claim under the specific grounds of a substantial misrepresentation or omission. Retaining aggressive and deceptive recruitment as its own category ensures these borrowers have a pathway to relief. There are also instances where aggressive recruiting on its own could lead to an approved BD claim even if it does not involve additional misrepresentations. The Department has seen instances where institutions use aggressive recruitment tactics such as: actively discouraging borrowers from seeking information from other sources; presenting information so quickly that borrowers cannot fully ascertain the true price of the program; and, failing to give the borrower the information and time to assess how much financial aid they would receive, how long the program will take, or what type of job opportunities they would be qualified for after completing the program. Such recruitment tactics could lead to a borrower enrolling without fully understanding the program they are purchasing and may thus end up spending significantly more money for the program than they expected, or not be qualified for the types of jobs they sought to obtain by enrolling in the program. As with all other possible paths to an approved BD claim, simply alleging acts of aggressive recruitment will not automatically result in an approved BD claim. Nor would all substantiated instances of aggressive recruitment behavior result in an approval. Rather, the Department would have to conclude that the allegation is substantiated and that the school's actions caused detriment to the borrower that warrants relief.

Overall, laying out the categories of behavior that constitute aggressive and deceptive recruitment in a non-exhaustive list balances clarity for the field with enough flexibility such that other similar conduct identified later could also fall under this category. The commenters' concerns about vagueness are better addressed by the changes made to the overall Federal standard. The Department is changing § 685.401(b) to require that an approved borrower defense claim result from a finding that the act or omission by the institution caused detriment to the borrower that warrants relief. This requirement ensures that an inadvertent or immaterial instance of what otherwise might seem to be aggressive and deceptive recruitment, standing alone, will not necessarily warrant relief, nor would the type of reasonable contact that the commenters described—such as a reminder of upcoming financial aid deadlines. Rather, relief will be available in cases where the practices cause detriment to borrowers for which the appropriate remedy is discharge, refund, and other remedies that accompany a successful defense to repayment. This requirement also provides a framework for an institution to disprove an allegation of aggressive recruitment since they could show how the conduct did cause any detriment.

The Department did, however, identify some components of aggressive

[71] At least one comment suggested that the Department was somehow relying on state deceptive-practices or consumer-protection causes of action to incorporate this basis for relief. Although those types of claims may overlap with this prong of a BD claim, there are also many practices that could amount to cognizable state claims but would nonetheless fall short of a claim warranting discharge, refund, and the other relief provided by BD. In this respect, BD is not coextensive with all deceptive, unfair, or otherwise actionable practices that might serve the basis for a claim under state law. The same observations apply to comments asking that we adopt the CFPB's definition and application of the term ''abusive.'' *See* 12 U.S.C. 5531(b). The Department may look to the application of that term by the CFPB and other agencies as a reference.

[72] *See, e.g.,* Complaint ¶¶ 14, 25, 65, *California* v. *PEAKS Trust 2009–1,* No. 20STCV35275 (L.A. Cty., Cal. Super. Ct. filed Sept. 15, 2020) (documenting aggressive tactics to leverage student borrowing decisions); S. Comm. on Health, Educ., Labor & Pensions, Rep. on For Profit Higher Education, S. Doc. No. 112–37, at 67–73 (2d Sess. 2012) (similar). The Department's own findings have also observed the harmful effects of aggressive and deceptive recruitment tactics. *E.g.,* Westwood Exec. Summary, *supra* note 24, at 1–2 (''aggressive sales tactics'' paired with ''a high-pressure sales environment where recruiters made false or misleading statements to prospective students to persuade them to enroll''); ITT Tech. Exec. Summary, *supra* note 24, at 1–2 (same).

[73] *See, e.g.,* 37 FR 22933, 22937 (Oct. 26, 1972) (''FTC Cooling-Off Rule'') (explaining the prevalence of high-pressure sales tactics ''designed to create . . . desire for something [a consumer] may not need, or cannot afford'').

[74] 87 FR at 41894; *see, e.g.,* 12 U.S.C. 5531(d)(2) (unreasonable advantages); 15 U.S.C. 1692 (FDCPA prohibitions on unsolicited contacts); 940 Mass. Code Regs. 31.06(9) (declaring high-pressure sales tactics on the part of for-profit colleges unfair).

[75] 87 FR at 41894.

recruitment where we agree with commenters that items could be deleted or altered to improve clarity. We edited §§ 668.501 and 685.401(b) to clarify our intention. We also revised § 668.501(a)(4) to remove the term ''appear to'' when referring to instances of aggressive recruitment when an institution or its affiliates obtains the student or prospective student's contact information through websites or other means that falsely offers assistance to individuals seeking government benefits. The Department is concerned with instances when these sites do falsely offer assistance, which is a clearer standard than whether they just appear to. We have combined § 668.501(a)(1) and (2) into a single item related to pressuring a student to enroll, including falsely claiming that a student would lose the opportunity to attend the institution. This change addresses concerns raised by a few commenters about legitimate instances when there may in fact be a hard deadline for a student to enroll or where spaces may in fact be limited. Similarly, the Department has adjusted what was § 668.501(a)(3) (now § 668.501(a)(2)) to indicate that we consider aggressive recruitment to occur when the institution takes unreasonable advantage of a student's lack of knowledge or experience with postsecondary education, as suggested by commenters—a higher requirement than just taking advantage of lack of knowledge. Setting a standard of ''took unreasonable advantage'' instead of ''took advantage'' better aligns these requirements with those used for similar practices laid out in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[76] That legislation defines an abusive act as one that in part involves taking unreasonable advantage of a consumer.[77] The Consumer Financial Protection Bureau (CFPB) uses this definition in its work. Similarly, the FTC, CFPB, and State regulators and attorneys general consider whether a consumer could have reasonably avoided an injury in analyzing unfairness claims.[78] These are suitable comparisons because they reflect how other State and Federal agencies address issues similar to what the Department is facing with BD claims.

Substantively, unreasonable advantage is a different concept than a requirement to show that an institution took advantage of someone. It acknowledges that the institution or its representatives had information not available to the borrower that indicated the product being marketed—in this case a postsecondary education—was not worth what the borrower was going to pay for it. This has shown up in the past when institutions made loans to students where they had estimates that showed 60 percent of more of the borrowers would likely default. Or, when an institution marketed programs that required externships that it knew it did not have sufficient spots for everyone it was admitting. As noted above, unreasonable advantage is also a concept that exists at the CFPB, which provides the Department additional precedent to consider. By contrast, simply requiring a finding that an institution took advantage of someone would be harder to ascertain because it would create a new legal standard that may be more challenging to define and apply consistently. Accordingly, a standard of unreasonable advantage will result in more consistent determinations.

Again, coupled with the requirement to show an act caused detriment to a student that warrants relief, this phrasing clarifies that the Department seeks to address conduct that falls outside normal and reasonable interactions and causes detriment that is appropriately addressed by discharging a borrower's outstanding loan balance, refunding amounts previously paid to the Secretary, and receiving the default- and credit-related relief that accompanies those two remedies. We also further revised § 668.501(a)(4) concerning an institution that obtains a student's or prospective student's contact information through websites to include other means of communication to curb aggressive communications regardless of the source. We have also accepted the recommendation of commenters to delete proposed § 668.501(a)(5) concerning failure to respond to a student or prospective student's requests for more information. While institutions should ensure students get the information they request, we are persuaded by the concern that this provision lacked clarity about what information the institution would need to provide in response or how to address repeated requests for significant amounts of unnecessary information. Removing this requirement eliminates the need for the safe harbor requested by a commenter.

The Department also agrees with the commenters that the language in § 668.500(a) about the effect of tactics and conduct is confusing and will delete it.

Finally, with respect to the disclosures raised by commenters we note that such information would be useful to provide during the institutional response process in accordance with § 685.405.

Changes: We revised § 668.500(a) to delete the phrase ''the effects of those tactics or conduct reflected.'' We revised § 668.501(a)(1) to provide that demanding or pressuring students or prospective students to make enrollment or loan-related decisions immediately includes the conduct previously included in § 668.501(a)(2), which is now removed. We revised what is now § 668.501(a)(2) to describe that taking advantage of a borrower's lack of knowledge must be ''unreasonable.'' Additionally, we have removed § 668.501(a)(5) regarding failure to respond to students' requests for information. We made corresponding technical changes, such as renumbering, to reflect these edits. Finally, we revised § 685.401(b) to provide that, to approve a claim, the Department must find that any act or omission, including aggressive recruitment, caused detriment to the borrower that merits relief to assert a borrower defense to repayment.

Comments: A few commenters suggested the Department expressly provide that unfair or abusive conduct can give rise to a valid BD claim and suggested that the Department adopt an ''unfair or abusive conduct'' standard as grounds for relief in lieu of the aggressive recruitment standard. The commenters further stated the addition of unfairness or abusive conduct is particularly important if the Department excludes a State law standard in the initial review of an application, as many State laws include a broad definition of deceptive trade practices that incorporates unfair or abusive conduct. The commenters suggested the Department could adopt a similar approach and import established FTC case law regarding this standard, as well as the abusive practices standard within the Dodd-Frank Act and the CFPB's application of that law to protect student loan borrowers. Other commenters argued that the Department has not indicated it has the capacity to properly evaluate claims under the aggressive and deceptive recruitment standard after noting in the 2016

[76] Public Law 111–203.

[77] *Id.* § 203; 12 U.S.C. 5531(c)(1)(A).

[78] *See, e.g.,* 15 U.S.C. 45(n); 12 U.S.C. 5531(c)(1)(A); *Int'l Harvester Co.,* 104 F.T.C. 949, 1066 (1984); *id.* at 1070 (appending FTC Policy Statement on Unfairness); *Bank of America, N.a.,* CFPB No. 2022–CFPB–0004 ¶ 41 (July 14, 2022); *State* v. *Weinschenk,* 868 A.2d 200, 206 (Me. 2005); Ga. Dep't of Banking & Fin., *Guidance Re: Predatory Lending,* DBF SUP 20–002, at 3 (June 4, 2020), *https://dbf.georgia.gov/banks-holding-companies/publications-and-guidance.*

regulation that it did not believe it could.

Discussion: In 2016, the Department decided to consider aggressive recruitment as a factor in determining whether a misrepresentation under part 668, subpart F, was substantial enough to merit approval.[79] Although the Department did not consider aggressive recruitment, standing alone, to warrant a distinct basis for a defense to repayment at that time, the Department's experience in the years since then along with developments in the law have led us to believe that an appropriate standard can now be articulated and enforced for BD and that including one as a distinct basis is a necessary addition to address gaps in the Federal standard.[80] When the Department drafted the 2016 BD regulation it had received a significant influx of applications disproportionately associated with Corinthian Colleges. These were claims seeking discharges under an authority that had been used sparingly since the 1990s and the Department did not have any dedicated staff for reviewing those applications. For most of the period during the negotiated rulemaking sessions and drafting of the NPRM that resulted in the 2016 regulations, the Department's framework for reviewing borrower defense claims relied on the help of a special master. As such, the 2016 regulation reflected the Department's best assessments at the time of what would make a sensible rule based upon the work it had done.

The situation is very different in 2022. The Department for several years has had a dedicated unit that has built up expertise in reviewing BD claims. We have approved findings at several different institutions and for misrepresentations related to employment prospects, the ability to transfer credits, whether the program had necessary accreditation, and other acts or omissions. The borrower defense group staff have reviewed hundreds of thousands of applications. This includes adjudicating well over 250,000 applications, though we note that roughly half of those were denials that have since been challenged in court. As a result, we have a much stronger sense of what types of allegations we receive, what evidence we have obtained from borrowers or other third parties that have been useful in adjudicating claims, and what type of conduct appears to be associated with practices that can result in borrowers being harmed.

Our years of experience since last considering this issue have shown that the recruitment process is consistently one of the most common concerns raised by borrowers and when many of the misrepresentations that lead to borrower defense approvals occurred. The recruitment process is thus a period that raises concerns for the Department that millions if not billions of dollars are being loaned to students as a result of a process that has not allowed borrowers to fully understand the educational product underlying those loans.

The types of aggressive and deceptive recruitment covered by this rule represent both specific practices the Department has grave reservations about in addition to recruitment processes that are designed to exploit borrowers, incentivize manipulatively aggressive tactics, and are implemented at a structural and organizational level. The specific practices that give the Department reservations include gaining borrowers' contact information under false pretenses by pretending to be a website for receiving other Federal benefits. The organizational approaches that exploit borrowers are recruiting structures that either implement or unavoidably incentivize practices like using abusive or threatening language, misrepresenting decision deadlines to manufacture time pressure, discouraging them from consulting other individuals, and rushing them through the enrollment process.

Today, the Department's accumulated capabilities combine additional experience evaluating practices generally and accumulated examples of aggressive and deceptive recruitment we have observed. Together, these give the Department confidence it can make consistent and reasoned decisions on whether to approve claims alleging aggressive and deceptive recruitment. We further explain the inclusion of aggressive recruitment as a basis for a defense to repayment in the NPRM, 87 FR 41878, 41893–95 (July 13, 2022). The Department also consulted with the FTC and other Federal agencies to thoroughly analyze Federal laws on UDAP, and we believe UDAP violations could act as a relevant factor that would favor a finding of one of the enumerated bases for a defense to repayment.

As we stated in 2016, we believe that a comprehensive Federal standard appropriately addresses the Department's interests in accurately identifying and providing relief to borrowers for misconduct by institutions in appropriate cases; providing clear standards for the resolution of claims; and, avoiding for all parties the burden of interpreting the authority of other Federal agencies and States in the BD context.[81] We believe that our comprehensive Federal standard, including the inclusion of aggressive recruitment as a new basis, would obviate the need for Department officials to become experts on State UDAP laws or to stand in the shoes of State courts. Furthermore, consumer protection laws sweep more broadly than the circumstances warranting BD relief. That is, UDAP and consumer fraud laws enforce certain warranty and transaction-related rights intended to remedy injuries that are different from the injuries that warrant a discharge, refund, and accompanying default- and credit-related remedies provided by a defense to repayment. For example, a seller charging small and incremental hidden fees or automatically renewing memberships at increased rates might create a cause of action under State UDAP laws. But such practices would be more appropriately addressed through damages awards or civil penalties. Adopting State UDAP laws as a standard would expand BD beyond its intended purpose. As a result, we decline to include UDAP violations as a basis for a defense to repayment.

Changes: None.

Comments: One commenter requested that aggressive recruitment not be triggered if the student is entering a program that has a trial or conditional enrollment period. The commenter stated that trial periods of enrollment have been permissible under Department guidance (see Dear Colleague Letter, GEN–11–12)[82] and serve to prevent the very kind of pressured decision-making that raises concerns. The commenter also included suggestions on altering the language about pressuring the student to enroll immediately, including on the same day of first contact to reflect the treatment of trial periods.

Discussion: The commenter misconstrues the intention of GEN–11–12, which was to ensure equitable and consistent treatment of students when institutions offer trial periods of enrollment in academic programs, after which time the student would be responsible for program charges and would, if otherwise eligible, become eligible for title IV assistance.

In general, a ''trial period'' is the beginning of the student's attendance in an eligible program where the institution has not admitted the student

[79] 87 FR at 41983.

[80] *Ibid.*

[81] 81 FR at 75940.

[82] *https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2011-06-07/gen-11-12-subject-trial-periods-enrollment.*

as a regular student. While the details of each program may vary, the trial period of attendance is part of the eligible program, and academic credit earned by the student will count toward the student's completion of that program if the student becomes a regular student after the trial period. Because this trial period is part of the eligible program if the institution admits the student as a regular student after the trial period, total charges for the eligible program would include the trial period, and, if otherwise eligible, the student could receive title IV funds for the trial period. At the end of the trial period, the student has the option to leave, incurring nominal fees (such as an application fee) or no charges. If the student elects to continue beyond the trial period, the student is eligible for title IV funds back to the beginning of the program.

The Department declines to incorporate the safe harbor provision that the commenter suggests. A safe harbor would allow institutions that have trial periods the ability to engage in aggressive recruitment as an act that could rise to a defense to repayment and borrowers would be unable to assert that conduct as an act that could give rise to a defense to repayment. The Department does not share the commenter's view that trial periods prevent the pressured decision-making envisioned in these regulations, because an institution could still engage in aggressive recruitment even if it offers a trial period. Regardless of whether a student decides to continue enrollment beyond the trial period, that student must be able to make an informed decision about continuing enrollment without unnecessary duress.

While the Department disagrees with the commenter's suggestion to eliminate the application of aggressive recruitment altogether during a trial period, we have combined proposed § 668.501(a)(1) and (2) into a single item related to pressuring a student to enroll, including falsely claiming that a student would lose the opportunity to attend. This removes the mention of enrollment on the first day, which the commenter had suggested removing. It also addresses other comments concerned about the vagueness of specific terms in § 668.501(a)(1).

Changes: None.

Comments: A few commenters suggested revising the definition of ''representatives'' for the purposes of aggressive recruitment.

Discussion: We disagree with the suggestion made by these commenters. This language is modeled on Part 668, subpart F, which also mentions a representative without a definition and has been in place for years. The Department believes the plain meaning of this term in the context of the HEA and our regulations is clear and that an institution should know the individuals or entities acting as representatives on its behalf.

Changes: None.

Comments: A few commenters suggested better defining ''prospective student'' in the context of aggressive recruitment. These commenters state that while the intent appears to be limiting the use of deceptive advertising, drawing the definition of a prospective student so broadly as to include anyone who has viewed or received an institution's advertising is impractical.

Discussion: The Department appreciates the concerns of the commenters, but we believe the revised definition of a BD claim addresses this concern. The definition of a prospective student for the purposes of aggressive and deceptive recruitment is the same as the one in § 668.71. There, prospective student is defined as any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution. However, there would still need to be an overall finding that the aggressive and deceptive recruitment occurred and that it caused detriment to the borrower that warrants relief. Those added requirements will protect against immaterial instances of otherwise well-meaning recruitment.

To ensure the community has an adequate definition of prospective student for purposes of subpart R, the Department will incorporate the definition of prospective student as defined in § 668.71.

Changes: We are adding a new paragraph in § 668.500(c) that defines prospective student for purposes of subpart R. The Department will incorporate the definition in § 668.71.

Comments: A few commenters wrote in noting that the provision in § 668.501(a) related to the use of abusive or threatening language was reasonable. They did, however, raise concerns about the subjectivity of what might fall under this standard and asked for requirements that any approval under this prong require objective documentation.

Discussion: Evaluating a BD claim is not a formulaic process. Each individual or group claim will raise its own allegations and evidence that requires a fact-specific and tailored review. Those reviews inevitably require judgment by the individuals reviewing the claims, but the process for adjudicating a borrower defense claim and the standards a claim must meet are designed to ensure consistent decision-making—a process that addresses the commenters' concerns. First, the Department will review the application to ensure that it is materially complete. This will ensure there is enough detail for an institution to respond to the allegations. Second, the institution would have an opportunity to respond to those allegations. It would have an opportunity to both refute whether it thinks the abusive or threatening language occurred as well as whether if such action occurred, whether that action met the overall standard of causing detriment to the borrower that warrants relief. This produces evidence from both parties for consideration. Third, the Department would have to review that evidence. Fourth, the Department would have to conclude both that abusive or threatening language occurred and that the abusive or threatening language caused detriment to the borrower that is of a nature and degree that warrants relief. We believe this approach captures a process where the Department can make an objective determination as to whether a school's use of threatening or abusive language or behavior merits an approved BD claim under these regulations.

Changes: None.

Judgments Against Institutions and Final Secretarial Actions

Comments: Several commenters expressed support for the inclusion of judgments and final Secretarial actions as part of a strong Federal standard.

Discussion: The Department agrees with the commenters about the importance of these items and appreciates their support.

Changes: None.

Comments: Several commenters requested that the Department remove judgments from the Federal standard. They argued that a judgment is not an act or omission. They also argued that the judgment should preclude additional claims to avoid violating principles of collateral estoppel, including granting a discharge under borrower defense.

Discussion: The Department disagrees with the commenters. As we explained in the NPRM, including judgment against an institution as part of the Federal standard would allow for recognition of State law and other Federal law causes of action, but would

also reduce the burden on the Department and borrowers of having to make determinations on the applicability and interpretation of those laws. In addition, although a judgment is not itself an act or omission, it is necessarily based on acts or omissions. Relief is thus appropriate if those and the other factual findings essential to a judgment also support a BD claim.

We also decline to incorporate a bar on borrower defense claims if the borrower has sought or obtained independent relief from the school itself. Because different underlying legal or factual bases may have been involved in the judgment, the borrower could still raise a defense to repayment and have a valid claim that the institution otherwise engaged in an act or omission. Likewise, there are many potential actions that borrowers could have against schools that provide remedies that complement a defense to repayment rather than supplant it. The Department will, however, follow established principles of collateral estoppel in its determination of borrower defense claims, which reflects past Department practice.[83]

Changes: None.

Comments: Commenters suggested that judgments against institutions should be revised to clarify that the judgment must include a specific determination as to the act or omission of the institution that relates to the borrower defense claim and that the portion of the judgment relating specifically to the act or omission must have been favorable to the student borrower. Commenters also argued that solely saying a judgment had to be in connection with borrowing a loan was too broad and vague or that judgments themselves should not be sufficient bases for BD relief. A few commenters urged the Department to clarify that judgments obtained by State attorneys general are also included, even though such actions are not class actions, and the borrower would not be considered a party to the case. These commenters suggested that the rationale for approving a BD claim due to a contested judgment in a class action applies just as forcefully to a judgment obtained by a State attorney general. Other commenters suggested that allowing all favorable judgments to establish a BD claim ensures that borrowers will be able to obtain relief as a consequence of litigation, even if the judgment ultimately is uncollectible. Commenters also asked how a settlement that did not include an admission of wrongdoing would be considered.

Discussion: The final regulations provide that judgments obtained against an institution based on any State or Federal law may be a basis for a BD claim, whether obtained in a court or an administrative tribunal of competent jurisdiction. Under these regulations, a borrower may use such a judgment as the basis for a BD claim if the borrower was personally affected by the judgment, that is, the borrower was a party to the case in which the judgment was entered, either individually or as a member of a class. To support a BD claim, the judgment must pertain to the making of a Direct Loan or the provision of educational services to the borrower. We do not believe that further clarification is necessary because the judgment, itself, would have to be connected to the provision of educational services for which the loan was provided, or the institution's act or omission relating to the borrower's decision to attend or continue attending the institution or the borrower's decision to take out a Direct Loan. Absent that qualifier, the borrower would not have a defense to repayment claim on this basis. As we explained in the NPRM, the favorable judgment against the institution would still be required to relate to the making of the Federal student loan to ensure that the scope of the judgment justifies approval of a BD claim. 87 FR at 41896. That is, the judgment must necessarily include factual findings that may stand in the place of the factual findings required for an approved BD claim.

The Department does not believe that further elaboration is necessary regarding the inclusion of a judgment obtained by a governmental agency, such as a State attorney general, in the universe of acceptable judgments that could form the basis for a defense to repayment. Existing regulations at § 685.222(b) provide that the governmental agency (in the case of a State attorney general) that obtains a favorable judgment against the institution based on State or Federal law in a court or administrative tribunal, in connection with the provision of educational services for which the loan was provided or the institution's act or omission relating to the borrower's attendance, could assert this basis as a defense to repayment. Therefore, no further clarification is needed.

Finally, a settlement is not a judgment and thus would not be captured under this provision. The Department could, however, consider underlying evidence that may have been used, produced, or considered as part of a settled lawsuit's filings or proceedings as part of the process for adjudicating a borrower defense claim under other elements of the Federal standard.

Changes: None.

Comments: A few commenters requested that the Department clarify that the judgment against the school needs to relate to the BD claim. Another commenter requested that a judgment against an institution should only be considered if the basis of the judgment was due to conduct by the school that would give rise to a BD claim under the Federal standard and that the favorable judgment alone should not be the basis of the BD claim.

Discussion: We concur. Consistent with our position that a breach of contract must relate to the BD claim, the act or omission by the school is the class action or judgment itself. We are clarifying, however, that the judgment against the school must be related to the BD claim. A favorable judgment against an institution, alone, from a court or tribunal of competent jurisdiction that was unrelated to a BD claim would not be sufficient.

Changes: We revised § 685.401(b)(5)(i) to state that a borrower has a defense to repayment if the borrower, whether as an individual or as a member of a class, or a governmental agency has obtained against the institution a favorable judgment based on State or Federal law in a court or administrative tribunal of competent jurisdiction based on the institution's act or omission relating to the making of a covered loan, or the provision of educational services for which the loan was provided.

Comments: A few commenters suggested that the Department clarify what constitutes final Secretarial sanctions or other adverse actions against the institution in § 685.401(b)(5)(ii). Other commenters raised questions about how the failure to meet cohort default rate requirements could lead to an approved BD claim. Commenters also asked for clarity about how an administrative capability finding could connect to a BD claim and said they were concerned about the breadth of that part of the regulations when coupled with what they described as a vague description of educational services. Finally, a few commenters raised concerns that this provision may encourage institutions to challenge Department findings they previously would have agreed to, increasing the cost to institutions and the Department around other oversight work. Alternatively, other commenters argued that the possibility of approved BD claims could force institutions to settle some of these actions to avoid the consequences of losing a challenge.

[83] 81 FR at 75942–43.

Discussion: The goal behind the process based on final Secretarial actions is to clarify the connections between oversight actions taken by the Department and the approval of BD claims if the conduct that led to those sanctions would also give rise to a BD claim. To accomplish that goal, we have clarified the description of a final Secretarial action under § 685.401(b)(5)(ii) to state that this will only encompass actions under part 668, subpart G, the denial of an institution's application for recertification or revoking the institution's provisional program participation agreement under § 668.13. We further note that those actions must be based upon acts or omissions by an institution that could rise to a BD under the standards for substantial misrepresentation, substantial omission of fact, breach of contract, or aggressive and deceptive recruitment.

This exhaustive list and the explicit mention of a connection to a BD claim will provide the clarity requested by commenters. It also results in the removal of the provisions where commenters raised concerns about a lack of clarity.

This list represents the most serious and significant actions that the Department takes against a participating institution. Institutions already would have significant interests in challenging these actions, especially those that could result in loss of participation in the Federal student financial aid programs. Accordingly, this provision does not present the risk raised by commenters that institutions might challenge actions they would not otherwise contest. Similarly, given the seriousness of these actions, it is unlikely that the possibility of a related BD claim will encourage institutions to attempt settlement just to avoid the findings.

Changes: We revised § 685.401(b)(5)(ii) to state that a borrower has a defense to repayment if the Secretary took adverse actions against the institution under a subpart G proceeding, denied an institution's application for recertification or revoked the institution's provisional program participation agreement under § 668.13 for reasons that could give rise to a BD claim under substantial misrepresentation, substantial omission of fact, breach of contract, or aggressive and deceptive recruitment.

Comments: Commenters argued that the inclusion of final Secretarial actions as the basis for a BD claim did not specify any acts or omissions that could appropriately give rise to an approved borrower defense claim. They also argued that including this solely as a way of reducing burden was an insufficient rationale. They also expressed concerns about a lack of due process for final Secretarial actions.

Discussion: The Department disagrees with the commenters. The acts or omissions in question would still be subject to the elements of the Federal standard related to misrepresentation, omission, breach of contract, aggressive and deceptive recruitment, or judgment. The inclusion of final Secretarial actions relates to drawing a clearer connection to when the Department already takes a final action that relates to those items. Doing so provides greater clarity about how, for example, a denial of an institution's application for recertification because of a misrepresentation then connects to borrower defense relief. As for issues related to due process, all of the actions contemplated in the definition of a final Secretarial action already provide for extensive due process for institutions. This includes opportunities for challenging the grounds for the action that would in turn also lead to the approved borrower defense claims.

Changes: None.

State Law Standard

Comments: A few commenters urged the Department to allow borrowers to assert claims under the State law standard at the same time they assert claims under the Federal standard. They argued that it was too long for borrowers to wait up to 3 years for a review under the Federal standard, plus an indeterminate period for reconsideration under the State standard. They suggested that the Department could still choose to adjudicate claims under the Federal standard first.

Other commenters argued that the Department should limit application of the State law standard to borrowers with loans that would otherwise be covered under the 1994 regulations. They argued that the Department's rationale for including a State law standard, at most, justified its inclusion only for loans covered by the 1994 regulation. A few commenters argued for the complete elimination of the State law standard. Some commenters also argued against the use of a State law standard saying that it runs counter to the Department's arguments about streamlining the borrower defense process, that the Department lacks the ability to review State laws, and that inclusion of a State law standard violates principles of federalism.

Discussion: In the NPRM, § 685.401(c) provided that a violation of State law could form the basis for a BD claim but only upon reconsideration. That meant State law could only be used after a claim was denied in whole or in part and if the Department received a request for a claim to be reconsidered. Similarly, § 685.407, provided that only an individual borrower, or a State requestor in the case of a group claim brought by a State requestor, could request reconsideration of the Secretary's full or partial denial of a claim.

As we explained in the NPRM, during negotiated rulemaking non-Federal negotiators proposed that violations of State law be included in the initial adjudication as one element of the Federal standard. The Department believed such an upfront analysis would be unduly burdensome and would delay relief to borrowers whose claims merited approval.[84] The Department reasoned that a strong Federal standard in the initial adjudication would also minimize confusion for borrowers.

In applying these regulations, the Department will first adjudicate the claim under the Federal standard in § 685.401(b) which we believe will resolve most claims that would be approved under either the Federal or State standard. Where adjudication under the Federal standard does not result in an approval, the State law standard is available to certain borrowers as part of the reconsideration process. Where applicable, both third-party requestors and individual claimants will be able to request application of a State law standard upon reconsideration.

The Department, however, is persuaded by both public comments and consideration of operational needs that determinations under State law should be limited to reconsideration for loans disbursed prior to July 1, 2017. On the first point, the Department has articulated that one of its goals in issuing this regulation is constructing a single Federal standard that can ensure consistency in decision-making across all claims pending on July 1, 2023 or received on or after that date. Adopting a single Federal standard provides clarity to borrowers who file an application so they know what standards will apply to their claim. The current lack of a uniform Federal standard for all claims risks substantial borrower confusion regarding the necessary elements for a successful claim. Those elements could vary widely depending on the applicable state law, which might also be unclear due to ambiguity from choice-of-law

[84] 87 FR at 41907.

issues. Adopting a single Federal standard also provides predictability to institutions and ensures more consistent decision-making by the Department, which will be using the same policies and procedures to review all claims. The use of a State law standard is necessary, for at least some period of time, because claims filed by all borrowers with loans disbursed prior to July 1, 2017 would currently be subject to that standard. However, the number of claims in that category will fall over time as those loans are paid off, while the number of claims from more recent years will grow as time passes. The relative share of claims that are potentially reviewable under two sets of standards should thus decline over time with the structure of this final rule. The indefinite inclusion of a State law standard works against that goal. It would mean that all loans in perpetuity are eligible for reviews under both a Federal and a State standard. This would undermine the goals of simplification and consistency because the latter option would vary based upon their state of residence, the school's location, and the manner in which they communicated and engaged with the school.

The ongoing usage of a State law standard also represents very significant operational challenges for the Department. For one, State laws frequently change. That would require the Department to regularly confirm laws haven't changed, and if they have, determine the dates that such alterations occurred and how they might affect borrowers, including those with pending claims. That would add a very significant amount of work and require the continual monitoring and analysis of all 50 State laws, plus the District of Columbia, Puerto Rico, and the territories. For each claim the Department would also have to conduct a choice-of-law analysis and confirm that we have the evidence needed to apply the relevant law selected. This all adds significant time and complexity to the claims resolution process. The Department is particularly concerned about the potential added time because this rule limits how much time the Department may take to decide applications or else declare the loans unenforceable. While the timelines established in these regulations do not include time for reconsideration, both initial decisions and reconsiderations will draw from the same pool of resources and personnel. (The actual staff that conduct the reconsideration of a given borrower's claim would be different than the one that did the initial review). A potentially extensive number of reconsideration requests, all of which necessitate a more detailed legal review could jeopardize the Department's ability to meet the timelines for initial decisions or result in borrowers waiting inordinate periods for reconsideration decisions.

The indefinite inclusion of a State law standard also runs the risk of inaccurate decision-making. Adopting a Federal standard allows the Department to conduct training and ensure that its reviewers are applying consistent approaches and protocols to claims. It is unrealistic to be able to train all reviewers on 50-plus State standards. The result is there is greater risk that the decision made by one reviewer may be different when considering State laws.

For all the reasons identified above, we will keep the ability to bring a reconsideration request under the State law standard for loans disbursed prior to July 1, 2017. As noted, these borrowers already have access to State law review under the 1994 regulation and this leaves their treatment unchanged. This limitation will also result in a single Federal standard for all new loans issued over the last 5 years and into the future. Because borrowers with loans disbursed prior to July 1, 2017, always had access to a State law standard, it is not possible to fully eliminate this element, as requested by a few commenters.

Substantively, this limitation on the application of State law in the consideration of BD claims will not result in a material change to the likelihood that a borrower's claim will be approved. That is because the rule's unified Federal standard reflects elements of a variety of State laws, but its core elements—actionable conduct, causation, and detriment—are basic elements of fraud- or deception-based causes of action. The Department does not believe that an equivalent remedy would be available to a borrower under any individual State standard that is not available under the Federal standard.

Indeed, many State laws are narrower than the Federal standard. For instance, claims for common law fraud or violations of applicable UDAP statutes in many states require proof of intent, knowledge, or recklessness—requirements that are not present in the Federal standard. Many State-law causes of action also require particularized proof of causation-related elements such as reliance. The Federal standard employs a general causation element that does not force claimants to satisfy individual steps in the causal chain with a particular form of proof. Some State laws also demand a more detailed showing of loss or harm to the borrower than the approach adopted by the Department. The Department also notes that, in conventional civil litigation, a plaintiff may principally benefit from invoking a certain State law due to the additional remedies available, which is not relevant here, because the available remedies are the same for all successful BD claims.

Therefore, the Department will limit the availability of the State law standard to reconsideration requests relating to loans that were first disbursed before July 1, 2017.

Changes: We revised § 685.401(c) to state that a borrower has a defense to repayment under the applicable State law standard, but only for loans disbursed before July 1, 2017, and only upon reconsideration as described under § 685.407.

Limitations Period for Filing a Claim

Comments: The Department received comments with differing opinions on whether borrowers should only be able to file a defense to repayment claim within a set period. Several commenters supported the Department's proposal to allow borrowers to submit a claim at any point. Other commenters asserted that there should be clearer statutes of limitations [85] for pursuing claims. These commenters expressed concerns that the absence of any meaningful limitations period contradicts existing public and judicial policy, which strongly favors statutes of limitation, and they asserted that a reasonable limitations period would guard against the litigation of stale claims, reduce the risk of an erroneous discharge and spare institutions the unfair task of defending an old claim. Commenters also argued that it was unreasonable to have a statute of limitations beyond the 3-year record retention requirement for student financial aid records. They said the longer period for filing a claim means that institutions must maintain records for longer than would be appropriate. They also disagreed with the Department's position in the NPRM that the most relevant records for adjudicating a BD claim would not be subject to a 3-year retention requirement. Commenters also argued that the requirement in the 2019 regulations that borrowers file a claim within 3 years of leaving an institution gave borrowers sufficient time to decide whether to raise a claim, especially if the act or omission in question occurred during the admission process and the

[85] Throughout this document, we use the term ''statute of limitations'' interchangeably with ''limitations periods.''

borrower attended the school for multiple years. These commenters also argued that, while the Department cited concerns about administering a statute of limitations, it did not sufficiently explain why a bright-line standard of 3 years after leaving school was not administrable. Finally, commenters argued that the lack of a statute of limitations, coupled with the reconsideration process, meant that institutions would lack any finality on claims.

Conversely, other commenters stated that many borrowers do not find out about their right to a discharge, or how to apply, until much later, which is often when the student is no longer enrolled at the institution, and these commenters supported the Department's proposal that borrowers with an outstanding loan balance would not be subject to a limitations period.

Discussion: The Department has concluded that there should be no statute of limitations for filing a BD claim, so long as the borrower still has outstanding loans related to attendance at the institution whose conduct the borrower is asserting could give rise to a discharge. As long as a borrower has an outstanding loan, they still face the possibility of delinquency, default, and the negative outcomes associated with those statuses, as well as the cost of making their monthly loan payments.

This position makes BD discharges consistent with all the other discharge opportunities available in the Direct Loan Program, such as closed school discharges, total and permanent disability discharges, and false certification discharges.

The Department reiterates the points raised in the NPRM regarding the operational challenges of administering a limitations period that varies by State or that requires a determination of when the borrower knew or could credibly have known about the act or omission.[86] With regard to the proposed bright-line standard of 3 years, this would still create operational difficulties because the starting point for a limitations period would still vary based on when the borrower left the school. The Department is also concerned that many of the schools against which it has approved BD claims to date have kept poor records. Poor record-keeping raises the risk that the limitations period—and ultimately the correct refund amount—would be improperly calculated due to mistakes by the school that cannot be corrected. This is not a speculative concern but is grounded in the Department's experience processing BD discharges. For example, the Department discovered while processing eligibility for discharges for former students at Marinello Schools of Beauty that the enrollment periods reported by the school and the periods covered by loans did not always line up. The Department also has found that some schools do not accurately report the correct Office of Postsecondary Education Identifier (OPEID) for locations that their students attended, which raises the risk of applying the limitations period incorrectly. For example, Corinthian Colleges often reported students going to campuses other than those they actually attended, which makes it difficult to accurately apply a limitations period. This is an important consideration because the Department's initial findings around falsified job placement rates at Corinthian covered different periods by the campus. Inaccurate reporting by campus then risks that a borrower's BD claim is subject to one limitations period when in fact they should be subject to a different one. Similarly, inaccurate recordkeeping of when a borrower enrolled would also risk marking someone as enrolled earlier than they actually were, potentially making a claim seem like it was filed outside the limitations period when it in fact was not. The risk then is that even a standard that appears to be a bright line on paper may in fact be inconsistently applied. This could result in the Department failing to refund payments to borrowers that it should have, or if it were to adopt a limitations period, refunding payments that in fact occurred outside the limitations period. The Department is also concerned that requiring student loan servicers, which do not have systematic access to BD applications or know when a BD application was actually submitted, to apply differing limitations periods at the borrower level will introduce a high risk of error, especially if loans have transferred among companies leaving records of when exactly payments were received hard to access. For instance, if a servicer has to discharge the loans of 1,000 different borrowers and each borrower has a slightly different limitations period, then they would have to engage in a highly manual process with significant possibility of applying the wrong limitations period.

The concerns raised by institutions about the staleness of evidence, record retention requirements, lack of finality, and related issues are addressed in several ways. First, the burden is to show, by a preponderance of the evidence, that the act or omission meets the standard to approve a BD claim. The commenters do not consider how the passage of time would also affect the evidence that could be available in favor of the claim. Second, the Department has included a separate limitations period for the recoupment of costs associated with approved discharges from institutions. As noted already, claims pending on or received on or after July 1, 2023, will be adjudicated under this rule, the Department will not seek to recoup the cost of discharges on approved claims that are outside that limitations period. Nor, as noted elsewhere in this final rule, would institutions be subject to recoupment for conduct that occurred prior to July 1, 2023, unless such conduct was separately covered under the regulations for recoupment in effect at that time.

The Department does not want to create a situation in which a borrower is still obligated to repay a loan on which the Department has concluded that the borrower should have received a discharge due to the institution's misconduct solely because the individual did not fill out an application in time.[87]

Changes: None.

Comments: A few commenters said that State law claims should be subject to relevant State statutes of limitations.

Discussion: We disagree. As we explain elsewhere in this document, we believe that that there should be no statutes of limitation for filing a BD claim so long as the borrower still has outstanding loans related to attendance at the institution whose conduct the borrower is asserting should give rise to a discharge. This includes acts or omissions that would give rise to a cause of action against the school under applicable State law. We find it necessary to codify this position in the regulatory language in § 685.401(c) to make clear that there is no limitations period for a claim under the Federal standard or State law standard. The operational considerations outlined in the response about the lack of a limitations period for a Federal standard also apply with regard to State law adjudication. Furthermore, the operational issues would be magnified because the limitations would also vary by the State whose law the Department used for adjudication under a State law standard.

Changes: We have revised § 685.401(c) to state that borrowers who assert a defense to repayment under a State law standard do not have a limitations period for filing a claim. A borrower with a loan disbursed prior to

[86] 87 FR at 41913.

[87] 87 FR at 41897.

July 1, 2017, may assert, at any time through the reconsideration process, a defense to repayment under a State law standard of all amounts owed to the Secretary.

Exclusions

Comments: Commenters expressed differing views on the conduct that should be excluded from consideration as grounds for a BD claim as outlined in § 685.401(d). A few commenters expressed support for the Department's position that an institution's violation of an eligibility or compliance requirement in the HEA or its implementing regulations would not alone give rise to a BD claim. They, however, asked the Department to delete the phrase ''unless the violation would otherwise constitute a basis for a borrower defense under this subpart,'' deeming it unnecessary.

Other commenters argued that the Department should explicitly state it is not excluding violations of civil rights laws that relate to the making of a Federal student loan for enrollment at the school or the provision of educational services. They pointed to ongoing litigation in cases that involve the Civil Rights Act and the Equal Credit Opportunity Act and noted that judgments on those grounds would give borrowers a defense under the Master Promissory Note.

Discussion: The Department appreciates the commenters' ideas but believes that additional changes are not necessary. With respect to deleting the clause in § 685.401(d), the Department believes this language is a helpful reminder that were these violations to be part of another ground for a BD claim, such as a misrepresentation, they could be included.

We disagree with the request to include civil rights laws more explicitly as grounds for a BD claim. Both cases cited by the commenters involve allegations of misrepresentations, which are already a component of the proposed Federal standard. Moreover, the Department's Office for Civil Rights has existing statutory authority to address civil rights violations.

Changes: None.

Borrower Defense to Repayment—Adjudication (§§ Part 685, Subpart D)

Group Process and Group Timelines

Comments: A few commenters stated that the HEA does not permit the Department to proactively certify a group of borrowers and initiate a proceeding without any BD claim filed or any showing that a borrower relied upon or was harmed by some act or omission of the institution. These commenters cited the recent Supreme Court ruling in *West Virginia* v. *EPA,* which stated that ''[a]gencies have only those powers given to them by Congress, and 'enabling legislation' is generally not an 'open book to which the agency [may] add pages and change the plot line.''' [88] The commenters rationalized that since Congress did not explicitly include a group process in the borrower defense provision in the HEA, then the Department should not be making radical and fundamental changes to the BD scheme, including initiating a group process. These commenters argued that the Department should remove the language permitting group claims.

Discussion: The Department disagrees with the commenters' assertion that the proposed group process violates the HEA. The Department similarly rejected this argument in 2016. The Department's statutory authority to enact BD regulations is derived from Sec. 455(h) of the HEA, 20 U.S.C. 1087e(h), which states that ''the Secretary shall specify in regulations which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan. . .'' While the language of the statute refers to a borrower in the singular, it is a common default rule of statutory interpretation that a term includes both the singular and the plural, absent a contrary indication in the statute.[89] We believe that, in giving the Secretary the discretion to ''specify which acts or omissions'' may be asserted as a defense to repayment of loan, Congress also gave the Department the authority to determine subordinate questions of procedure, such as what acts or omissions alleged by borrowers meet the Department's requirements, how such claims by borrowers should be determined, and whether such claims should be heard contemporaneously as a group or successively, as well as other procedural issues.[90]

Congress clearly contemplated group discharges for BD claims. Section 703 of the Consolidated Appropriations Act of 2021 (Pub. Law 116–260) amended the HEA to restore Federal Pell Grant eligibility during a period for which a student received a loan, and that loan is discharged ''due to the student's successful assertion of a defense to repayment of the loan, including defenses provided to any applicable groups of students.'' Clearly, Congress envisioned a group BD process, including a group discharge process.

The Supreme Court's holding in *West Virginia* does not implicate the Department's inclusion of the group process to adjudicate BD claims. In *West Virginia,* the Supreme Court invalidated one aspect of the EPA's Clean Power Plan because the Court concluded the rule reflected a new and unprecedented change in how emissions would be measured, which would amount to a ''wholesale restructuring'' of the energy sector with little statutory language justifying the authority to do so.[91] There is no such issue here. BD claims invoke a defense to repayment that Congress created and that the Department clearly has the discretion to define and operationalize. That legislatively created defense will exist irrespective of Department regulations, as will the hundreds of thousands of BD applications that we have received in recent years. That is categorically different than the EPA rule that the Supreme Court considered in *West Virginia.* Finally, a process to consider certain claims in groups has existed since 2016 and was confirmed by Congress in the 2021 amendments mentioned above.

As noted earlier in this document, the general provisions granted to the Secretary in GEPA and the Department's organic act, along with the provisions in the HEA, authorize the Department to promulgate regulations that govern defense to repayment standards, including the initiation of a group process. And as we stated in 2016, and we reiterate again, in addition to giving the Secretary the discretion to ''specify which acts or omissions'' may be asserted as a defense to repayment of loan, Congress also gave the Department the authority to determine such subordinate questions of procedure, such as the scope of what acts or omissions alleged by borrowers meet the Department's requirements, how such claims by borrowers should be determined, and whether such claims should be heard contemporaneously as a group or successively, as well as other procedural issues.[92]

Changes: None.

Comments: Many commenters supported the Department reinstituting the group process for BD claims. A few commenters stated that requiring States to submit an additional request for consideration of group discharge applications under a State law standard is unnecessary and duplicative.

[88] 142 S. Ct. at 2608.

[89] *See* 1 U.S.C. 1.

[90] *FCC* v. *Pottsville Broad. Co.,* 309 U.S. 134, 138 (1940); *see* 81 FR at 75965.

[91] 142 S. Ct. at 2608.

[92] *Pottsville Broad. Co.,* 309 U.S. at 138; *see* 81 FR 75965.

Discussion: The Department thanks the commenters for their support for the group process. The Department discusses the State law standard elsewhere in this document.

Changes: None.

Comments: Several commenters argued that the Department could not form a group claim because claims must have individual showings of harm or reliance in order to be approved. Some argued that the Department could only form a group claim in limited circumstances in which the acts or omissions in question did not require individualized proof.

Discussion: As discussed in the NPRM as well as in this final rule, the Department disagrees that borrowers have to show individualized harm or reliance. There is nothing in the law that requires the Department to only process discharge claims on an individual borrower basis. The Department has in the past adjudicated group discharge claims where large numbers of borrowers were in the same situation. A group approach is more efficient for the Department and saves resources. Borrower defense claims are particularly appropriate for a group claim process since, in many cases, the error or omission of the institution is likely to have affected more than a single borrower and it would be inefficient for the Department to adjudicate large numbers of individual claims relying on the same facts and circumstances on a one-by-one basis.

Changes: None.

Commenters: A few commenters wrote in opposing the group claim on the grounds that the process lacked impartiality. They said the group process should require an ALJ or some other kind of neutral party. They argued that having the Department decide on whether to form the group and whether to approve it put in the role of both plaintiff's counsel and judge.

Discussion: The Department disagrees with the commenters. Just like individual adjudications, the group process is a method for the Department to decide whether to discharge outstanding loan obligations owed by borrowers. The institution is not a direct party in that consideration. If the Department attempts to recoup the amount of approved discharges resolved through a group process, the institution would have a full and fair opportunity to challenge the liability before an independent hearing official. This is different approach from that adopted in the 2016 regulation in which the group claim was resolved in the same procedure as the determination of the institution's liability. In that process, the involvement of the hearing official made sense because the school's liability was directly implicated. The separation of approval from recoupment thus addresses the concerns about impartiality raised by institutions.

Changes: None.

Comments: Some commenters stated that the Department's group process proposal fails to specify adequate criteria for when a group process is appropriate. One of these commenters argued that criteria like commons facts and evidence was merely a threshold consideration and concerns like promoting compliance was vague and not a sufficient rationale for forming the group.

Discussion: We disagree with the commenters. The factors laid out in § 685.402(a) represent a sensible list of considerations that establish the use groups in situations in which acts or omissions were sufficiently widespread to affect a definable group of borrowers. While the commenter dismisses the concept of common facts or evidence, this is an important starting point. When facts, evidence, and legal issues are unlikely to apply group-wide, then the claims should be adjudicated individually. Similarly, the consideration of acts or omissions that are pervasive or widely disseminated adds further supports making group-wide determinations. Such cases are well suited for group treatment, which makes more sense than repeating substantially similar determinations in a series of individual adjudications. The list of factors thus represent items that speak to the core purpose of a group adjudication.

We similarly disagree about the lack of clarity for group claims based upon third-party requests. We specify in § 685.402(c) the criteria for when a third-party requestor may request the Secretary to form a group, and the documentation that must be submitted with such a request, including information about the group; evidence beyond sworn borrower statements that supports each element of the claim; and identifying information about the affected borrowers to the extent that information is available. While we customarily do not prescribe such granular details in regulations, we listed the application criteria in this instance, so requestors know exactly what to submit and the Department official knows what to consider in evaluating the appropriateness of forming a group.

In response to the commenters' concerns, and to provide interested parties with even more detail, the Department has revised the requirement that a third-party requestor must provide evidence beyond sworn borrower statements that supports each element of the claim, to specify that such evidence must include, but is not limited to, evidence demonstrating that the conduct is pervasive or widely disseminated. While we do not prescribe what would constitute evidence beyond sworn borrower statements for the purposes of forming a group under this paragraph, we believe that this further clarification will provide requestors guidance while allowing the Department official to assess each group request on a case-by-case basis. The Secretary retains the authority and reserves the right to request other information or supporting documentation from the third-party requestor.

Changes: We revised § 685.402(c)(1) to reflect that a third-party requestor must provide evidence beyond sworn borrower statements that supports each element of the claim made in the application, including but not limited to, evidence demonstrating that the conduct is pervasive or widely disseminated.

Comments: A few commenters requested that institutions be allowed to review a State requestor's request to the Secretary to form a group under § 685.402(c). Other commenters raised concerns that institutions would not receive copies of decisions related to group claim requests from State requestors.

Discussion: As we note above, we are including a new definition of third-party requestors to include State requestors and legal assistance organizations. We agree that providing the institution an opportunity to review a third-party requestor's request to the Secretary would be valuable before determining whether to form a group. This will provide the Secretary adequate information to better determine whether a group should be formed, and if so, the proper definition of the group. After the institution is apprised of the third-party requestor's request to form a group, the institution will have 90 days to respond. Institutions will still be afforded the opportunity to respond to the Department official on any group after it is formed in accordance with § 685.405. Institutions will also be given a copy of the decision on whether to form a group under § 685.402(c).

Affording this additional opportunity for institutional response to a group formation, as well as the changes discussed earlier to allow legal assistance organizations to request consideration of a group claim means the initial review of group requests will take longer prior to issuing a decision

on whether to form the group. The Department anticipates that the number of group requests will increase. Because of this new opportunity, the Department will adjust the deadline by which the Department will respond to both the third-party requestor and the institution under § 685.402(c) to within 2 years of receipt of a materially complete group request. This is an increase from the 1-year timeline in the NPRM.[93] The Department extended this timeline because the inclusion of third-party requestors from the legal assistance community means the possible number of requests for considering a group claim could be substantially higher than anticipated in the NPRM. The inclusion of an additional institutional response period in the group also increases the amount of time needed to decide whether to form a group. Thus, it would not be realistic to conduct a longer review on what could be more group claim requests within the time period specified in the NPRM. However, by getting additional information earlier in the group process, the Department will shorten the time to render a final decision on the group claim to 1 year following the formation of a group instead of the 2 years in the NPRM. 87 FR at 42008. The result is the same overall timeline of 3 years, with the breakdown adjusted to better reflect the different evidence-gathering stages.

Second, we will remove the set time limit for the Department to respond to requests for reconsideration around the formation of a group by a third-party requestor from the 90 days proposed in the NPRM. In looking further at the extent of information provided under previous requests for group claims and the number of potential additional group claim consideration requests it might receive, the Department is concerned that it will not be feasible to fully consider all the evidence that may be received in a reconsideration request within 90 days, especially while still balancing other pending requests. Accordingly, we have adjusted § 685.402(c)(6) to remove the 90-day response deadline. Instead, the Department will provide responses to the third-party requestor and institution after making a decision on the reconsideration request. This approach also mirrors the treatment of reconsideration decisions elsewhere in the regulation, which do not contain timelines for rendering a decision.

The Department has also revised the regulations to provide that institutions will receive copies of all decisions that are given to third-party requestors.

[93] 87 FR at 41898.

Changes: We have added language in § 685.402(c) to provide that the Secretary will notify the institution of the third-party requestor's application that the Secretary form a group for BD discharge consideration. The institution will have 90 days to respond to the Secretary regarding the third-party requestor's application. We are also revising § 685.402(c) to clarify that the Secretary will respond to the third-party requestor and the institution within 2 years of the receipt of a materially complete group request from the third-party requestor. We are also revising § 685.402(c) to clarify that the Secretary will also provide a response to both the third-party requestor and the institution of a reconsideration request from the third-party requestor to form a group. We are revising § 685.402(c)(6) to note that the Secretary will provide a response on the reconsideration request when a decision is reached by the Secretary. Finally, we revised the time frame for adjudicating a group claim in § 685.406(g) to within 1 year of the date the Department official notified the third-party requestor under § 685.402(c)(4).

Comments: A few commenters asked the Department to remove the requirement that the third-party requestor must submit evidence beyond sworn borrower statements for group claim requests.

Discussion: The Department declines to make the requested change. The third-party requestor process is valuable because it creates a formal mechanism for the Department to receive evidence that will help it decide whether to form a group claim. Sworn borrower statements are important, but to date the Department has found that the most useful third-party evidence also include evidence of an institution's internal policies, procedures, or training materials, data used to calculate job placement rates, marketing materials, and other similar types of evidence. This does not preclude a third-party requestor from also attaching borrower statements but setting a higher evidentiary bar for considering a group claim request ensures the Department receives strong applications.

Changes: None.

Comments: A few commenters argued that the Department should not be able to form a group that encompasses borrowers from a given State if that State did not request it. They stated that allowing States to request consideration of group claims implies that if they do not ask for a group claim the Department should not consider one.

Discussion: We disagree with the commenter. The ability of States to request group claim consideration provides a mechanism for sharing evidence and information that may assist the Department. There may be many reasons why the Department chooses to form a group when a State does not request it. The Department may have evidence in its possession the State does not possess, or the Department could find a violation under the Federal standard that would not be a violation under a given State's law. The State request process thus complements, rather than precludes the Department's work.

Changes: None.

Comments: A few commenters claimed the Department is using the group process to simply get around limitations on its own oversight and investigatory authorities.

Discussion: The Department disagrees. The Department already has a robust ability to request information from the institutions it oversees. The rule also provides processes for the Secretary to initiate group claims at his own discretion. The third-party requestor process simply creates a formal way for the Department to receive additional evidence that will ensure it is making thorough, reasoned, and evidence-based decisions on the claims it receives. Obtaining evidence in this manner will make the adjudication process more efficient. This group process will not replace other oversight work. There is no requirement that the Department attempt or conduct an investigation of an institution before considering a group claim request and so it is possible the Department will receive evidence related to institutions it was not previously reviewing or concerned about.

Changes: None.

Comments: A few commenters argued that borrowers should have the ability to opt out of a group. They likened this to provisions that allow individuals to opt out of class action lawsuit, saying the Department cannot bind absent class members. Other commenters argued that any group should require borrowers to opt in.

Discussion: Being considered part of a group claim is not the same as class action litigation. For one, if the group claim is denied, the borrower would maintain the ability to file an individual claim. However, the Department recognizes that there could be situations in which a borrower may not want to want to accept the forbearance that comes with the formation of a group or may want to decline a discharge associated with an approved group claim for some reason. Accordingly, borrowers will have an opportunity to

opt out of the forbearance as well as a discharge if a group is approved. Borrowers may opt out of forbearance as provided in § 685.403(d)(1) or § 685.403(e)(4) in the case of enforced collections. The Department also disagrees with the proposal to make borrowers opt into any group. One of the Department's concerns in providing a group process is ensuring that borrowers who experienced detriment that warrants relief as a result of the institution's act or omission should receive a loan discharge regardless of whether they file an application. This is consistent with other changes being made to the regulations to remove barriers for borrowers in areas such as providing for automatic closed school discharges. Adding an opt in requirement would add administrative burden and increase the likelihood that borrowers who are eligible for relief miss out on it. Moreover, an opt in process would further burden the Department without any corresponding benefit to the process.

Changes: We are adding § 685.408(b) to state that members of a group that received a written notice of an approved borrower defense claim in accordance with § 685.406(f)(1) may request to opt out of the discharge for the group.

Comments: A few commenters objected to language about forming groups that covered multiple schools at once, challenging how the Department could find commonality in such a situation.

Discussion: The Department does not contemplate the formation of group claims that could cover institutions that share no common ownership. Rather, it is possible that the Department may end up forming a group claim that could cover some or all of the institutions within the same ownership group. The Department has seen instances where the company that owns multiple institutional brands exerts significant centralized control such that all institutions it owns use the same recruitment tactics or methods for calculating job placement rates. Whether a group claim covers some or all of the institutions under common ownership would depend on the underlying evidence.

Changes: None.

Forms of Evidence

Comments: Several commenters argued that the applications submitted by borrowers should be made under penalty of perjury, given that the Department is proposing to use that requirement for the response from institutions. Commenters also noted that such a requirement is important to ensure that institutions are not being held to a higher standard than students. Similarly, commenters also asked that the application made by State requestors be signed under penalty of perjury. A few commenters also proposed that State requestors be required to indemnify institutions for damages, including the costs of defending and investigating the claim, and that State requestors waive sovereign immunity to deter any errors in a group request. The commenter suggested these changes to deter the use of group processes to influence potential settlement negotiations between a State and an institution.

Discussion: As we note above, we are including a new definition of third-party requestors to include State requestors and legal assistance organizations. The Department agrees with commenters that the application from the borrower and the response from the institution be made under penalty of perjury. In fact, the existing BD application already contains this requirement. Accordingly, we are updating the regulatory text to reflect this current practice. Similarly, we will adopt a requirement that group requests submitted by third parties be signed under penalty of perjury. This will also apply to reconsideration requests.

We do not believe it would be appropriate to add the other requirements for third-party requestors as requested by commenters. The group request is a mechanism for a third-party requestor to share information with the Department, which evaluates what it receives and makes its own decision about whether to form a group. Adding the requirement that parties make submissions under the penalty of perjury sufficiently ensures the information shared under that practice is truthful and accurate and ensures that every external party providing information to the Department is held to the same standard.

Changes: We have updated §§ 685.403(b)(1)(i) and 685.402(c)(1) to indicate that applications from individuals and requests to consider a group from a third-party requestor be made under penalty of perjury. We have revised § 685.407(a)(4) to require individual claimants and third-party requestors who request reconsideration submit their request under penalty of perjury.

Comments: A few commenters requested the Department clarify that a sworn borrower statement alone would be sufficient evidence to approve a BD claim.

Discussion: As noted in § 685.401(b), approving a BD claim requires meeting a preponderance of the evidence standard. Whether a given claim meets that standard will require an assessment of all evidence in the Department's possession. This includes evidence from the sworn borrower statement, the institutional response, and anything else in the Department's possession. Because sworn borrower statements are themselves evidence, there are situations where the evidence supporting the approval of a borrower's claim could come solely from the application submitted by the borrower. But identifying the circumstances in which that occurs can only be determined on a case-by-case basis based upon a review of the specific evidence at hand. Given that the Department already spells out the process for considering evidence and the standards involved, there is no need for additional changes.

Changes: None.

Comments: A few commenters requested the Department confirm that, when the only evidence we possess is sworn statements from the borrower and the institution, we clarify that both those statements be given equal weight. The commenters also asked the Department to clarify how it verifies that the information provided by borrowers under a sworn statement is in fact accurate. They pointed to purported instances where institutions notified the Department of inaccuracies in a borrower statement and stated they were unclear if the borrower had addressed those concerns in the Department's adjudication process.

Discussion: As stated in the Federal standard for BD in § 685.401(b), approving a claim requires a determination based upon a preponderance of the evidence. That means when the Department only has sworn statements from both sides, it must determine whether the statement from the borrower, weighed and considered against the opposing statement, makes it more likely than not that facts exist sufficient to establish all essential elements. This requires a case-specific assessment of the evidence received. The Department also has the ability to request additional information from either the borrower or institution as needed. Accordingly, it would be inappropriate to conclude that the sheer presence of only having a sworn statement by each party inherently means that both are equal. Such a determination cannot occur without an actual review of the statements.

Changes: None.

Institutional Response Process

Comments: A few commenters stated that 90 days is insufficient for an institution to respond to a borrower's BD application or a group BD claim. A few commenters requested at least 180 days to respond to a group claim.

Discussion: We disagree. As we explained in the NPRM, we used the program review process to inform our proposal in § 685.405 to give institutions adequate time to respond.[94] The program review process mirrors some of the same BD processes, and where appropriate, we maintained similar procedures. In this case, we believe 90 days is a sufficient time for an institution to respond, and it is already twice as generous as the response time afforded to a school during a program review.

Changes: None.

Comments: One commenter stated that as the regulations are written, there is nothing to guarantee a 90-day period for the institution to respond to a BD claim and suggested that the Department could impose a more abbreviated time frame at the Department's discretion.

Discussion: The Department is clarifying that institutions will have 90 days to respond to a BD claim. Although we explicitly stated that institutions would receive 90 days to respond, including our rationale for doing so, we are convinced that we need slight modifications in the regulatory text.[95]

Changes: We revised § 685.405(b)(2) to state that the Department official requests a response from the institution which will have 90 days to respond from the date of the Department official's notification.

Process Based on Prior Secretarial Actions

Comments: A few commenters expressed support for the inclusion of approving BD claims tied to final Secretarial actions. Other commenters expressed opposition to the proposal to approve BD claims for borrowers based upon prior Secretarial actions. They argued that the proposed text did not specify the acts or omissions that would give rise to an approved BD claim. Other commenters requested greater specificity as to the types of prior actions that would be covered by this section and were concerned that some topics mentioned, such as administrative capability, were quite broad.

Commenters also argued that tying other Secretarial actions to BD claims could result in more lawsuits on those actions rather than settlements since it would be more worthwhile for an institution to challenge those actions. Conversely, other commenters argued that approvals tied to prior Secretarial actions could encourage too many settlements so that institutions could avoid the threat of a group claim. Commenters also raised concerns about the lack of due process procedures for claims under this process.

Discussion: We appreciate the support from commenters in favor of including BD claim approvals tied to final Secretarial actions. We believe the commenters opposed to this treatment of final Secretarial actions misconstrued our position in suggesting that that we did not specify the acts or omissions that could give rise to an approved BD claim. As we stated in the NPRM,[96] § 685.404 establishes a process by which we could consider prior Secretarial actions in the context of forming and approving group BD claims. We outline the acts or omissions that could give rise to a borrower defense to repayment in § 685.401.

The Department appreciates the questions from commenters about exactly what types of final actions fall under this process. We updated the Federal standard in § 685.401(b)(5)(ii) to create an exhaustive list of the types of actions that fall under this standard. Those are actions taken under part 668, subpart G, action to deny the institution's application for recertification, or revoke the institution's provisional program participation agreement under § 668.13, if the institution's acts or omissions tied to those final actions could give rise to a BD claim under § 685.401(b)(1) (substantial misrepresentation), (b)(2) (substantial omission of fact), (b)(3) (breach of contract), or (b)(4) (aggressive recruitment). We provided a longer discussion of why we are making this change in the *Definitions* section of responses to comments. However, we note that those listed actions are the most serious actions that the Department can take against an institution. All also provide ample due process before they are final. When the Department initiates an action under part 668, subpart G the institution can request a hearing before an independent hearing officer, and the proceedings vary depending on if the proposed action is a suspension, fine, emergency action, or a limitation or termination action. But every action includes the opportunity for the institution to present evidence, as well as the possibility of in-person or written testimony by fact or expert witnesses. The hearing officer's decision may be appealed to the Secretary. And, since employing those actions for a BD claim requires them to be related to conditions that could give rise to an approved claim due to misrepresentation, omission of fact, or aggressive and deceptive recruitment, the addition of another institutional response process would repeat an opportunity to rebut the Department's arguments.

Because we have moved the definition of what actions would fall under this process to § 685.401(b)(5)(ii), we have removed the additional clarifications that were in paragraphs (a)(1) through (5) of § 685.404.

Changes: We have updated the definition of a final Secretarial action in § 685.401(b)(5)(ii) to limit this provision to actions under part 668, subpart G, to action denying the institution's application for recertification, or revoking the institution's provisional program participation agreement under § 668.13, based on the institution's acts or omissions that could give rise to a BD claim under paragraphs § 685.401(b)(1) through (4). We removed paragraphs (a)(1) through (5) of § 685.404 and the actions that fall under this category are now listed in § 685.401(b)(5)(ii).

Comments: Commenters suggested that only Secretarial final actions initiated, finalized, and resolved after the effective date of these regulations should be subject to being employed as a basis to initiate a group process under § 685.404.

Discussion: We disagree with these commenters with respect to the approval of BD claims filed by borrowers but agree with the commenters regarding recoupment actions against institutions. The purpose of including a process based on Secretarial actions was to codify a process that better integrates the Department's oversight and compliance work with the adjudication of a BD claim. Doing so minimizes the duplication of work, as institutions would have already had multiple opportunities to respond to similar sets of findings in final actions that could give rise to a defense to repayment claim. In short, it streamlines the process to form groups for the purpose of adjudication. As these regulations bifurcate the adjudication and recovery processes, the recoupment of amounts discharged is conducted in a separate proceeding independent of the Secretarial final action described here. Additionally, because there is no time frame for a borrower to submit a claim, it would not be prudent to restrict final

[94] 87 FR at 41901.

[95] 87 FR at 41901.

[96] 87 FR at 41901.

Secretarial actions for purposes of forming groups on or after the effective date of these regulations.

As we explain elsewhere in this document, the Department will not attach any new liability for institutions to actions or transactions that were permissible when the events occurred. Thus, the formation of groups under § 685.404 exists independent of any recovery action that the Secretary could take after discharging a loan. To allay institutions' concerns, the Department codified in § 685.409 that we will only initiate recovery proceedings for loans first disbursed after the effective date of regulations if we would not separately approve claims and initiate recovery under the relevant regulation in effect at the time.

Changes: None.

Comments: One commenter stated that the Department does not explain why an institution's loss of eligibility due to its cohort default rate (CDR) should result in an approved BD claim.

Discussion: After further review, we concur with the commenter. While failing to meet the cohort default rate standards for continued participation in the Direct Loan Program is concerning, there is not an immediate connection between that occurrence and the types of acts and omissions that would give rise to a borrower defense claim. As such, we do not think it would be appropriate to draw such a connection. If an institution's high default rates were attributable to misrepresentations, omissions, or other actions that would be better captured by the Department's separate review of relevant evidence, then that evidence, not the cohort default rate, would be the grounds for considering a BD claim.

Changes: We removed an institution's loss of eligibility due to its CDR as a final action that the Department official may consider when forming a group in § 685.404.

Record Retention

Comments: Many commenters stated that institutions cannot be expected to, and do not, maintain the range of records required to defend a claim in perpetuity. These commenters also cite guidance from the Department and other Federal and State agencies to destroy data when they are no longer needed in the interests of data security, observing that, the longer data is retained, the more likely it is to be breached.

Thus, a few commenters proposed a 3-year limitations period for a borrower to bring a claim which would align to the general record retention period that institutions must adhere to regarding title IV records. A few commenters also disagreed with the Department's statement in the NPRM that the financial aid records subject to the 3-year records retention requirement were less likely to be relevant in adjudicating a claim than other records.

Discussion: The Department acknowledges the importance of records management, including the proper disposition of records when they are no longer needed and the appropriate transfer of such records for preservation. As we stated in the NPRM, the Department does not contemplate new record retention requirements.[97] It is unlikely that the records subject to the general 3-year record retention period in § 668.24 would be the most relevant records in question to adjudicate the BD claim. To date, most approved borrower defense claims have centered on evidence related to recruitment and admission practices, advertising campaigns, brochures, and handbooks. Specific student financial aid records have not been nearly as critical. However, if institutions are concerned about their ability to defend themselves from a BD claim, there is no prohibition on retaining records longer than the 3-year period. As we stated in 1996, which remains true now, records may always be retained longer than required by regulation.[98] Proper management of records to ensure data security and protecting institutions against claims and liabilities need not be mutually exclusive, and the Department believes institutions can accomplish these goals simultaneously.

We explain our rationale for not imposing a limitations period for a borrower to file a BD claim elsewhere in this document under the ''*Limitations Period*'' section.

Changes: None.

Borrower Status During Adjudication/Forbearance/Stopped Enforced Collections

Comments: Several commenters expressed concerns related to pending or undecided BD claims and stated borrowers should not have to choose between submitting claims and ballooning debt. These commenters suggested stopping interest accrual on individually submitted BD claims immediately instead of 180 days after the date of submission.

Discussion: As we explained in the NPRM, under current practice, we cease interest accrual once a claim has been pending for 1 year. In § 685.403, we reduce that time frame to 180 days.[99] The Department reiterates its view that allowing interest to accumulate for some period is an important measure to encourage borrowers to submit the strongest application they can since a borrower would risk several months of interest accumulation. For a borrower whose claim is ultimately approved, the accumulation of interest during this 180-day period is moot since it would be discharged anyway. Thus, the effect of the interest accumulation, which has been significantly reduced, will only be felt by a borrower whose claim is denied. Moreover, the Department notes that the elimination of interest capitalization when not required by statute will also mean that the borrower will not have this unpaid interest added to their principal balance. Allowing interest to accumulate for 180 days thus strikes a balance between giving a borrower a strong financial incentive to file the strongest possible claim, without making the financial risk of having a claim denied so great that a borrower would be dissuaded from applying if they do have a strong claim.

Changes: None.

Comments: One commenter stated that the Department should not grant forbearance (or stop collections) on a borrower's FFEL loans while the Department adjudicates a BD claim. They recommended that the applicable section and reference on granting forbearance or stopping collections refer only to Direct Loans and not title IV loans generally.

Discussion: The Department disagrees with the commenter and declines to incorporate their recommendation. As explained in the NPRM, *see* 87 FR at 41903, the Department is concerned that stopping collections on some loans but not others would be confusing for borrowers. By placing all of a borrower's loans in forbearance or stopped collection status, the Department would be able to automate the adjudication process more easily. Section 682.211(i)(7), for example, already requires FFEL lenders to put a FFEL borrower in forbearance upon notification from the Secretary while the Department official adjudicates the BD claim. Placing all of a borrower's loans into a forbearance (or stopped collections status in the case of a defaulted loan) gives these borrowers parity across all of their title IV loans and minimizes confusion. Non-Direct Loans could be consolidated into a Direct Loan, which could be discharged after a successful defense to repayment claim. Were the Department to limit forbearance or stopped enforced collections only to Direct Loans, borrowers could be harmed by

[97] 87 FR at 41902.

[98] 61 FR at 60495.

[99] 87 FR at 41903.

continuing loan payments, continuing to accrue interest, or facing enforced collections while their BD claims are adjudicated.

Changes: None.

Timelines To Adjudicate

Comments: Many commenters supported our proposal to include definitive timelines to adjudicate a BD claim. However, some of these commenters suggested that 3 years is too long for a borrower to wait for a decision and suggested 1 year as a more appropriate time frame. Yet another set of commenters suggested that the adjudication clock should begin from the time the Department receives an application.

Other commenters believed that the timeline to adjudicate is concerning as institutions do not have control over the timeline the Department may choose to process a claim. These commenters stated that deeming loans unenforceable after a certain time frame is a misuse of tax dollars and wasteful. One commenter argued that the timelines to decide on a claim would encourage all borrowers to file a claim in the hopes of overwhelming the Department. Similarly, another commenter pointed to program reviews that have taken as long as 5 years as evidence that the Department would not be able to decide claims within 3 years.

Discussion: We thank the commenters for their support and reiterate our goal of giving borrowers decisions in a timely fashion. As the Department has observed in its analysis of BD applications, many borrowers waited many years to have decisions rendered on their BD claims.[100] With the timelines in these regulations, the Department commits to continue its work to process and approve or deny claims.

While a few commenters believe 3 years is too long for a borrower to wait for a claim to be decided (in the case of an individual claimant), we reiterate that a thorough review of a claim cannot be achieved in a few weeks; we also reject the proposal to reduce the time to adjudicate claims to 1 year. The BD process requires many administrative steps, including identifying borrowers in the case of a group; collecting information pertinent to the claim; providing the institution an opportunity to respond; placing the borrower's loans in the appropriate status; reviewing what can be an extensive evidentiary record; making a recommendation to the Secretary; and issuing a decision. To mitigate risk of financial harm to borrowers who filed a claim, the Department will place all of a borrower's loans in forbearance or cease mandatory enforcement collections, with interest accrual ceasing either immediately (in the case of a group claim) or after 180 days from the date the borrower was placed in forbearance or stopped enforced collections. The Department also added a provision in § 685.406(g)(5) that after the timelines expire, the loans covered by the claims that do not yet have a decision would be unenforceable. Collectively, these guardrails provide adequate protection to the borrower while giving the Department time to thoroughly adjudicate the claim.

With regard to the commenters who expressed concerns about the Department not being able to handle the number of possible claims, we believe the changes made to a materially complete application will address this concern. While not erecting major barriers, this requirement will ensure that borrowers provide sufficient details about the institution's acts or omissions such that there will be a baseline level of quality in applications that go through the full adjudication process and that those applications contain the details needed to fairly adjudicate them. The goal of ensuring applications contain sufficient information for adjudication is reflected in existing regulations permitting the Department to seek further details from the borrower;[101] the provisions on materially complete applications give more affirmative guidance to applicants on the level of detail that an application should include.

In this context, the Department recognizes that the interaction of the materially complete application provision and regulation's July 1, 2023 effective date for then-pending applications could cause confusion surrounding the timeline for a borrower to receive a decision. To address this concern, we have clarified that the timeline for a decision on an individual application will be the later of July 1, 2026 or 3 years from the date the Department determines the borrower submitted a materially complete application. For applications that are pending on July 1, 2023, and that are not materially complete—that is, applications that lack sufficient information to adjudicate the claim—the Department will contact the applicant with an explanation of the details needed to make out a materially complete application. This, however, is not a novel requirement or a departure from existing standards. The material-completeness threshold merely sets forth clearer guidance on the details needed to facilitate continued adjudication. Indeed, under existing regulations, applications that lack such details would prompt a request for further information or have a higher likelihood of a denial.[102]

With respect to the commenter who suggested that the timeline should begin upon receipt of an application, we decline to adopt this proposal. Determining that an application is materially complete ensures the Department has the information it needs to fully review a claim under the Federal standard. An incomplete application may be missing key details that must be received to continue the process. Having the Department bind itself with deadlines for review of claims thus makes the most sense to start from when the borrower has given us enough information to start other parts of the adjudication process, such as the institutional response.

We understand that commenters are concerned about timelines over which institutions may feel they have no control. When crafting these timelines, however, we considered the institution's stake in the lifecycle of a BD claim and have made adjustments described elsewhere in this document to accommodate institutional concerns. We believe that the timelines in these regulations provide all parties concerned an opportunity to be heard in the BD adjudication process.

Finally, while we acknowledge concerns from commenters that deeming loans unenforceable if the Department is unable to meet prescribed timelines may result in a cost to the taxpayer that cannot be recouped, the Department's goal is to ensure claims are adjudicated within the prescribed timelines and thus no costs are ultimately incurred from these deadlines.

Changes: We have adjusted § 685.406(g)(1)(ii) to note that the timeline for a decision on an individual application is the later of July 1, 2026 or 3 years after the Department determines that the borrower submitted a materially complete application.

Comments: Commenters noted that the regulations lacked clarity on what it means for a loan to be unenforceable. Other commenters expressed concern that institutions could be subject to a recoupment action on loans deemed

[100] 87 FR at 41946.

[101] *See, e.g.,* 34 CFR 685.222(e)(1)(ii) (''an individual borrower must . . . [p]rovide any other information or supporting documentation reasonably requested by the Secretary'').

[102] *See, e.g.,* 34 CFR 685.206(e)(8), 222(e)(1)(ii).

unenforceable without any due process protections. Some other commenters expressed concerns that an unenforceable loan would not receive all the benefits of a discharge, such as updating credit bureau reporting and restoring federal student aid eligibility for borrowers in default. They also recommend clarifying the treatment of loans not covered by the BD claim.

Discussion: The Department is clarifying the steps it will take after a loan is determined to be unenforceable. If the Department fails to meet the adjudication timelines in § 685.406, any loans covered by the BD claim will be considered unenforceable. For consolidation loans, this would mean the portion of the underlying loans in the consolidation loan attributed to the BD claim. The Secretary will not require the borrower to repay the loans covered under the BD application, but it will not be considered an approved BD discharge. Consequently, the Department will not initiate or attempt recovery proceedings against the institution for loans deemed unenforceable under that section.

The commenters are correct that there are some differences between an approved claim and a loan deemed unenforceable, which is another reason why the Department is committed to making decisions on claims before the time limits are reached.

Moreover, as we discuss elsewhere in this document, we would provide copies of the written decision to the institution so the institution will be aware of the status of the claim. We will also commit to giving the institution an interim update as we do for borrowers.

Changes: We have revised § 685.406(g) to provide interim updates to an individual claimant, the third-party requestor under a third-party requested group formation, and the institution contacted for the institutional response, that will report the Secretary's progress in adjudicating the claim and the expected timeline for rendering a decision on the claim. We have added language to § 685.406(g)(5) to clarify that an institution will not be liable for a loan deemed unenforceable against the borrower.

Process To Adjudicate Borrower Defense Claims

Comments: A few commenters acknowledged that the proposed rules made significant improvements to the BD process by including a group process but expressed concern for applications adjudicated in the process for individual claims. These commenters suggested the Department consider other applications raising similar claims when adjudicating individual applications, so that the individual review process would mirror the group claim process; explicitly state that borrower attestations alone may be sufficient to substantiate a claim for relief; and explicitly state that the Department will apply a presumption of reliance when assessing individual applications.

Discussion: Individual borrowers have a full opportunity to file individual BD claims under these regulations. However, as we explained in the NPRM, the Department's recent experience with a significant influx of individual BD applications has convinced the Department that State partners can provide critical information in assessing BD claims.[103] Given this history, the Department believes that the group process, where warranted, provides the most efficient way to resolve claims for all parties—the borrowers, the institutions and the Department. The Department reserves the Secretary's right to form a group, including the ability to consolidate multiple individual applications as provided in § 685.402(b)(3).

The Department already explicitly states in the NPRM that the application itself, including the borrower's sworn statement, is a form of evidence. The Department has not deviated from this position and will consider the application as one of several components in the adjudication of a BD claim. Similarly, although the Department has updated the presumption applied to groups, it has not deviated from its position that, based on supporting factual evidence, it will apply a presumption that actionable acts or omissions affected each member of a group considered collectively.[104] With respect to applying the presumption to individual claims, the updated BD definition and its straightforward causation element address the concerns of comments seeking an individual presumption of reliance to avoid a barrier to relief reflecting mere formalism. That is less of a concern because individual claims will be assessed for whether the facts indicate the alleged acts or omissions caused the borrower detriment, rather than insisting on borrowers pleading specific technical terms. We discuss this topic further in the "*Federal Standard*" section.

Changes: None.

Comments: Several commenters requested that the Department adopt a liberal pleading standard when adjudicating an individual BD claim. In those requests, the commenters refer to pleading standards for *pro se* litigants in civil courts. The commenters believe that individual BD claimants warrant a similarly liberal standard for their BD applications because their experience and risk of confusion resembles that of *pro se* litigants in civil court.

Discussion: The Department believes that the improved processes included in these regulations and additional guidance provided to facilitate applications together will provide sufficient direction for borrowers to submit materially complete applications for BD. The Department believes that individual claimants will not need specialized legal expertise or training to file an individual BD claim under these rules. As we state in the NPRM, the BD application and accompanying sworn statements are forms of evidence.[105] Likewise, the details required for an individual application to be materially complete are all comprised of information that is readily available for an individual borrower without the assistance of a legal advocate. The Department official will adjudicate the claim upon receipt of a materially complete application from an individual claimant, along with information from the institution from the institutional response process and records within the Secretary's custody. Under § 685.403(b)(2), the Department can request more information from an individual borrower to materially complete the application, including a request to provide more information on some of the acts or omission that the borrower has alleged when a more robust narrative would give the Department a better understanding of what took place.

While the Department requires a materially complete application from an individual claimant to continue with adjudication, an otherwise complete application does not require legal analysis from the borrower. Although an individual's claim must still meet the same evidentiary standard whether or not represented by counsel,[106] individual adjudications will take into account the institution's response and potentially other information about the institution in the Department's possession, and even if the individual claimant does not capture the act or

[103] 87 FR at 41899.

[104] 87 FR at 41892.

[105] 87 FR at 41900.

[106] This reflects the approach to *pro se* litigants under the Federal Rules of Civil Procedure, which provide for the liberal construction of a *pro se* litigant's filings, but do not apply a more lenient evidentiary standard. *See* Fed. R. Civ. P. 59; *see also, e.g., Dunbar* v. *Foxx,* 246 F. Supp. 3d 401, 414 (D.D.C. 2017).

omission in precise terminology, the Department will make appropriate inferences based on the information available to it. Furthermore, the information available to the Department may include evidence from other sources, such as third-party requestors, investigations or reviews by the Department or other authorities, or other sworn applications. In effect, the Department's process for evaluating and adjudicating an individual claim already provides flexibility that incorporates the same principles motivating *pro se* pleading standards but is tailored to the BD process. Finally, it would not be appropriate to expressly adopt a standard applied in civil courts, because the requirements for submitting a BD application and the consequences of potential deficiencies differ from those applied under the Federal Civil Rules, State analogues, and various jurisdictions' local rules.

Therefore, we decline to alter the regulations or to expressly adopt a *pro se* pleading standard applied in civil courts, because the regulations afford sufficient flexibility to address these concerns.

Changes: None.

Comments: A few commenters observed that if the Department official requires additional information to adjudicate a claim, institutions must respond to a request within 90 days, whereas individual claimants must respond within a reasonable time frame. These commenters stated that the Department should not treat institutions and individual claimants differently.

Discussion: After further review, the Department concurs and believes 90 days is a reasonable time frame for an individual claimant to respond to a Department official's request for additional information. The Department believes 90 days is an adequate time for both the institution and the individual claimant to respond to a Department official's request for additional information that maintains parity for all parties.

In its proposal to give institutions 90 days to respond, the Department aligned the maximum time afforded to schools in the program review process.[107] When a borrower files a complaint with the Ombudsman in the FSA Feedback System, the borrower generally must respond within 60 days to the Ombudsman's request for additional information. Responding to such a request is similar to the Department seeking feedback from an individual to resolve a BD claim. Therefore, the Department will give both the institution and the individual claimant the maximum time frame, 90 days in this case, to respond to a request for additional information.

Changes: We revised § 685.406(d) to provide that if the Department official requires additional information from an individual claimant, that individual must respond within 90 days.

Comments: A few commenters requested that the Department require the submission of factual information to refute vague or emotional claims. A few commenters stressed that a borrower's application must contain sufficient explanation so the institution can understand exactly what is being alleged, by whom, and the basis of the claim. Another commenter urged the Department to adopt a plausible basis requirement for claims and specify that pleadings offering formulaic recitation of the elements of a cause of action would be insufficient. Other commenters noted that the definition of what constitutes a materially complete application was not sufficiently clear. A few commenters also recommended deleting the mention of a materially complete application.

Discussion: The Department shares commenters' desire to provide a process that generates useful information for the Department official to fairly adjudicate a claim. As we state elsewhere in this document and in the NPRM, we recognize that the application itself is a form of evidence.[108] However, the entire record needs to sufficiently and adequately describe the underlying conduct serving as the potential basis for relief to allow the Department official to fully consider the claim.

After further consideration, we believe that BD claims from individual claimants need clearer standards so that such individuals have a clear understanding of what information is needed by the Department prior to adjudication. To that end, the Department will determine an individual's application to be materially complete when the application contains: a description of one or more acts or omissions by the institution; the school or school representative to whom the act or omission is attributed; approximately when the act or omission occurred; how the act or omission impacted the borrower's decision to attend, to continue attending, or to take out the loan for which they are asserting a defense to repayment; and a description of the detriment they suffered as a result of the institution's act or omission. Laying out these concepts will also guide borrowers in creating the strongest claims possible and avoid denial of a valid claim because the borrower did not provide greater detail upfront. We reiterate, as we state elsewhere in this preamble, that an otherwise complete application lacking a legal analysis will not preclude adjudication. However, we believe it is reasonable to require an individual claimant to tell their story so the Department official can adjudicate the claim. By requiring all the aforementioned information, the Department believes it has created a framework that minimizes the likelihood of vague or emotional claims as suggested by the commenters. We also believe that the inclusion of the aforementioned information will be sufficient to allow the institution to understand and respond appropriately to the BD claim. Finally, by identifying the elements of a materially complete application package for an individual claim, we believe we have crafted a process that will result in a sufficient record to adjudicate, and we decline adopting any further requirements that would add unnecessary hurdles for a borrower to assert a defense to repayment.

Changes: We revised § 685.403(b) as described above to provide that the Secretary shall consider an individual BD claim to be materially complete when the borrower submits an application under penalty of perjury with the information enumerated in § 685.403(b).

Decision Letters

Comments: Commenters suggested that the Department should include language specifying that if the Department grants a partial discharge, the Department official must explain in writing the basis for its determination and how it calculated the proposed amount of a discharge. The commenters further suggested borrowers should be given the opportunity to respond and to submit evidence in support of further discharge amounts.

Discussion: Under § 685.406(f), the Department official issues a written decision of the adjudication of the BD claim. The Department believes this commenter's suggestion is no longer relevant because, as discussed below, approved claims will receive a full discharge and not a partial discharge. Nevertheless, the decision letter will contain information about whether the claim was approved, the evidence upon which the decision was based, and the loans that are due and payable to the Secretary in the case of a denial.

We already outline the conditions under which the Department would

[107] 87 FR at 41901.

[108] 87 FR at 41900.

entertain a reconsideration request by a borrower, which include: administrative or technical errors; consideration under a State law standard for loans first disbursed prior to July 1, 2017; and new evidence that came to light after the initial adjudication. We would expect borrowers to submit the best information they have at the time of application. To the extent that a borrower who receives a denial meets the criteria for reconsideration, that borrower may submit the request and the new evidence.

Changes: None.

Comments: Other commenters suggested the proposed BD regulations do not go far enough regarding decision letters. These commenters suggested the Department strengthen the regulations to make written decisions clear and actionable to borrowers when granting full approvals, partial denials, and full denials.

Discussion: The Department declines to make the changes suggested by the commenters. These regulations will result in decision letters with elements that will help a borrower determine their next steps after adjudication of the claim.

Changes: None.

Comment: Some commenters requested that the Department give copies of the written decision regarding a BD claim to the institution.

Discussion: The Department concurs that institutions should also be apprised of the outcome of the BD claim. Although we initially proposed that copies of the written decision would be made available to the institution to the extent practicable, we are removing the phrase ''to the extent practicable'' to ensure that the claimant, the institution, and, if applicable, the third-party requestor who requested the group claims process, will receive copies of the written decision.

Changes: We revised § 685.406(f)(3)(iii) to ensure that institutions will receive a copy of the written decision.

Borrower Defense to Repayment—Post Adjudication (§§ Part 685, Subpart D)

Reconsideration Process

Comments: Commenters expressed support for a reconsideration process. Many commenters suggested that institutions should have the opportunity to request reconsideration on the same terms as borrowers. Other commenters opposed a reconsideration process, adding that claims would lack finality and could be continuously granted reconsideration; institutions would, thus, have no way of knowing how often and for how long they may be required to defend against the same BD claim. Similarly, some commenters argued that a reconsideration process violated *res judicata* and borrowers should not be given another opportunity to have their claim reviewed. A few commenters argued that it would not be appropriate to conduct a reconsideration under a different standard, which is what is contemplated by allowing for considerations under a State law standard. A commenter also expressed concern that asserting a claim under State law would be confusing for borrowers. Other commenters requested that borrowers have an unqualified right to reconsideration.

Discussion: We thank the commenters who expressed support for the reconsideration process.

After careful consideration of the commenters' suggestion that institutions be allowed to request reconsideration, we decline to make this change. We remind institutions of the bifurcated process of the BD framework—adjudicating the claim is a separate and distinct process from the process for recoupment from the institution for the amounts that the Secretary discharges. In crafting the reconsideration process, we distinguished the issue of whether the borrower has a defense to repayment from whether and how much the Secretary should recoup from the institution. Consideration of the borrower's BD claim is between the borrower and the Secretary, since it is the borrower raising a defense to repaying the Secretary on a loan that is payable to the Secretary. Allowing institutions to request reconsideration is inconsistent with the purpose of this process.

We disagree with the concerns that allowing reconsideration would result in a lack of finality of a claim and that a claim could be continuously granted reconsideration. We also disagree with the proposal to give borrowers an unqualified right to reconsideration. We outline the limited circumstances under which we would consider a reconsideration request: administrative or technical errors; consideration under an otherwise applicable State law standard for loans disbursed prior to July 1, 2017; and new evidence. Limiting the State law reconsideration only to borrowers who would have previously had access to it also should help reduce borrower confusion and address the concerns raised by commenters about the use of a different standard during reconsideration. As we expressed in the NPRM, the specific instances for reconsideration provide appropriate limits on the borrower's ability to seek reconsideration or to ask for the same allegations to be reviewed repeatedly without a rationale for why the outcome may change.[109]

We also disagree with the commenters that the reconsideration process violates principles of *res judicata.* The bases for reconsideration involve certain legal and technical errors with the Department's decision or new evidence that was not previously considered. It is not simply the Department re-reviewing a decision for any reason. Moreover, the reconsideration process provides a step that is simpler for both the borrower and the Department by having a claim reconsidered instead of going to Federal district court for review.

Changes: None.

Comments: A few commenters suggested that the Department allow individual members of a group to request reconsideration on behalf of the entire group, on their own behalf, and for any individual borrower.

Discussion: As we discuss in the NPRM, we considered and rejected a proposal to allow an individual borrower that is part of a group claim to request reconsideration of a claim under a State law standard on behalf of the group, and we discussed our rationale for doing so. 87 FR at 41907. Similarly, as we discussed in the NPRM the regulations specify in § 685.407(a)(2)(ii) that an individual borrower from a group may not file a reconsideration request.

Nothing prevents an individual who is part of a group from submitting a new individual BD claim under § 685.403.

Changes: None.

Comments: Commenters recommended that if a borrower is denied relief, then the borrower should be entitled to request reconsideration from a different Department official to evaluate whether the first adjudicator made errors when assessing the facts or applying the law. These commenters suggested that under the proposed language, if a borrower believes the Department official adjudicating their claim made an error interpreting the facts or law, the borrower will be forced to challenge the Department's decision in court, which will be more burdensome for the Department and the borrower.

Discussion: As provided in § 685.407(b), the Secretary designates a different Department official for the reconsideration process than the one who conducted the initial adjudication.

Changes: None.

[109] 87 FR at 41906.

Amounts To Be Discharged/ Determination of Discharge

Comments: The Department received a range of comments regarding calculating discharge amounts for a borrower or borrowers with approved claims. Many commenters wrote in support of the proposal to adopt a presumption of full discharge. Many of these commenters, however, said that the Department should either eliminate the possibility of partial discharge or provide a much clearer and narrower set of instances when partial discharge could occur. These commenters pointed to the harms that borrowers suffer that go beyond the amount of the loan, aligning BD with the discharge amounts provided under closed school and other discharge programs operated by the Department, and the Department's history in struggling to define a proper formula for partial discharge. The commenters raised concerns that the examples of partial discharge are too vague, and that the overall Federal standard already would weed out trivial claims. Commenters asked that if partial discharge is maintained, it should be limited to clearly quantifiable sums, or the Department should provide greater clarity for what constitutes educational services or the outcome of a borrower's education. Commenters also suggested an opportunity for borrowers to provide additional evidence before finalizing a partial discharge decision.

Other commenters raised different objections to the proposed partial discharge approach. They said that the Department should not adopt a presumption of full discharge, should conduct its own fact finding for each individual borrower to determine discharge amounts, and give institutions an opportunity to provide additional evidence during the process of determining the discharge amount. Commenters argued that the Department should be capable of assessing the value of an education and did not explain why it no longer thought it could do so. Commenters also argued that the Department should be able to calculate the value of the education and that the proposal to provide a 50 percent discharge if the Department could not easily quantify the amount of harm was not sufficiently reasoned. Commenters also raised many concerns with the examples provided, arguing that some were unrealistic, some did not clarify how they would interact with the presumption of a full discharge, did not address fact-specific elements like a borrower not getting an internship because they lacked the academic qualifications to be eligible for one, and displayed favoritism toward more selective institutions that were more likely to have claims against them result in partial discharge. Commenters argued for rebutting the presumption of a full discharge for claims approved under State law. Commenters argued that the risk of giving borrowers an insufficient amount of discharge needs to be better balanced against the risk of trying to recoup excessive sums from institutions. Commenters also connected the concerns about discharge amounts to other comments around the lack of harm in the overall standard. Commenters also disagreed with the Department's argument that all approved claims to date have been for full discharges since, in all but one instance, those were all against schools that were no longer in business.

Discussion: The Department has tried for many years to construct an approach for calculating partial discharges that is consistent and fair. This includes definitions that rest on principles and examples as well as formulas. The significant number of comments opposed to the concepts of partial discharge, both for those in favor of granting larger discharges and those in favor of granting smaller ones, demonstrate how complex it is to define a clear set of rationales for properly ascertaining the amount of a partial discharge to grant a borrower.

Based upon all of this feedback, the Department is convinced that articulating a clear and consistent standard for applying a partial discharge is not feasible. Instead, the Department will award a full discharge for approved claims, while adding language that an approved claim must be tied to an act or omission that caused detriment to the borrower that warrants relief in the form that BD provides. Such an approach also means that a separate calculation of the educational value of a program is not necessary.

The Department finds support for this conclusion in the nature of the remedy provided by a defense to repayment, including the legal principles it implicates and the practical realities of administering the remedial scheme. Although the student loan context is unique, a defense to repayment resembles rescissionary remedies available in contract law (avoidance and restitution or reliance costs),[110] restitution and unjust enrichment (rescission and restitution),[111] and rules governing unsecured consumer lending (obligor's defense to enforcement and recoupment).[112] Although we do not think it is appropriate or necessary to adopt specific rules from these areas of law, they provide helpful points of reference for considering the nature of the remedy that BD provides.

This type of remedy differs from damages. Generally speaking, a damages remedy seeks to measure and compensate an injured party for the harm they suffered; rescissionary remedies, on the other hand, emerge from principles of restitution and restore a party to the status quo ante. In the context of a fraudulent transaction, a damages remedy would seek to measure loss based on either the injured party's out-of-pocket costs or on the benefit of the bargain that the injured party lost as a result of the wrongdoer's fraud.[113] In contrast, relief like the rescissionary remedies mentioned above would seek to unwind the transaction altogether and restore the injured party to a pre-transaction status. The latter category of remedies may be appropriate where damages are unavailable or difficult to reliably estimate or where wrongful or intentional conduct undermines a key reason for entering the transaction in the first place.

Although BD combines interests that do not neatly fit distinctions in conventional legal doctrine, we think it more closely resembles the latter category of remedies described above, which informs our determination to omit the option of partial discharge. Partial discharge more closely resembles conventional damages remedies, which honor compensatory interests that exist in the BD context but present far more practical difficulties. A damages-like remedy in the BD context would suggest that recovery should reflect the difference between the actual value of the educational program and the price a borrower paid. It might also suggest

[110] The contract remedies of avoidance and restitution or reliance costs permit a party to avoid contractual obligations and recover amounts paid as part of performing or expended in reliance. *See* Restatement (Second) of Contracts § 376 (1981) (''A party who has avoided a contract on the ground of . . . misrepresentation, duress, undue influence or abuse of a fiduciary relation is entitled to restitution for any benefit that he has conferred on the other party by way of part performance or reliance.'').

[111] *See* Restatement (Third) of Restitution § 13(1) (''rescission and restitution'' when a transaction is ''induced by fraud or material misrepresentation''); *id.* § 54 (permitting a party to ''reverse the challenged transaction instead of enforcing it,'' and to recover any benefits the party relinquished).

[112] *See* U.C.C. § 3–305(a), *and* 16 CFR part 433 (together providing consumer-obligor defenses to repayment and claims in recoupment arising out of underlying transaction).

[113] This might be calculated by the difference in value between the product received and the price paid. Another possible measure is the difference between the value actually received and the value the bargain would have produced if the false representations had been true. *See* Dobbs & Roberts, Law of Remedies §§ 9.1(1), 12.1.

calculating the difference between the education's actual value and the expected marginal increase in a borrower's future earnings. We do not think there is a feasible way of reliably estimating the lost value that would factor into determinations of partial discharge.

This approach will address the concerns of both commenters that pushed for limiting partial discharge and those that were concerned about approved claims being tied to minor matters. For the former group, the elimination of a partial discharge ensures that any borrowers whose claim is approved will receive a full discharge. But for the latter group, the language ensuring that an approved claim must warrant this relief adds a requirement that the circumstances justify the remedy BD provides. This concept is captured in new § 685.401(e), which states that in determining whether an act or omission merits relief, ''the Secretary will consider the totality of the circumstances, including the nature and degree of the acts or omissions and of the detriment caused to borrowers.'' Removing the concept of partial discharge also eliminates the need for changes to the rebuttable presumption of a full discharge requested by commenters.

In applying § 685.401(e)'s totality-of-the-circumstances approach, the Department expects to draw on principles and reasoning underlying the application of rescissionary remedies that BD resembles, where factual circumstances call for it. We chose not to expressly adopt the precise standards from any of those areas, because none account for the unique combination of interests at work in the Federal student loan program or for the wide range of varying circumstances that arise in the context of adjudicating BD claims.[114] Because of the student loan context's unique characteristics, the Department anticipates circumstances that may warrant BD relief even if an equivalent remedy would not be available under conventional tests from contract law, restitution and unjust enrichment, or defenses to the enforcement of obligations of an unsecured loan.

The Department considered whether the regulations themselves should include a more specific enumeration of circumstances that will warrant relief, but ultimately determined that the most appropriate approach was to further develop the standard through adjudication of particular cases. To that end, in appropriate cases dealing with circumstances not specifically addressed in the regulations, the Department will make its explanations of remedy-related determinations public to guide affected parties and provide an opportunity for public scrutiny. As a general matter, however, the determination described in subsection (e) is informed by documented cases of fraud and misrepresentation that the Department has addressed in the past.[115] In those cases, the schools' acts and omissions related to borrowers' careers and employability, which are among the core reasons for seeking higher education. In addition, the detriment that borrowers suffered often reflected receiving far less value than the tuition and fees their loans paid for. In those cases, the schools' conduct and resulting harm also often left borrowers unable to meet their loan obligations within a reasonable time. These, however, are only certain attributes of past cases; that is, we consider the circumstances related to those schools to fall within the heartland of what warrants discharges, and we anticipate the range of circumstances warranting discharges will extend beyond these past examples.

The Department also adopts a rebuttable presumption that, for claims that otherwise satisfy the standard, the detriment caused in the case of closed schools will be sufficient to warrant relief. This is based on the Department's experience that when a school closes and is shown to have been responsible for the misconduct encompassed by ''actionable acts or omissions,'' the borrowers shown to have been injured by that conduct are very likely to fall within the circumstances that warrant relief. This also acknowledges that when schools close, it is often challenging for borrowers or for the Department to obtain additional evidence that may be necessary to fully establish the nature and degree of detriment. In such situations, the Department does not want to make borrowers worse off because their institution has closed. This does not mean that every otherwise proven claim from a borrower who attended a closed school will necessarily be determined to warrant BD relief. Rather, in such cases are determined not to warrant relief, the Department will cite to the specific reasons and evidence for that conclusion.

The Department disagrees with the allegations by the commenters that its prior consideration of partial discharges had been shielding a specific type of institution. The Department has crafted a set of rules based upon what we have seen as misrepresentations, omissions, and other acts over time and there are no sector-specific limitations to those standards.

Changes: We revised the definition of borrower defense to repayment under § 685.401(a) to indicate that the Department must find that the act or omission caused detriment to the borrower warranting relief in the form of a full discharge of the outstanding balance, reimbursement of all amounts paid to the Secretary, deletion of the relevant credit history, and, in the case of a borrower in default, restoration of the ability to access title IV financial assistance. We have also added § 685.401(e), which states that in determining whether a detriment caused by an institution's act or omission warrants relief under this section, the Secretary will consider the totality of the circumstances, including the nature and degree of the acts or omissions and of the detriment caused to borrowers. For borrowers who attended a closed school shown to have committed actionable acts or omissions that caused the borrower detriment, there will be a rebuttable presumption that the circumstances warrant relief.

Comments: Commenters argued for a greater institutional role in calculating the amount of the discharge. They argued for a separate opportunity to provide a response on the discharge amount. Commenters also argued for the Department to conduct individual fact finding on harm.

Discussion: The Department disagrees with commenters. As noted elsewhere in this rule, the adjudication of borrower defense claims is a matter between the borrower and the Department. Institutions are given a considerable opportunity to submit evidence during that stage and will have a more extensive role during any efforts at recoupment. However, given that the Department is awarding a full discharge for any approved claim, that means an institution's response to the claim itself will also present it with an opportunity to submit evidence regarding the degree

[114] Among many other differences, a student loan differs from a mortgage, car loan, or other secured transaction, because there is no property to repossess or partially satisfy the debt. Likewise, in contrast to other types of loans, in the student loan context a misrepresentation that induces student debt is often inextricably intertwined with (and can often be one cause of) the borrower's inability to repay the loan; for some students, boosting earning capacity is the very reason they took out the loan in the first place, and it may be dispositive for whether they can ultimately pay the loan off. Furthermore, a student loan cannot be discharged in bankruptcy in the same way as other loans. These and other differences between student loans and other transactions inform our conclusion that drawing on principles surrounding rescissionary remedies in other areas of law is best suited for the context of specific cases.

[115] *See, e.g.,* examples cited in *supra* note 24.

of harm caused by the alleged acts or omissions and detriment. As for the discussion about individualized fact finding related to harm, the Department directs commenters to this discussion in the *Federal Standard* section, which explains, among other things, assessing individualized harm for each claim on a case-by-case basis is not an approach that is realistic or administratively feasible.

Changes: None.

Borrower Defense to Repayment—Recovery From Institutions (§ 685.409)

Comments: Many commenters urged the Department to hold institutions accountable for acts or omissions that give rise to a successful defense to repayment. Other commenters encouraged the Department to limit the exceptions to recoupment, and even if the cost of collection exceeds the amounts received or if the claims were approved outside the limitations period, the Department ought to recover as much funds as possible in the interest of making the taxpayer whole.

Other commenters expressed reservations about the Department's ability to recoup from the institution. These commenters stated that the Department did not have a legal obligation to detail the instances in which it would not seek to recoup because doing so would undermine its overall prosecutorial discretion. The commenters suggested eliminating § 685.409(b) or revising § 685.409(b)(1) to note the Department's discretion will be consistent with typical practice. Other commenters stated that the Department lacked the statutory authority to impose borrower defense liabilities against affiliated persons of closed schools.

Other commenters suggested that by requiring the Department seek recoupment from schools and school owners in all but a few narrow circumstances, the regulations will inadvertently constrain how much relief the Department is willing to provide borrowers. These commenters suggested that the Department would be reluctant to grant relief when doing so might result in an institutional liability that would push a school to close. Additionally, commenters theorized that if the Department is required to pursue recoupment, and believes schools will contest recoupment, then granting BD claims will create substantial additional administrative, legal, and resource demands on the Department. Commenters believed that this would decrease the likelihood that the Department would grant meritorious claims or pursue group processes.

Discussion: We take our responsibility to oversee and protect the taxpayer investment seriously and believe institutions should be held to their financial obligations when their actions result in discharge-related liabilities. Recoupment is a critical tool for ensuring that the institution that committed acts or omissions that lead to approved claims help offset that cost. And it is one of several ways to deter future unwanted behavior. In support of the commenters' request to hold institutions accountable, we proposed § 685.409, which is the framework under which we would seek recovery from institutions of the amounts that the Secretary discharges from BD claims and proposed to use existing procedures for pursuing liabilities under part 668, subpart H proceedings. We discuss recovery proceedings and the subpart H context elsewhere in this document. We proposed limited circumstances under which the Department would not recoup from institutions, namely: the costs of collecting would exceed the amounts received; the claims were approved outside the limitations period; a preexisting settlement agreement precludes additional financial recovery; and the Secretary already collected on the claim in a separate proceeding. In response to commenters who suggested limiting when the Secretary may choose not to collect, we decline. Settlement agreements or recoveries in other Secretarial collection actions may preclude the Secretary's ability to collect and we are merely codifying those limited circumstances on recovery here.

We disagree with commenters who stated that we lack the statutory authority to institute action to collect the amount of approved BD claims from persons affiliated with closed schools. As we discussed in the NPRM, Sec. 454(a)(3) of the HEA provides that an institution must accept responsibility and financial liability stemming from its failure to perform the functions set forth in its PPA—the signed document required for participating in the Federal financial aid programs through which the institution and other relevant parties agree to abide by the rules and requirements governing the programs.[116] This commitment includes persons affiliated with the institution who do not just inherit and profit from the assets of the institution but also assume its liabilities—which, in this case, would be the liabilities associated with the approved BD claims. In the case of a closed school, we described the persons affiliated with the institution as those individuals described in § 668.174(b). The Department proposed this recoupment framework to protect taxpayers as much as possible from losses caused by the actions of schools and affiliated persons.

Because the BD framework is a bifurcated process, the recovery provisions under § 685.409 would have no bearing on the separate process of adjudicating the claim. We dismiss any unfounded conjecture that the recoupment process itself would decrease the likelihood of granting meritorious claims.

Changes: None.

Comments: Some commenters argued the Department failed to consider that institutions may force borrowers to repay them for the cost of loan discharges. Others argued that the Department did not consider that an institution may withhold the transcripts of borrowers whose BD claims are approved, making it harder for the borrower to obtain work.

Discussion: We see no basis for an institution requiring a borrower to repay the cost of a loan discharged due to an approved BD claim. As noted in this final rule, the decision whether to discharge a loan is between the borrower and the Department. The act of recouping on that discharge is between the Department and the institution. We see no reason why an institution would have an enforceable right to shift liability to the borrower.

With regard to transcript withholding, we note that such policies may have separate implications under State and Federal consumer protection laws. Likewise, transcript-withholding practices have also drawn increased scrutiny from the Department independent of this rule and from the CFPB.[117]

Changes: None.

Recoupment Procedures

Comments: Some institutions argued that the recoupment process should occur under subpart G and objected to the Department's proposal to remove § 668.87. Commenters stated that striking § 668.87 represents an extraordinary oversight and the Department should provide institutions a meaningful opportunity to comment on any recovery process. Commenters also argued that the Department had not used § 668.87 to seek recoupment of an approved borrower defense claim and thus could not have a reason for moving

[116] 87 FR at 41911.

[117] *See, e.g.,* CFPB, *Student Loan Serv. Special Ed.,* 27 Supervisory Highlights, Fall 2020, at 8–9, *https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf.*

away from it. Commenters also argued that reaching faster decisions on claims was not a sufficient reason for shifting to a new recoupment process.

A few commenters stated the Department does not include any regulatory text in the proposed rule that guarantees, specifies, or even suggests that recovery proceedings will occur under subpart H. A few commenters asked if the shift to part 668, subpart H would mean that the same time limits that apply to program reviews would be applied, such as 30 to 90 days to respond a review and 45 days to appeal any final decision.

Discussion: We disagree that recoupment proceedings should be processed under subpart G, and we reiterate that the recoupment process under subpart H is the proper venue. The recovery of amounts discharged concerns monetary liabilities due to the Department, which is chiefly administered through subpart H; subpart G pertains to fine, limitation, suspension, or termination proceedings.

When the Department initially issued final rules on recovery proceedings under § 668.87, subpart G appeared a more appropriate fit because those recovery proceedings also included combined consideration of certain fact-finding steps like the actual claims' merits and relief for members of the group. In doing so, however, it made BD recovery an outlier among the other procedures in subpart G—that is, a fine, limitation, suspension, or termination proceeding involves punitive measures, whereas subpart H appeals are more appropriate in cases involving the recovery or reimbursement of federal funds owed.[118] In light of the other updates to the BD process, we consider subpart H the appropriate venue for recovery.

First, the updated structure and sequence of the process for adjudicating BD claims includes new features to make it a more robust fact-finding process, which also provides for considerable input from schools. But as we explain more in the ''*General Opposition to Regulations*'' section, BD claims reflect a defense that borrowers assert against repaying the Department and that is principally a Department-borrower matter. It would not make sense to treat a BD claim's merits and school liability as coextensive or to make BD claims' adjudications a series of adversarial steps between the borrower and school—nor would such a sequence be administratively feasible for the volume of BD claims that the Department now faces. As part of the updated structure's acknowledgement of those realities, the decision of whether to approve the claim is handled through the process outlined in § 685.406, which avoids the previous structure's combined merits-relief-recovery step that was a reason for including recovery proceedings in subpart G.

Second and relatedly, in light of that updated structure, there is little reason for recovery to remain an outlier among the punitive steps provided for in subpart G. As noted, BD recovery more closely matches the other means of recovering federal funds provided for in subpart H. As we explain in the ''*Federal Standard*'' section of this document, relief in the form of a defense to repayment, though unique, resembles features of remedies like rescission, avoidance, restitution, and certain forms of out-of-pocket or reliance costs, not punitive remedies like special, consequential, or exemplary damages—which underscores that recovery proceedings were an outlier in subpart G. In light of the buttressed fact-finding procedures now included in BD-claim adjudication under the updated structure, it makes more sense to avoid leaving recoupment as an outlier in subpart G and focus it on what it is, which is recovering liabilities from the institution rather than a punitive step like the other subpart G proceedings.

Contrary to at least one comment's suggestion, the 2016 BD regulations do not acknowledge that the Department *should* bear the burden of proof in any recovery action against an institution. Rather, the 2016 BD regulations acknowledged that the proponent of a BD claim bears the burdens of production and persuasion in relation to the claim's merits. The 2016 regulations combined determinations of claims' merits into a single step along with determinations of relief and recovery, and it only envisioned the Department as the proponent of granting group claims. In that context, it made more sense for the Department to bear all relevant evidentiary and persuasive burdens as part of that step. The updated regulations still assign the burden of persuasion on a claim's merits to its chief proponent, but the new regulation's update acknowledges that proponent will often be third-party requestors or simply individual borrowers. Having avoided combining merits, relief, and recovery determinations into a single step, the 2016 regulations' description of the relevant burdens is not applicable.

We believe that, in addition to schools' opportunities to submit evidence and arguments during the adjudication stage, using the familiar process in subpart H will provide institutions with a meaningful opportunity to contest any liabilities sought in recoupment.[119] While it is true that the subpart G process has also been in use for some time, it is used far less frequently than subpart H. For instance, since October 1, 2017, the Department received about 175 subpart H appeals compared to just under 75 actions initiated under subpart G.[120]

In response to the commenters who stated the Department does not include any regulatory text in the proposed rule that guarantees, specifies, or even suggests that BD recovery proceedings would occur under subpart H, we agree that the regulations should better reflect the recovery proceedings. Therefore, we are adding regulatory text that makes clear the Secretary will recoup these amounts discharged under a subpart H proceeding. We are including a new § 668.125 to part 668, subpart H to add specific provisions related to the proceedings for recouping the costs of approved borrower defense claims from institutions. Under these provisions, institutions will have 45 days to request a review of the determination that they are liable for the amounts discharged, with that period running from the day the institution receives a written notice from the Department. This timeline mirrors the process for other part 668, subpart H proceedings and addresses the questions from commenters about how timelines for borrower defense would compare to program reviews.

The added language also specifies that the written notice's request will fulfill the role of a final program review or final audit determination as described in §§ 668.115 to 668.124. This ensures that the correct document will be used for all the proceedings under this part. The Department also adds language in § 668.125(e) to specify that the Department has the burden to prove that the loans it is seeking to recoup on were discharged for the purposes of borrower defense and that the institution has the burden to prove that the decision to discharge the loans was incorrect or inconsistent with law and thus that the institution should not be liable. Also within paragraph (e), the Department

[118] *See, e.g., In re The Hair Cal. Beauty Acad.,* Dep't of Educ. OHA Docket No. 2018–13–SP (July 2, 2019), at 13 (explaining the ''distinctions between appeals within the Department under Subpart H (which address recovery of federal funds) and under Subpart G (which address fines, penalties, terminations and other civil punishments)'').

[119] 87 FR at 41912.

[120] These figures are based on a Department of Education analysis of subpart G actions initiated or subpart H appeals submitted to the Administrative Actions and Appeals Service Group within Federal Student Aid since October 1, 2017.

specifies the types of evidence that may be submitted in the hearing, which is limited to (1) materials submitted to the Department during the process of adjudicating the claims, which includes information from borrowers, the institution, or other third parties; (2) any materials the Department relied on to adjudicate claims and that the Department provided to the institution; and (3) any other relevant documentary evidence submitted by the institution related to the bases cited by the Department's decision to approve the borrower defense claims and pursue recoupment.

Changes: We have added § 685.409(d) to provide that in requiring an institution to repay funds to the Secretary in connection with the program review issued concerning the institution's act or omission that gave rise to a successful claim under this subpart, the Secretary follows the procedures described in part 668, subpart H. We have also added new § 668.125 within part 668, subpart H that specifies certain procedural elements specific to a borrower defense recoupment proceeding as described above.

Comments: Commenters suggested the Department provide greater detail on the proposed change to the recoupment process, including specifically placing the burden on educational institutions, demonstrating that the proposed framework is permissible under the HEA, and explaining why the Department believes it is better to allocate the burden in recoupment proceedings to the educational institution rather than to the Department. These commenters suggest that, although the proposed rule provided some of the Department's reasoning, the final rule could be more comprehensive and more explicit. Commenters stated that since the HEA supports the proposed recoupment process and burden allocation, the final rule should cite the relevant regulatory authority and case law that supports the Department's interpretation of the HEA, in addition to elaborating on the reasons behind the change.

Discussion: We appreciate the feedback from the commenters. In this rule, we are separating the process for adjudicating a BD claim from the process for recouping the government's loss from the responsible institution. Under this rule, if the Department initiates an action to recoup from the institution, it will follow the procedures provided in 34 CFR part 668, subpart H, which apply to other actions in which the Department attempts to recoup funds from a participating institution. Under those rules, following an audit or compliance determination by the Department, the institution has the burden of demonstrating that its receipt or expenditure of funds was appropriate and in compliance with applicable conditions. That approach is appropriate here since the institution is the party which is most likely to have relevant records relating to the basis of the BD claim and because the institution had an opportunity to present relevant evidence and arguments at the time the Department was adjudicating the claim. To switch the burden of production would create a disincentive to institutions to submit their evidence during the earlier process thus limiting the record before the Department when it is adjudicating claims.

Changes: We have added new § 668.125 within part 668, subpart H that specifies certain procedural elements specific to a borrower defense recoupment proceeding as described in the response to the prior comments.

Comments: A few commenters objected to using part 668, subpart H, saying that it provided more limited rights than what is available under part 668, subpart G. Commenters pointed to the ability to have live witness testimony and, discovery in particular, as elements not available under part 668, subpart H. Commenters also noted that only certain types of evidence can be brought under part 668, subpart H, which would not be the most relevant for defending allegations. They also argued that without showing student harm the Department could not recoup the compensatory damages contemplated under part 668, subpart H. Commenters also asked whether the timeline for this proceeding would match the same timeline used for other part 668, subpart H proceedings.

Discussion: The processes of part 668, subpart G are designed to address the issues presented in those cases—the possible termination, limitation or suspension of the institution's title IV program participation or the imposition of a penalty on the institution. In contrast, the processes provided under part 668, subpart H are designed to resolve issues relating to whether the institution owes a financial liability to the Department. In the BD context, the issue is the latter (financial liability) not the former. The Department has successfully used the processes in subpart H to resolve financial liability issues for more than 30 years, including in cases where the Department is pursuing liabilities from an institution based on approved closed school and other discharges. The commenters did not provide any examples of situations in which the processes provided in subpart H would not be sufficient to address the issues presented. We also note that many commenters' have a misunderstanding of the subpart G process. There is no right to discovery in subpart G and there is no automatic right for the parties to present oral testimony or oral argument. Instead, the hearing officer sets the procedures to be used based on the issues presented as outlined in § 668.89(a) and (b). In BD cases, the institution will have had the opportunity to rebut the evidence and arguments supporting the claims during the adjudication process and will have seen how the Department addressed its arguments during that process. If the Department decides to pursue collection of the liability from the institution, the subpart H process provides an opportunity for the institution to present its arguments that it should not be held liable for the value of the claims granted. This process also affords institutions the ability to appeal the decision of the hearing official to the Secretary.

As noted above, the Department has added language in the new § 668.125 to address certain issues raised by commenters. This specifies the types of evidence considered during the proceedings and confirms the time provided for an institution to request a hearing after receiving written notice.

Changes: We added new § 668.125 that lays out the procedures for a proceeding under part 668, subpart H related to recoupment efforts on approved borrower defense claims. Those additions are described above.

Comments: A few commenters suggested that holding executives and owners personally liable, as authorized under the HEA, would produce two intended results: reducing the burden on students and taxpayers for decisions made by these individuals that resulted in harm to students and creating a deterrent effect on the owners, executives, and board members of these institutions. These commenters urged the Department to adopt specific processes to facilitate the recoupment of funds from the owners and executives of institutions subject to borrower's defense claims, regardless of whether the school has closed.

Discussion: We decline to incorporate specific additional processes to seek recoupment of funds from owners of institutions subject to BD claims. We believe that the financial responsibility regulations in part 668, subpart L, along with the regulations in § 685.409 provide us with adequate authority to recover from owners in circumstances permitted by the HEA.

Changes: None.

Comments: Many commenters noted that there was no regulatory text to accompany the NPRM preamble's mention that we would not seek to recoup on approved claims stemming from an act or omission that would not have been approved under the standard in effect at the time the loan was first disbursed.

Discussion: The Department is adding regulatory text to clarify the policy laid out in the NPRM. Though the standard in this regulation will apply to all claims pending on or received on or after July 1, 2023, in § 685.409(b) the Department has added language noting that it will not seek to recoup on an approved claim under this regulation unless it would have been approved under the 1994 regulation standard for loans first disbursed prior to July 1, 2017; the 2016 regulation standard for loans first disbursed on or after July 1, 2017, and before July 1, 2020; and the 2019 regulation standard for loans first disbursed on or after July 1, 2020, and before July 1, 2023.

Changes: Because the standards in this rule will apply to claims pending on or received on or after July 1, 2023, we revised § 685.409(b) to clarify that the Secretary shall not collect from the school any liability to the Secretary for any amounts discharged or reimbursed to borrowers under the discharge process described in § 685.406 unless: for loans first disbursed before July 1, 2017, the claim would have been approved under the standard in § 685.206(c)(1); for loans first disbursed between on or after July 1, 2017, and before July 1, 2020, the claim would have been approved under the standard in §§ 685.222(b) through (d); and, for loans first disbursed between on or after July 1, 2020, and before July 1, 2023, the claim would have been approved under the standard in § 685.206(e)(2).

Comments: A few commenters suggested that the Department conduct a second adjudication under the 1994, 2016, or 2019 regulation, as applicable, before attempting to recoup any approved claims that would have originally been covered by one of those regulations. The commenters noted that the borrower would not have to participate under that process.

Discussion: The Department disagrees with these commenters. Approving a BD claim will not automatically trigger a recoupment process. Instead, as specified in § 685.409, the Department will need to initiate a part 668, subpart H proceeding. As part of that process, the Department would need to demonstrate how the approved claim it seeks to recoup would have met the standards for approval under the relevant regulation. This will provide the institution the information it needs to contest whether that claim would in fact have been approved under the relevant regulation. We will also provide the institution with an opportunity to respond in the relevant proceeding before making a final determination.

Changes: None.

Comments: Some commenters suggested that the Department not bifurcate the processes of approval of BD claims and recoupment. They argued for keeping the two processes together—in particular due to, what they described as, the significant harm to an institution just from approving a claim. They also noted that any approval puts an institution one step closer to recoupment. Another commenter pointed out that the Department did not give examples of how a borrower must cooperate in any recoupment proceeding.

Discussion: The Department declines the commenter's suggestion to combine the approval of BD claims and recoupment. As we discuss elsewhere in this preamble, the adjudication of borrower defense claims is a matter between the borrower and the Department, and recoupment is a matter between the institution and the Department. These are two separate proceedings with different parties and, as such, require different processes. Similarly, the Department disagrees with the commenter's claim that the mere act of approving a BD claim imposes exposure on the institution so extensive that approval and recoupment cannot be disconnected. These concerns are addressed in more detail by the Department's responses in the ''*General Opposition to Regulations*'' section related to comments on institutional reputational and other forms of harm. We also note that the argument about all approvals putting an institution one step closer to recoupment overlooks the actual provisions and structure of this rule. In this rule, the Department outlines several situations in which an institution will not face a recoupment proceeding, including claims outside the limitations period for recoupment or those that would not have been approved under the BD standard in place at the time of the loan's disbursement. The Department also retains the discretion whether to pursue recoupment from the institution in other circumstances.

We specify in § 685.410 that to obtain a discharge, a borrower must reasonably cooperate with the Secretary in any proceeding under these regulations. Because recoupment is a matter between the institution and the Department, the borrower would be a non-party at the recoupment stage because, by then, the borrower's BD claim would have been adjudicated. The sworn statement under penalty of perjury and any other materials submitted by the borrower when they applied are likely to be the most important items from the borrower in a recoupment proceeding. The cases where additional cooperation might be necessary would vary depending on the specifics of the recoupment effort and the facts involved. Accordingly, the Department expects that borrowers will provide any necessary additional assistance as relevant and requested when conducting a recoupment proceeding.

Changes: None.

Time Limit for Recovery From the Institution

Comments: Many commenters recommended that either a 5- or 6-year time limit for recovery from the institution would be optimal to both benefit borrowers and maintain fairness for institutions. A few proposed a 3-year limitation period to align with the record retention requirement for student aid records.

A few commenters suggested limiting the tolling period and suggested revised language. The commenters stated tolling should come to an end and allow the institution to maintain its business without the fear of receiving BD claims at some indeterminate date in the future. Similarly, some commenters expressed concerns about the lack of any limit on the recoupment period for claims approved due to a judgment. Other commenters proposed that the limitations period should be temporarily suspended upon notification by the Department and that any pause should cease upon the issuing of a final decision on the claim or the issuing of a judgment. One commenter requested that the Department make the regulatory text more definitive as to when events suspend the limitations period. Finally, commenters also suggested that the Department issue a decision within 1 year of the final decision notice about whether it would seek to recoup.

Discussion: The Department sought feedback in the NPRM on whether to use a 5-year or 6-year limitations period for BD recoupment proceedings.[121] After careful consideration, the Department is convinced that a 6-year limitations period for recoupment is appropriate. In part, we believe that,

[121] 87 FR at 41913.

because some States have 6-year limitations periods for consumer protection claims and that a borrower could assert a State law standard during reconsideration as a defense to repayment, a 6-year time frame would give the Secretary the ability to recoup the costs of approved BD claims. The limitations period would be tolled if the Department notifies the institution of the BD claim.

We disagree with commenters who suggest a 3-year limitations period. The Department believes this time frame is too short, as it minimizes the financial remedies for the Department.

We also disagree with the proposal to limit the recoupment period for judgments. Obtaining a judgment often takes years after a complaint is filed. The Department is concerned that the limitations period for recoupment could expire while a case is working its way through the litigation process. Using a clock on judgments could also encourage institution to intentionally extend case schedules rather than expeditiously moving a case closer toward resolution. Given that the litigation process produces and preserves evidence, and that a judgment follows a robust factfinding process, the lack of a limitations period for judgments is appropriate.

In response to the commenter who requested that the Department alter the regulatory text on tolling the limitations period, we disagree that the text is vague as the commenter described. The relevant text in those provisions reflects existing regulatory language,[122] and the word ''may'' is used to avoid presupposing that the school's acts or omissions impacted the borrower or that the borrower's claim should be granted. We enumerated the instances when certain notifications toll the limitations period: when the Department official notifies the school; receipt of a class action complaint; and upon a civil investigative demand or other demand for information from a competent authority. We believe the regulatory text in § 685.409(c) is clear. We are, however, making slight modifications to the regulatory text on the school's receipt of a class action complaint to state the limitations period is tolled when a class is certified in a case against the institution asserting relief that may form the basis of a BD claim.

We are partially accepting the proposal by commenters to not keep the limitations period permanently suspended even after a final decision is issued. In particular, if there is a final agency decision to deny an application, it would be reasonable to cease the tolling of any limitations period, since that would keep a denied claim potentially available for recoupment until the loan is paid off. Therefore, we are updating § 685.409 to cease the suspension of any limitations period upon issuing a final agency decision to deny a claim. We, however, decline the other suggestions from the commenter to cease the suspension of the limitations period upon any approval, or to announce the Department's intentions regarding recoupment within 1 year of a final decision. Based on past experience, the Department is highly likely to receive additional individual applications after the approval of claims. As such, the universe of approved claims under which the Department may seek to recoup could grow over time. It would be more efficient for both the Department and the institution to conduct a single recoupment effort for similarly situated claims. As such, preserving flexibility for a delay between approval and any initiated recoupment is appropriate.

Changes: We revised § 685.409(c)(2)(ii) to state that the limitations period does not apply if a class that may include the borrower is certified in a case against the institution asserting relief that may form the basis of a BD claim. We also added new § 685.409(c)(4) to note that the suspension of the limitations period in this section will cease upon the issuing of a final decision to deny a claim under § 685.406(f)(2).

Comments: A few commenters argued that tolling the limitations period for a class action complaint is too broad. These commenters also stated that written notice of a State investigation is too low a bar to toll. These commenters suggested that tolling of the limitations period be limited to final, non-default adverse judgments regarding a class action complaint asserting relief for a class, or written notice of a final adverse action, or non-appealable finding of a civil investigative demand from a Federal or State agency.

Discussion: We agree with the commenters in part. Simply filing a class action complaint is too low a bar for tolling the limitations period, as a judge may then decline to certify a class. Instead, requiring a class to be certified in a case against the institution establishes a more meaningful bar for tolling the limitations period. This balances the need for the Department to pause the limitations period so that cases can run their course and potentially lead to an approvable BD claim without holding an open-ended limitations period over an institution for every complaint filed.

We disagree, however, with the suggestion to unlink the limitations tolling from the filing of a written State investigation request. As we state in the NPRM, such notice would make the institution aware of the issue and the possibility of related action, essentially alleviating the concerns that a limitations period is meant to address. Receiving such formal notice would require the institution to maintain relevant records and thus addresses any concerns about institutions no longer retaining any relevant records.[123] Moreover, we are concerned that if we did not toll the limitations period upon receipt of the investigation request, the institution may have an incentive to intentionally delay providing responsive documents to avoid the prospect of recoupment.

We also disagree that tolling should only be keyed to final adverse outcomes or findings. As a general matter, a limitations period serves interests in finality, providing notice to defendants, and avoiding adjudications based on stale or disappeared evidence. We do not believe that waiting until final adverse outcomes or findings is needed to account for those interests. Instead, we believe that the events the regulations identify for tolling purposes reflect reasonable points in time that acknowledge the sequence in which Department is likely to learn of relevant bases for relief but that still address interests in finality and avoiding unlimited periods of liability.

Changes: None.

Comment: One commenter argued that since a portion of many borrowers' loans are for costs not attributed to the institution, such as room and board, the Department should not try to recoup on the full amount of all discharges.

Discussion: The Department disagrees. When a student borrows, they are taking out money for the cost of attending that institution and the cost of attendance (COA) is calculated by the institution. It is important to note that institutions have the discretion to determine a reasonable COA based on information they have about their students' circumstances. It would not be appropriate to limit recoupment to some lesser amount. Moreover, given that money is fungible, there is no feasible way to distinguish what funds went to living expenses versus other purposes.

Changes: None.

[122] *See, e.g.,* 34 CFR 685.222(e)(b)(iii)(B)–(C).

[123] 87 FR at 41913.

Pre-Dispute Arbitration and Class Action Waivers (§§ 668.41, 685.300, 685.304)

General Support for Pre-Dispute Arbitration and Class Action Waiver Regulations

Comments: Many commenters supported the Department's proposed rules to prohibit mandatory pre-dispute arbitration and class action waivers and agreements. These commenters acknowledged that the regulation is within the Department's authority under Sec. 454(a)(6) of the HEA, which authorizes the Department to include in the PPA such ''provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of'' the Direct Loan program. One commenter specifically noted that students should not have to forfeit their rights in pursuit of higher education and that had these students been aware of potential wrongdoing earlier, fraudulent activity could have been curtailed.

Discussion: We appreciate the many commenters who wrote in support of these regulations prohibiting institutions from requiring pre-dispute arbitration agreements or class action waivers from borrowers who obtained or benefitted from a Direct Loan. The Department's experience in reviewing and resolving BD claims demonstrates that many borrowers have been misled into attending predatory institutions, all the while incurring student loan debt. We believe it is in the public interest to ensure that these borrowers' rights under the Direct Loan Program, such as their ability to file a BD claim or pursue other appropriate legal relief, are not abrogated by an institution that has chosen to participate in the Direct Loan Program.

Changes: None.

Comments: Several commenters urged the Department to take appropriate enforcement action against any institution that intends to circumvent the notice provisions in these regulations.

Discussion: We agree with the importance of these requirements. The Department intends to vigorously assess institutions' compliance with these regulations and enforce them to protect borrowers' rights.

Changes: None.

General Opposition for Pre-Dispute Arbitration and Class Action Waiver Regulations

Comments: A few commenters representing institutions opposed the Department's prohibition of mandatory pre-dispute arbitration agreements, arguing that such prohibition adds complexity, cost, and uncertainty to the resolution of student complaints. These commenters further asserted that arbitration allows for faster and more cost-effective resolution of disputes when compared to litigation via the judicial system. They further argued that defendants and claimants have the same legal rights in arbitration as in court.

Another commenter stated that the Department did not sufficiently explain its analysis for the proposed regulatory changes pertaining to arbitration agreements. This commenter further asserted that we failed to engage with the justifications for the current regulation in a meaningful manner and, therefore, the Department did not provide the public a sufficient basis to justify the rule change.

Discussion: We disagree with commenters who characterize pre-dispute arbitration agreements as more beneficial to students and borrowers. As discussed in the NPRM, the Department believes that the history of the Federal student loan programs demonstrates that mandatory pre-dispute arbitration agreements and class action waivers impede borrowers' ability to file BD claims and receive appropriate relief and discharges.[124] As noted in the NPRM, Corinthian Colleges included mandatory arbitration and class action waivers in students' enrollment agreements; these students effectively could not receive BD relief due to the restrictive covenants in their enrollment agreements. Including such provisions in the students' enrollment agreements further insulates institutions from financial liability and severely limits the opportunities for borrowers to pursue recovery while bringing their claims about the institutions' misdeeds to the attention of appropriate regulators and the public.

In response to the commenter who stated that we did not sufficiently explain our analysis for the changes pertaining to pre-dispute arbitration agreements, we note that we explained in the NPRM our reasons for prohibiting pre-dispute arbitration agreements in students' enrollment agreements and the basis for the policy changes from the 2019 rule.[125] We reviewed both the 2016 NPRM and the 2019 final rule and remain concerned about current and prospective students' ability to assess the potential burdens and risks they assume when they choose to attend an institution that includes mandatory arbitration and class action waivers in its enrollment agreement. The NPRM also highlighted those areas where the 2019 regulations failed to protect borrowers and taxpayers.[126] We also note that the 2019 regulations relied on evidence of the efficacy of arbitration that is inconsistent with the actual experience in the student loan programs administered by the Department.

Changes: None.

Comments: Multiple commenters requested that the Department maintain the current regulations with regard to pre-dispute arbitration agreements and class action waivers. One commenter posited that the Department's rationale for regulating pre-dispute arbitration agreements was vague enough to allow for arbitration bans tied to any source of Federal funding. One commenter also alleged that the Department did not consider the benefits of arbitration when developing these regulations. Another commenter claimed that the Department has not explained how these regulations better balance the costs and benefits of arbitration.

Discussion: The Department has the authority to regulate the use of pre-dispute arbitration agreements under Sec. 454(a)(6) of the HEA, which authorizes the Department to include in the PPA such ''provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of'' the Direct Loan program. Such purposes include providing financing for students to pursue postsecondary education and obtaining repayment for the taxpayers. To obtain repayment, the loans must be enforceable obligations. To ensure that loans are enforceable, borrowers must have a full opportunity to raise legal issues regarding the institution's conduct and services and access to timely and pertinent information that may inform their enrollment decisions.

The Department's actions are tied specifically to promoting the interests of the Direct Loan program. Institutions choose to participate in the Direct Loan program and are subject to many restrictions and requirements relating to that participation. If an institution voluntarily signs a PPA to participate in the Direct Loan program and benefit from public funds, then it must agree to abide by the conditions the Department determines are necessary to safeguard borrowers, taxpayers, and the integrity of the program.

In response to the commenters who stated that the Department failed to consider the benefits of arbitration and the costs and benefits associated with arbitration, we considered the effect of

[124] 87 FR at 41914.

[125] 87 FR at 41914–41918.

[126] 87 FR at 41915.

pre-dispute arbitration agreements on the achievement of the goals of the Direct Loan program. For a borrower to fully obtain the benefits of the Direct Loan program, a Federal public benefit, all of the benefits must be available to the borrower without obstruction or delay including a borrower defense discharge. As we explained in the NPRM, we concluded that these pre-dispute arbitration agreements frustrate the purposes of the Direct Loan program.[127]

We recognize that arbitration may provide some potential efficiencies for institutions and consumers and the regulations do not discourage institutions from offering or promoting arbitration to complainants once a grievance is reported. The regulations instead only forbid institutions from imposing arbitration upon Direct Loan borrowers as a mandatory barrier to seeking relief through other means. The regulations also do not bar institutions from immediately addressing a grievance as fully as it can, whether or not the student chooses to raise the complaint to outside authorities.

Changes: None.

Pre-Dispute Arbitration and Class Action Waiver Notices

Comments: A few commenters suggested that we clarify that institutions must use the notice language included in the final regulations verbatim and without conditions. These commenters cited a recent court decision in compelling students to pursue arbitration *Britt* v. *Florida Career College* as the basis for the commenters' suggestion.

Several other commenters asked the Department to clarify the timing of notices sent to borrowers to ensure that they be made aware as quickly as practicable that their rights to pursue claims in court have been restored, both individually and as part of a class.

Discussion: The regulations at § 685.300(e)(3) clearly state the specific language that institutions must use in notices (and amendments to notices) provided to borrowers whose class action rights are restored under these regulations, as well as when institutions must deliver such notices or amendments. Similar provisions apply for the regulations at § 685.300(f)(3) for pre-dispute arbitration agreements.

Changes: None.

Comment: One commenter requested clarification regarding an instance where an institution that otherwise satisfied the requirements to notify students that the institution complies with § 685.300(e)(3), moves to dismiss, defer, or stay a class action lawsuit, without reference to the agreement.

Discussion: The Department believes that the regulation clearly refers to the institution's use of pre-dispute arbitration agreements in certain types of cases. We do not believe that further clarification is needed.

Changes: None.

Internal Dispute Process

Comments: Several commenters expressed concerns with provisions that would restrict institutions from requiring students to pursue complaints related to a BD claim through an internal dispute process before presenting it to an accrediting agency or government agency. These commenters assert that requiring students to attempt to resolve disputes internally before filing a claim would lower the number of pending BD claims and provide borrowers with a faster resolution when disputes arise. In addition, commenters claim that reliance upon an internal dispute process would be consistent with the processes established under the Federal Arbitration Act (FAA) for resolving disputes without protracted legal challenges.

Discussion: We recognize that some internal dispute resolution processes provide some potential merits and efficiencies, and the regulations do not discourage the use or promotion of internal grievance procedures. Instead, the regulations only forbid institutions from imposing a mandatory barrier upon borrowers before seeking relief through other means. The regulations also do not bar institutions from immediately addressing a grievance as fully as they may wish, regardless of whether the student chooses to raise the complaint with outside authorities.

However, if a borrower believes that a grievance is significant enough to warrant the attention of a government agency or accrediting agency, we believe that the benefit of bringing that complaint to their attention outweighs the benefits of compelling the student to delay. The regulations do not impose any duty on such an authority or accrediting agency to take any particular action, and they may choose to defer or delay consideration of the complaint until completion of the institutional process. However, at a minimum, the regulations would help those authorities better monitor institutional performance by making timely notice of substantial complaints more likely.

We disagree with the commenters who invoke the FAA to support mandatory reliance upon an internal dispute process. The FAA specifically refers to the practice of arbitration and does not extend to an entity's internal dispute process. Moreover, for reasons detailed elsewhere in this Notice in response to other comments concerning mandatory arbitration, the Department considers the regulation of class action waivers and pre-dispute arbitration agreements to be justified because they affect the interests of the Direct Loan program.

Changes: None.

Comments: A few commenters noted that requiring students to exhaust internal dispute processes before presenting BD claims to an accrediting agency or relevant government agency diminishes the opportunity to ensure students are afforded full relief and to identify and address systemic issues. Commenters suggested that if institutions maintain that students benefit from internal dispute processes then institutions can offer this as an option.

Discussion: We appreciate the comments in support of prohibiting institutions from requiring Direct Loan borrowers to navigate an internal dispute process prior to presenting a complaint to an accrediting agency or government agency. We agree that allowing institutions to mandate the use of an internal dispute process diminishes the opportunity to ensure students are afforded full relief and to identify and address systemic violations. We agree with the commenters who correctly noted that the regulations do not discourage the use or promotion of internal grievance procedures, and instead only prohibit participating institutions from imposing such a process upon borrowers as a mandatory barrier before borrowers can seek relief through other means.

Changes: None.

Submission of Arbitral and Judicial Records; Centralized Database

Comments: A few commenters suggested the Department eliminate the requirements that institutions submit arbitral and judicial records in connection with BD claims. These commenters stated the requirements to submit these records are extremely broad and likely would place a significant burden on institutions without regard to the materiality of the claims or the likelihood of success.

Discussion: We decline to eliminate the submission requirements. As we stated in the NPRM, use of these mandatory arbitration agreements is often shielded from public view and the lack of transparency is an issue that impedes our ability to oversee institutions and to ''protect the interests

[127] 87 FR at 41914.

of the United States'' by hampering our ability to identify patterns of abuse and wrongdoings to take appropriate corrective action.[128] In other words, the Department requires these records to conduct oversight over institutions.

We also disagree that these requirements to submit records are overly broad. Section 685.300(g)(1) states that a school must submit arbitral records in connection with any BD claim filed in arbitration by or against the school, and § 685.300(h)(1) states that a school must submit judicial records in connection with any BD claim filed in a lawsuit by the school against the student or by any party, including a government agency, against the school. The required submission of records is thus appropriately connected with any BD claims.

Changes: None.

Comments: One commenter requested further information regarding requirements for the submission of arbitral and judicial records in accordance with § 685.300(g) and (h). This commenter requested additional details on the publicly accessible centralized database where the Secretary would publish arbitral and judicial records. The commenter further requested clarification on the policy basis for the Department's regulations, who the Department believes will access these records and why publicly available documents (such as judicial records) will need to be submitted when they are freely available elsewhere. Finally, the commenter asked whether the Department has considered the potential for individuals to ''troll'' the database for clients.

A separate group of commenters suggested that the Department clarify what it means by ''in connection with any borrower defense claim filed in arbitration,'' (§ 685.300(g)) or filed ''in a lawsuit'' (§ 685.300(h)). They asked whether the Department is asserting that covered records must be submitted after a BD claim is filed or whether we would require an institution to submit records that could give rise to a BD claim.

Discussion: To implement the 2016 regulations on the prohibition of pre-dispute arbitration agreements and class action waivers, the Department published an electronic announcement[129] about the changes made under those regulations. We envision a similar approach to implementation of these regulations and will provide guidance to institutions on how to submit arbitral or judicial records in accordance with the regulations. Because the requirements of these regulations will include an information collection in accordance with the Paperwork Reduction Act, the Department will seek public comment about the data we will collect, as well as information about the centralized database. This includes where the Secretary will publish the centralized database containing the appropriate arbitral and judicial records.

With respect to the commenter's requests for clarification on the policy basis for the Department's regulations, the Department reiterates its policy position and the Department's rationale in the NPRM, specifically the discussion set forth at 87 FR 41913 through 41918. Notably, and we emphasize again, the institutions' use of mandatory arbitration agreements impedes the Department's oversight authority as arbitral records are often shielded from public view. We disagree with the commenters' assertion that publicly available documents are freely available elsewhere. In the case of judicial records that may be public, some records may be difficult for the general public to access because of user registration, fees, and other hindrances. The Department's publication of these arbitral and judicial records in a centralized database supports open government initiatives to help ensure consistency, increase transparency, and establish self-service opportunities for stakeholders, especially for borrowers or prospective students.

In response to the commenter's request to clarify whether the Department has considered the potential for individuals to ''troll'' the database for clients, we considered the matter and addressed confidentiality concerns in the NPRM.[130]

Finally, with respect to the commenters who suggested that the Department clarify what it means by ''in connection with any borrower defense claim,'' we believe the regulatory text at § 685.300(i)(1) provides the parameters of a BD claim, which is a claim based on an act or omission that is or could be asserted as a borrower defense as defined in the regulations. Thus, we would require institutions to submit records in connection with an act or omission that is or could give rise to a BD claim.

Changes: None.

Comments: Multiple commenters requested that the Department rescind the proposal and maintain the current regulations, with regard to pre-dispute arbitration agreements and class action waivers. Commenters asserted that the 2019 Rule cited that the ''primary motivation'' for allowing the use pre-dispute arbitration agreements and class action waivers was to provide students ''an opportunity to obtain relief in the quickest, most efficient, most cost-effective, and most accessible manner possible.'' Commenters further stated that when weighed against the costs of a trial, the Department chose when issuing the existing regulations ''to emphasize speedy relief and accessibility'' in resolving grievances. A commenter alleged that the Department did not explain why the additional time and cost of a class action lawsuit is preferable to the speed of arbitration. Commenters also argued that the disclosures currently required under § 668.41(h) protect student borrowers by requiring detailed consumer disclosures about the use of pre-dispute arbitration agreements and class action waivers, consistent with Congress' intent with respect to the utilization of arbitration for dispute resolution.

Discussion: In the NPRM we described the actual effect that class action waivers have had in the postsecondary education field on students and Federal taxpayers.[131] Nothing in the comments opposing the regulation provides evidence that these effects are exaggerated or mischaracterized, that the substantial problems enabled by the use of class action waivers has been reduced or eliminated by more modest measures, that the disadvantages and burdens the regulation would place on schools outweigh the real costs and harm that use of class action waivers has already caused, or that there is any reason to expect that this pattern will change so that such waivers will not enable these same problems in the future.

Reliance upon internal dispute resolution processes and arbitration impedes effective program oversight by the Department as well as accrediting agencies and other oversight bodies, because institutional and arbitral records are often shielded from public view. Prospective students may not be able to make informed enrollment and borrowing decisions without knowledge of or access to arbitral records that may otherwise reveal systemic problems at an institution, whereas public knowledge of a class action suit allows prospective students to make more informed decisions.

It is possible that restricting the use of class action waivers may in some cases

[128] 87 FR at 41916.

[129] *https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2019-03-15/ope-announcements-subject-guidance-concerning-some-provisions-2016-borrower-defense-repayment-regulations.*

[130] 87 FR at 41917.

[131] 87 FR at 41916.

increase legal expenses and could divert funds from educational services or lead to tuition increases. We also concur that arbitration or an internal resolution process may in some cases be faster or less costly. However, the 2019 regulations failed to adequately balance the costs and benefits of arbitration, focusing too heavily upon the premise that arbitration provides speedier results, while failing to consider the protection of the interests of the United States, whose funds are at stake for BD claims asserted on Direct Loans. Moreover, the benefits associated with the availability of a class action suit as a borrower remedy are not limited merely to the amount of monetary relief or the speed with which a grievance is resolved. The potential for a class action lawsuit also offers value as a preventative measure, and we expect that the potential for exposure to class actions will motivate institutions to provide competitive value and treat their student borrowers fairly in order to reduce the likelihood of such suits occurring.

In response to comments that the disclosures currently required under § 668.41(h) protect students, the Department does not believe that there is evidence that such protections are adequate to safeguard borrowers against harm. Since the issuance of the 2019 regulations, the Department has heard from borrowers, student advocacy groups, State attorneys general, and the public about problems arising from mandatory class action waivers and the opaqueness of institutional and arbitral records. In a review of court filings, the Department observed that institutions frequently relied on pre-dispute arbitration clauses to discourage students from filing appropriate claims in court and to force them into arbitration. The records of these arbitration proceedings are not publicly accessible.[132] State attorneys general[133] have also written the Secretary to request a BD discharge on behalf of the borrowers in their states and the Department found that the students' enrollment agreements purported to bar such borrowers from bringing a BD claim to the Department, even though they had a legal right to do so. Finally, the Department was also apprised of reports and studies that suggest that, in other consumer-related fields, forcing individual borrowers into arbitration with businesses that have experience with arbitration and which were involved in structuring the arbitration process tilted in the favor of the industry irrespective of the amount of disclosures that were made.[134]

In sum, the Department's position is that class action waivers contribute to an environment in which bad actors can mask abuses, delay or evade accountability, and harm borrowers by restricting access to the full array of relief available to them under the law.

Changes: None.

Legal Authority

Comments: A few commenters opposed the Department's pre-arbitration and class action waiver regulations and argued that the restriction on mandatory pre-dispute arbitration agreements and class action waivers violates decades of public policy favoring arbitration and that courts have ruled that prohibitions against arbitration violate the FAA.

Discussion: As we explained in the 2016 NPRM, the Department lacks authority, to displace or diminish the effect of the FAA and does not invalidate any arbitration agreement, whether already in existence or obtained in the future. This is true for these regulations as well; we are not displacing or diminishing the effect of the FAA, and these regulations do not affect any arbitration agreement in existence or obtained in the future.

As we explained in the NPRM, this position has prevailed in Federal district court.[135] Specifically, the court in *California Association of Private Postsecondary Schools* v. *Devos* noted that ''if a school wants to participate in a Federal program and to benefit from the many billions of dollars that the United States distributes in Direct Loans every year, it must agree to abide by the conditions that the Secretary reasonably determines are necessary to protect the public and the integrity of the program.'' [136] In that case, the court concluded that the Department's 2016 regulations were consistent with the Secretary's authority under the HEA and did not conflict with the FAA. We further noted that regulations issued by the U.S. Department of Health and Human Services (HHS) in 2019, which barred health care facilities participating in the Federal Medicare and Medicaid programs from requiring residents to agree to binding arbitration as a condition for admission, were similarly upheld based on the agency's authority to condition participation in those Federal programs.[137]

Changes: None.

Comments: A few commenters contended that the Department lacks the authority to regulate on arbitration agreements or class action waivers. In these commenters' view, absent an explicit statutory authority to regulate on arbitration agreements and class action waivers, the Department cannot prohibit an institution from including in the institution's enrollment agreements an arbitration agreement or class action waiver in the filing of a BD claim.

Discussion: The Department respectfully disagrees with these commenters. Under Sec. 454(a)(6) of the HEA, the Secretary shall include in the institution's PPA ''provisions as the Secretary determines are necessary to protect the interest of the United States and to promote the purposes of'' the Direct Loan program. Moreover, Sec. 410 of the GEPA provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department.[138] Under Sec. 414 of the Department of Education Organization Act, the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.[139] Collectively, the above statutory authorities granted to the Secretary gives the Department broad discretion to regulate on arbitration agreements and class action waivers as they relate to a BD claim.

Changes: None.

Definitions

Comments: A few commenters requested that the Department modify its definition of ''borrower defense claim'' in § 685.300(i) to be a claim

[132] *Britt* v. *IEC Corp.,* No. 20–CV–60814, 2021 WL 4147714 (S.D. Fla. Sept. 13, 2021); *Hadden* v. *Univ. Acct. Servs.,* No. 18–CV–81385, 2020 WL 7864091 (S.D. Fla. Dec. 31, 2020); *Cheatham* v. *Virginia Coll., LLC,* No. 19–CV–04481, 2020 WL 5535684 (N.D. Ga. Sept. 15, 2020); *Mosley* v. *Educ. Corp. of Am.,* No. 20–CV–105, 2020 WL 3470174 (N.D. Ala. June 25, 2020); *Caplin* v. *Everglades Coll. Inc.,* No. 20–CV–21886, 2020 WL 10224161 (S.D. Fla. Nov. 2, 2020).

[133] *See https://coag.gov/app/uploads/2022/06/CEHE-BD-application-6.30.22.pdf.*

[134] Mark Egan, Gregor Matvos, & Amit Seru, *Arbitration with Uninformed Consumers,* Harvard Business School Finance Working Paper No. 19–046, at 1 (May 11, 2021), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3260442* (in study of consumer arbitration in the securities industry, explaining that the ''the pool of arbitrators skews pro-industry due to competition'').

[135] 87 FR at 41915 (citing *Cal. Ass'n of Priv. Postsecondary Sch.* v. *DeVos,* 436 F. Supp. 3d 333, 344 (D.D.C. 2020), *vacated as moot,* No. 20–5080, (D.C. Cir. Oct. 14, 2020)).

[136] *Id.*

[137] *Northport Health Servs. of Ark.* v. *U.S. Dep't of Health & Human Servs.,* 14 F.4th 856, 866–69 (8th Cir. 2021).

[138] 20 U.S.C. 1221e–3.

[139] 20 U.S.C. 3474.

based on an act or omission that is or could be asserted as a borrower defense. These commenters note that for purposes of the pre-dispute arbitration and class action waiver provisions, clarity around a borrower defense claim is needed given the Eleventh Circuit ruling in *Young* v. *Grand Canyon University, Inc.*[140]

Discussion: The proposed rule's definition of a BD claim included as an element an actionable act or omission, which refers to the enumerated categories or conduct that may serve as a basis for a borrower defense. Because the definition is inclusive of such an act or omission, we were concerned that adding a reference to a claim based on that act or omission would risk being superfluous. Nevertheless, considering the Eleventh Circuit ruling in *Young,*[141] which focused on a BD claim and the regulatory language we constructed, the Department will incorporate the language proposed by the commenters.

Changes: We revised § 685.300(i) to define a borrower defense claim as a claim based on an act or omission that is or could be asserted as a borrower defense as defined in the BD regulations.

Comments: One commenter expressed concern about institutions that contract with online program managers (OPMs). The commenter indicated that OPMs develop, deliver, and recruit for online degree programs that are marketed and promoted using the brand name of their institutional clients. OPMs are compensated by a percentage of revenue raised from the academic programs they manage, which set up incentives like those found among predatory institutions. The commenter urged the Department to consider OPMs covered under the pre-dispute arbitration and class action waiver regulations.

Discussion: As we stated in the NPRM, the Department's authority with respect to the terms and conditions of the institution's PPA with the Secretary only pertains to the making of a Direct Loan or the provision of educational services for which the Direct Loan was intended.[142] OPMs may be covered under these regulations only to the extent they are providing services that are part of the borrower's educational program for which the Direct Loan was intended.

Changes: None.

Interest Capitalization (§§ 685.202, 685.208, 685.209)

General Support for Interest Capitalization Regulations

Comments: Many commenters expressed their support for our proposal to end interest capitalization on Direct Loans where it is not required by the HEA.

One commenter noted that the proposed rule will have the effect of slowing growth on the balance of loans and create a fairer repayment system. This commenter also stated that interest capitalization imposes financial burdens on borrowers who are already experiencing financial instability.

Commenters pointed out that ending interest capitalization would assist many borrowers who have struggled with high loan balances and repayment of their loans since their overall amount of interest paid would be significantly lower.

Discussion: The proposed regulations eliminated most of the current regulatory provisions that require capitalization for Direct Loans under circumstances when it is not required by statute. As proposed, accrued interest would no longer be capitalized when: a borrower enters repayment; upon the expiration of a period of forbearance; annually after periods of negative amortization under the alternative repayment plan or the income-contingent repayment (ICR) plan; when a borrower defaults on a loan; when a borrower who is repaying under the Pay As You Earn (PAYE) income-driven repayment plan fails to recertify their income or chooses to leave the plan; and when a borrower who is repaying under the Revised Pay As You Earn (REPAYE) plan, fails to recertify their income or leaves the plan. As noted later in this preamble, the Department missed two instances of interest capitalization that are not statutorily required in the NPRM but will be included in this final rule, which is why we describe the proposal as covering ''most'' instances of capitalization. We believe the final rule will now cover all instances where capitalization is not required by statute.

Although the Department will not capitalize interest, it will still accrue while a borrower is in these situations. The borrower will have to pay that interest before a payment is applied to the principal balance.

The Department cannot change interest capitalization requirements in the HEA. This includes when a borrower exits a period of deferment on an unsubsidized loan and when a borrower who is repaying loans under the income-based repayment (IBR) plan is determined to no longer have a partial financial hardship, including if they fail to annually recertify income.

Changes: None.

Comments: Many commenters asked the Department to make the elimination of interest capitalization retroactive.

Discussion: The Department thanks these commenters for their support for the amendments to these regulations. The Department does not have the authority to make these changes retroactive.

Changes: None.

Comments: One commenter requested the Department eliminate interest capitalization for all Federal student loans and require student loan servicers to reduce the principal balances by the amount of capitalized interest charged over the original amount borrowed.

Discussion: In this regulation, the Department eliminates all instances of interest capitalization on Direct Loans that we can address through regulation.

Changes: None.

Comments: A few commenters recommended the Department end the practice of capitalizing interest for borrowers while they are still in school.

Discussion: The Department does not capitalize interest while the borrower is in school. Instead, capitalization occurs when a borrower who is in school moves into repayment. In this regulation, the Department ended capitalization when a borrower first enters repayment on a loan. Borrowers who enter repayment and then return to school on at least a half-time basis are placed on an in-school deferment. Capitalization does occur when the in-school deferment ends, but that is a statutory requirement that we cannot change.

Changes: None.

Comments: A few commenters suggested that we remove all instances of capitalization where we have the legal authority to do so. They noted two instances where we could do so yet were not reflected in the NPRM—when a borrower is repaying loans under the alternative repayment plan and when a borrower no longer has a partial financial hardship under the PAYE repayment plan.

Discussion: We agree with the commenters who suggested these two additional areas where we have the authority to eliminate interest capitalization. The Department intended to remove all instances of interest capitalization that were not required by statute in our proposed regulations.

[140] 980 F.3d 814, 821 (11th Cir. 2020).

[141] In *Young,* the Eleventh Circuit stated that our regulation was ''poorly written'' but ultimately confirmed that the regulatory language prohibited GCU from compelling the plaintiff from arbitrating the borrower defense claim. *Id.* at 815, 821. To minimize confusion, we will incorporate the commenters' proposed by commenters.

[142] 87 FR at 41917.

During the development of the regulations through the negotiated rulemaking process, however, these two instances were missed. We believe these changes are consistent with the Department's overall goals and in the best interest of borrowers. We thank the commenters for their suggestions, which we accepted.

Changes: The Department is amending the regulations to remove interest capitalization at § 685.208(l)(5) when a borrower is repaying under the alternative repayment plan and at § 685.209(a)(2)(iv)(A)(1) when a borrower no longer has a partial financial hardship under the PAYE repayment plan.

Comments: One commenter expressed concerns for borrowers who were not aware of how interest capitalization would apply to their loans and were not always given proper information or counseling on it. They urged the Department to eliminate all instances of interest capitalization on Federal student loans. Another commenter requested that the Department eliminate interest capitalization in all instances.

Discussion: Every borrower is required to complete entrance counseling to ensure they understand the terms and conditions of their loan. Borrowers learn through entrance counseling how interest works, their repayment options, and how to avoid delinquency and default. Information regarding interest and repayment is also included in the master promissory note which the borrower signs. However, the Department agrees that the counseling may not prevent all borrower confusion around interest capitalization. Removing instances of interest capitalization where not required by statute will thus be one less thing for borrowers to have to understand when going through counseling.

As discussed earlier, the Department cannot eliminate interest capitalization where it is required by the HEA.

The Department is eliminating interest capitalization in all circumstances where we have the discretion to do so. These changes only apply to Direct Loans. We do not have a legal basis to make the suggested changes in the FFEL program regulations. The terms of FFEL program loans are set by the promissory note signed by the borrower and the lender, and the lender has a right to receive the return on the loan that was set under the law at the time the loan was made. In this case, the regulations and the promissory note give the lender the right to capitalize interest in most cases. The assumption is that the lender took that into account when deciding that it was financially worthwhile to make the loan.

The interest rates on all Federal student loans, including those in the FFEL Program, are set by Congress and cannot be changed by the Department.

Changes: None.

Comments: A few commenters stated that borrowing Federal student loans with interest capitalization makes education costlier for graduate students who face capitalizing events because they are enrolled in income-driven repayment (IDR) plans that require annual recertification of income.

Discussion: We have addressed this concern by eliminating interest capitalization on Direct Loans when a borrower who is repaying under the PAYE plan fails to recertify income and when a borrower who is repaying under the REPAYE plan leaves the plan.

Changes: None.

Comments: Some commenters requested that the Department no longer capitalize interest when borrowers consolidate their Federal student loans into a Federal Direct Consolidation Loan.

Discussion: The Department does not believe such a change would be appropriate. Taking out a consolidation loan does not result in capitalization; rather, it is a new loan with a new principal balance made up of the principal and interest that the borrower owed on each of the underlying loans. That is different from the capitalization events covered in this final rule, in which outstanding interest is added to the principal balance of the existing loan.

Changes: None.

General Opposition to Changes in Interest Capitalization

Comments: One commenter writing in opposition to the changes to interest capitalization produced a hypothetical example that showed the dollar savings to the borrower from eliminating capitalization would be small per $100 borrowed. The commenter also argued that the size of the savings versus the cost of the proposal both financially, for servicers to implement it, and borrowers to understand it, may not pass a cost and benefit analysis. They suggested the changes to interest capitalization be limited only to new borrowers going forward.

Discussion: We disagree with the commenter. The example used is for a one-time, short-term capitalization event and does not account for the long-term effects of capitalized interest or the possibility of multiple capitalization events. Those items are reflected in the estimated cost of the policy in the Regulatory Impact Analysis. Moreover, there would not be any costs to the borrower from understanding this policy because it would be implemented automatically to provide them a benefit. If anything, it would reduce costs for borrowers related to comprehending student loan repayment since the Department has found that borrowers are often confused as to why their balances have grown. Additionally, we compensate servicers for their time spent updating policies and procedures. We also anticipate reducing this burden will reduce the number of phone calls servicers must field from borrowers who are unhappy with their loan balance growing. Finally, this benefit should be available to all borrowers in repayment going forward. There is nothing in the record that would justify only providing this type of benefit to new borrowers.

Changes: None.

Total and Permanent Disability Discharges (§§ 674.61, 682.402, and 685.213)

Comments: Many commenters overwhelmingly supported the proposed revisions to the TPD discharge regulations. In particular, the commenters supported expanding the list of healthcare professionals who may certify that a borrower is totally and permanently disabled; removing the 3-year income monitoring period; and expanding the circumstances that may support a TPD discharge based on SSA disability determinations.

A few commenters suggested that TPD discharges should be extended to other groups of disabled borrowers, such as cancer patients; partially disabled veterans; primary caretakers and spouses of permanently disabled persons; borrowers with permanent disabilities who still work; people who have been disabled for over 10 years; and people suffering from post-traumatic stress disorder. Commenters argued that if there is factual evidence that a student loan borrower is unable to engage in any substantial gainful activity by means of the Social Security earnings record data demonstrating a period of substantial earnings impairment for a continuous period of not less than 60 months, then the borrower should qualify for a TPD discharge either automatically or upon their own certification of their disability status in accordance with the TPD discharge application process.

Discussion: The Department does not believe that we should specify medical conditions that may qualify a borrower for a TPD discharge, but instead should describe general criteria for meeting the TPD discharge requirements. Many

borrowers with the conditions cited above may already qualify for a TPD discharge under the current regulations either through a physician's certification, an SSA disability determination, or a Department of Veterans Affairs (VA) disability determination. However, we note that TPD discharges as outlined in the HEA are intended for borrowers who are totally and permanently disabled, not for the spouse or caretaker of a disabled individual. Regarding Social Security earnings, a continuous period of low earnings does not necessarily indicate that a borrower is disabled and would not in itself be sufficient grounds for granting a TPD discharge. We believe that a TPD discharge in such a situation would be inappropriate, unless the borrower qualified through one of the three means available for receiving a TPD discharge: an SSA disability determination, a VA disability determination, or a certification from an authorized healthcare professional.

Changes: None.

Comments: One commenter raised concerns about the potential ramifications stemming from large numbers of borrowers experiencing ''Long COVID'' (Post-COVID–19 conditions and Post-Acute Sequelae of SARS–CoV–2). The commenter expressed the view that many borrowers with Long COVID will likely have difficulty obtaining TPD discharges because Long COVID is quite new and is little understood by the medical community. Testing capacities or treatment avenues for Long COVID remain limited, and some medical professionals may not believe that the condition exists at all. In addition, in the view of the commenter, patients experiencing Long COVID may find it difficult to receive SSDI benefits or SSI based on disability at all, much less be classified in either the SSA's Medical Improvement Not Expected (MINE) or Medical Improvement Possible (MIP) categories. The commenter believes that it is more likely that patients with Long COVID would be placed in SSA's Medical Improvement Expected (MIE) category, which requires a medical review by the SSA after 1 year. The commenter urged the Department to revise the regulations in the Final Rule to consider Long COVID and other disabling chronic illnesses. The commenter recommended, as an intermediate approach, establishing a Long COVID forbearance that would both pause loan payments and set the interest rate at 0 percent during the forbearance period. The forbearance would apply to borrowers with Long COVID, but for whom a TPD discharge determination cannot currently be made. The commenter expressed the view that this would provide time to add to our body of knowledge about Long COVID while offering some relief to borrowers. At a minimum, the commenter requested that the Department actively monitor developments with respect to our understanding of Long COVID's impact on individuals and assess whether TPD discharges are adequately serving borrowers afflicted with Long COVID.

Discussion: While much is not known about Long COVID at this point, a borrower suffering from disabilities severe enough to prevent the borrower from working would exhibit symptoms that a qualified physician or other healthcare professional would be able to diagnose. The definition of a total and permanent disability includes a medical condition that ''can be expected to last'' or ''has lasted'' for a continuous period of not less than 60 months. While physicians and other healthcare professionals may be reluctant to certify that a Long COVID medical condition can be expected to last for up to 60 months, in the near future, they will be able to certify whether the condition has lasted for up to 60 months.

The commenter recommended establishing a new forbearance type specifically geared toward borrowers suffering from Long COVID. Even if this were feasible, we believe that the existing forbearance and deferment provisions render such a regulatory action superfluous. Currently, a borrower who is experiencing severe medical problems and who does not qualify for any of the existing deferments—such as an unemployment deferment or an economic hardship deferment—may apply for a forbearance. The Department grants forbearances for borrowers with medical conditions that do not rise to the level of a total and permanent disability. Interest accrues during forbearance periods. While the Department may pause interest accrual during a national emergency, the Department does not have the authority to set interest rates on title IV loans. Interest rates on title IV loans are established by Congress.

Changes: None.

Comments: Loans discharged due to TPD are not currently reported as a zero balance on the borrower's credit report for up to 3 years after the discharge due to the post-discharge monitoring period. A few commenters suggested that the change in the monitoring period after a TPD discharge also necessitates a change in credit bureau reporting practices for title IV loan holders. Commenters also suggested that title IV loan holders report these loans as having a zero balance immediately after a TPD discharge is granted.

Discussion: While the final regulations eliminate post-discharge income-monitoring, they do not remove the requirement that a loan discharged due to TPD may be reinstated if the borrower takes out another title IV loan or TEACH Grant during the 3-year post discharge monitoring period. Therefore, the consumer credit reporting practices of title IV loan holders for loans that have qualified for a TPD discharge need to stay unchanged.

Changes: None.

Comments: Several commenters stated that under the current proposed regulatory language, the Secretary would be required to provide automatic relief only if they obtained data from SSA or the VA, but there is no obligation to obtain such data. The commenters believe the rule should be strengthened to place an affirmative obligation on the Secretary to obtain data from the VA and SSA. In addition, the Department should work with SSA and the VA (through joint rulemaking or other means) to ensure that each agency is bound by the process set forth in this regulation. Several commenters encouraged the Department to automate the TPD discharge process as much as possible wherever the Department can do so for qualifying borrowers to access a TPD discharge without an application.

Discussion: The Secretary obtains TPD discharge data from the VA and the SSA through formal agreements with those agencies. The Department cannot, through its regulations, bind another agency to share with the Department the information necessary to grant a TPD discharge. We agree with commenters that automating the TPD process, as we have done with our agreements with SSA and VA, is desirable. However, we also believe that it is important to maintain a borrower application process for borrowers who may not qualify for a TPD discharge based on any current or future automated TPD discharge process.

Changes: None.

Comments: The Department received a few comments objecting to the proposal to remove the 3-year income-monitoring period. One commenter argued that it would lead to inappropriate TPD discharges that are costly to the taxpayer. The commenter referenced Sec. 437(a)(1) of the HEA, which directs the Department to develop safeguards that prevent fraud and abuse in the discharge of liabilities due to total and permanent disability to ensure that TPD discharges are granted only to individuals who truly meet the

statutory definition of total and permanently disabled.

A few other commenters pointed to the same section of the HEA to argue that Congress intended for the Department to have a monitoring period. One of these commenters pointed out that Sec. 437(a)(1)(A) and (B) of the HEA describe the circumstances under which reinstatement of a discharged loan is appropriate. They also noted that Sec. 437(a)(3) requires the Secretary to ''establish and implement'' procedures for an income monitoring process, apply it ''to each borrower of a loan that is discharged due to total and permanent disability'', and use return information ''to determine the borrower's continued eligibility for the loan discharge.'' Finally, that same commenter also pointed to the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, which amends the Internal Revenue Code of 1986 to provide for the release of IRS tax return data for the purpose of monitoring and reinstating title IV loans that were discharged due to a total and permanent disability.

One commenter also pointed to the extensive inaccuracies (and potentially fraudulent occurrences of TPD discharges) as described in OIG Final Audit Report 06–80001 (June 1999) that were identified prior to implementation of the monitoring period. The commenter recommended that, rather than returning to what the commenter characterized as the 1990's discharge process that allowed potential fraud and abuses, the Department should instead use the tools Congress has provided to minimize paperwork burden on individuals with a disability while also minimizing taxpayer burden from the cost of TPD discharges.

Discussion: Section 437 of the HEA states that the Secretary ''may promulgate regulations to reinstate the obligation and resume collection on, loans discharged'' due to TPD. That section does not require nor make mention of a post-discharge monitoring period, much less a 3-year monitoring period. The statutory language in no way obligates the Secretary to promulgate such regulations. The HEA does state that ''the Secretary may promulgate regulations to reinstate the obligation of, and resume collection on, loans discharged under this subsection.'' Under these final regulations, loans discharged due to TPD will be reinstated under certain conditions. The Secretary will require the reinstatement of a borrower's discharged loans if the borrower obtains a new title IV loan or TEACH Grant within 1 year of receiving the TPD discharge. The commenter inaccurately states that limiting the post-discharge monitoring period in this way is a return to the TPD discharge process that was in place prior to 1999.

Moreover, as noted in the NPRM, the Department has found that the income monitoring requirement is significantly more likely to result in the reinstatement of a loan for a low-income borrower than it is to identify someone whose income suggests they are able to engage in gainful employment. As noted in the NPRM, since 2013, loans for more than half of the 1 million borrowers who received a TPD discharge were reinstated because the borrower did not respond to requests for income documentation. However, an analysis conducted by the Department with Internal Revenue Service (IRS) data suggests that 92 percent of borrowers who received a TPD discharge did not exceed the earnings threshold, and that these results are similar for borrowers whose discharge is based on an SSA disability determination or physician's certification process. Similarly, an older review by GAO [143] found that the overwhelming majority of reinstatements were occurring because borrowers were not responding to requests for furnishing income information and that very few borrowers were earning above the income threshold.[144] Moreover, while Congress did give the Department authority for automatically receiving income data for borrowers who received a TPD discharge, that change unfortunately only will provide the data at a household level. This is a challenge because the TPD requirements are based upon an individual's earnings. That means the Department would be unable to ascertain the proper earnings level for married individuals through any automatic data match. Therefore, the Department is concerned that the income-monitoring requirement is something not required by Congress that generates far more false positives than real ones and cannot be addressed through automatic sharing of income information. Accordingly, the Department maintains its position of eliminating the income-monitoring period.

As to the OIG audit, since 1999 the Department has made many reforms to the TPD discharge process, including centralizing the TPD discharge application review process within the Department, rather than relying on guaranty agencies in the FFEL program and school lenders in the Perkins Loan program to make TPD discharge decisions. The Department has implemented reforms allowing TPD discharges to be granted based on SSA or VA disability determinations, rather than relying solely on certifications by physicians. Finally, the Department has entered into agreements with SSA and VA to allow for automatic discharges to be granted based on information provided to us directly from these agencies. All of these reforms provide for more consistent TPD discharge review and significantly reduce the likelihood of TPD discharges being granted in error.

Changes: None.

Comments: One commenter expressed dismay over disability fraud, calling it widespread. The commenter referenced a particular case involving TPD discharges, and cited a June 15, 2022, press release from the Department of Justice, stating that the U.S. Attorney's Office of the Southern District of New York had charged a nurse practitioner with allegedly orchestrating TPD discharges in excess of $10 million on behalf of more than 100 borrowers that the nurse practitioner led to believe were eligible for various forms of student-loan relief.

The commenter expressed the view that the while this alleged fraudster was caught, the revised rule would enable many more fraudsters to operate by enabling lower-level professionals to certify a total and permanent disability.

Discussion: While the Department cannot comment on an ongoing investigation, we note that the press release from the DOJ states that the charges were brought due to ''the outstanding investigative work of the Federal Bureau of Investigation and the U.S. Department of Education, Office of Inspector General.'' The commenter has highlighted the work that the Department of Education does, through its Office of Inspector General, of investigating cases of apparent fraud with regard to the student financial aid programs. We expect OIG to continue its outstanding work in this regard. We do not see the final regulations as impeding that work in any way. In fact, by enhancing BD discharges, false certification discharges, and closed school discharges, the overall impact of these final regulations will be to reduce fraud in the student loan programs.

Changes: None.

Comment: One commenter asserted that using an income-monitoring period does not have to be a cumbersome process for the disabled borrower. The commenter notes that the Department has asserted that requiring reinstatement

[143] 87 FR at 41939.

[144] *https://www.gao.gov/assets/gao-17-45.pdf.*

of loans for borrowers who have received TPD discharges if the borrower does not submit annual income information results in significant numbers of reinstatements simply because the borrower did not respond to a paperwork request and not because the borrower had earnings above the threshold for reinstatement.

The commenter asserted that the Department's position is untenable because borrowers are only required to submit annual income information because the Department has failed to carry out the authorization that was extended by Congress through the FUTURE Act. The Department could easily remedy borrower burden by implementing the automated data match as authorized. In doing so, we could alleviate borrower burden while protecting taxpayer dollars.

Discussion: The Department notes that under the COVID–19 HEROES waivers, borrowers who have received TPD discharges have not been required to provide annual income information. The Department believes that a more permanent solution is needed to relieve borrowers of this administrative burden by eliminating the regulatory requirement for annual income information. Moreover, we note that the authorization allowed by the FUTURE Act would still not fully absolve borrowers of the burden associated with income monitoring. That is because the current TPD income monitoring process looks at the income of the individual borrower, but IRS data are not able to provide individual income information from a married filing jointly tax return. We would thus not have enough information to determine if a married borrower filing jointly who received a TPD discharge had earnings that exceeded the threshold.

Changes: None.

Comments: A few commenters objected to allowing non-physician practitioners to make TPD determinations. They believed that current law prohibits non-physician healthcare professionals from making such determinations and point to State scope of practice laws which may have certain limitations on nurse practitioners (NPs), physician assistants (PAs), and psychologists diagnosing, prescribing, treating, and certifying an injury and determining the extent of a disability.

Another commenter believed that a licensed psychologist may be unable to reasonably certify the inability of a person to function productively in society. In the view of the commenter, entrusting TPD determinations to an individual psychologist invites fraud and incorrect TPD determinations. The commenter felt that the risks of error and fraud were not sufficiently weighed against the minor additional accessibility that would be available under the proposed rule, which, in the view of the commenter, rendered the proposed rule arbitrary and capricious.

Discussion: We believe that expanding the list of healthcare providers who may certify a TPD discharge application is imperative in enabling eligible borrowers to more easily obtain TPD discharges for which they qualify. Many states allow NPs to practice independently, meaning that they can run their own healthcare practice without the need for a collaborating physician in those states. PAs also have an extensive level of knowledge and training in general medicine and, while they often practice alongside physicians, PAs can also practice independently. When treating a patient, there are no requirements that a physician must be on the premises or that each patient must be seen by a physician in addition to the PA. The PA can take complete charge of patient appointments. A shortage of physicians, especially in poor and rural areas, results in NPs and PAs serving as primary healthcare providers for many individuals. Allowing NPs and PAs to certify TPD applications will be an enormous benefit for borrowers who seek care from these types of providers—particularly for those without access to doctors. Regarding NPs and PAs being unable to certify TPD discharge applications due to State scope of practice laws, the TPD regulations do not require NPs or PAs to certify TPD discharge applications; they simply allow it. Such individuals should know of the limitations of their own state licensure. However, we see no reason to limit the authority of all NPs and PAs merely because some States have such limitations.

Psychologists licensed at the independent practice level by a State are generally required to have Ph.D.s. They identify psychological, emotional, and behavioral issues and diagnose disorders. They provided evidence-based clinical services, including psychotherapy, evaluation and assessment, consultation, and training. Psychologists who provide health care services are primarily independent practitioners. The Department believes psychologists licensed at the independent practice level are well-qualified to diagnose patients, and to make TPD determinations.

Changes: None.

Comment: A commenter believed that § 674.61(d)(1) (''Discharge without an application'') does not appear to require sufficient evidence of a total and permanent disability. The provision states merely that it is enough to receive VA data showing that the borrower is ''unemployable due to a service-connected disability.'' The commenter believed that being ''unemployable'' is a temporary and non-severe designation rather than a determination of total and permanent unemployability or disability. The VA also uses a specific definition of ''individual unemployability'' (IU) that distinguishes ''substantially gainful employment'' from ''marginal employment.'' The commenter recommended that the Department should establish its own definition of a qualifying disability and make its own determinations, on an individual basis, on the basis of that definition.

Discussion: The commenter's proposal would defeat the purpose of using VA disability determinations to grant TPD discharges. The language in proposed § 674.61(d)(1) is identical to the language in current § 674.61(d)(1). Current § 674.61(d)(1) states that ''The Secretary may discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary obtains data from the Department of Veterans Affairs (VA) showing that the borrower is unemployable due to a service-connected disability.'' The language in these final regulations is consistent with the language in the NPRM, and with the language in the current regulations.

The reference to a veteran being unemployable due to service-connected disability derives from the current definition in § 674.51(a)(2) which defines ''total and permanent disability as the condition of an individual who has been ''determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.'' This definition, in turn, derives from the statutory language which states that a borrower is considered totally and permanently disabled if the borrower ''has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition'' (HEA, Sec. 437(a)(2)).

Changes: None.

Comments: One commenter noted that the proposed rule would remove § 682.402(c)(7). That paragraph outlines a borrower's responsibilities after receiving a total and permanent disability discharge. These responsibilities include notification of income and notification of the Secretary if the borrower is no longer disabled. The commenter believed that this paragraph should be retained and

similar language provided regarding all of the loan programs that permit TPD discharges. The commenter noted that the VA stipulates that ''veterans may have to complete an employment questionnaire once a year for VA to continue to pay [disability] benefits. In the commenter's view, this creates an inconsistency between agencies regarding a verification of a veteran's level of disability and continuing eligibility for disability benefits.

Discussion: We have removed paragraph 682.402(c)(7) because most of the requirements in paragraph (c)(7) relate to income verification, which are no longer a requirement under the final regulations. In addition, because these final regulations expand the circumstances in which a borrower can qualify for a TPD discharge based on an SSA disability determination, a change in SSA disability status is less concerning, because we are allowing more SSA disability statuses to qualify a borrower for a TPD discharge based on an SSA disability determination.

With regard to the VA requiring veterans who are receiving disability benefits to submit an employment questionnaire annually, we note that VA disability benefits are structured differently than TPD discharges. VA disability benefits are ongoing. When the Department grants a TPD discharge, it is one-time event. We do not see a need to replicate VA's process for determining if a borrower continues to qualify for VA disability benefits.

Changes: None.

Comment: A commenter noted an apparent inconsistency between § 674.61(b)(3)(ii) and (b)(3)(vi). The former states that the Secretary determines whether the application ''conclusively prove[s]'' the disability, but the latter states only that the Secretary determines whether the application ''support[s] the conclusion'' that the disability qualifies. The commenter believed that ''Conclusively proves'' is the right standard because a conclusion should be necessary. Mere support toward a conclusion does not determine the result. Also, the same inconsistent language of ''support[s] the conclusion'' exists at § 682.402(c)(3)(v) and should be changed to ''conclusively prove.''

Discussion: We thank the commenter for pointing out the inconsistency in language in sections 674.61(b)(3) and 682.402(c)(3). However, we note that the ''conclusively prove'' language is the inconsistent language. The other two references to the TPD application in these sections use the phrase ''supports the conclusion.''

Changes: We have replaced ''conclusively prove'' with ''supports the conclusion'' in §§ 674.61(b)(3)(ii) and 682.402(c)(3)(v) so the language is consistent throughout these sections. We have also replaced the erroneous ''conclusively proves'' language in 685.213(b)(4)(ii) of the Direct Loan regulations with ''supports the conclusion.''

Comments: None.

Discussion: In consultation with SSA, the Department adjusted some language to better conform with how SSA describes those same items. This includes clarifying that the borrower must qualify for SSDI benefits or SSI based on disability. It also means referring to disability reviews as being continued rather than renewed and clarifying that they are scheduled for a certain period instead of being definitively within a certain period. The Department also adopted the formal term of ''established onset date'' instead of ''disability onset date'' to better match the appropriate terminology used by SSA. We also noted that the borrower has to qualify for SSDI or SSI benefits based on a compassionate allowance because the NPRM language incorrectly referred to it as a program and did not have the clear link to the SSDI or SSI benefits. None of these changes alter the underlying policies as proposed in the NPRM.

Changes: We have adjusted the language in §§ 674.61, 682.402, and 685.213 to reflect the edits described above as well as other technical changes.

Comments: None.

Discussion: In the NPRM, the Department proposed that a borrower would be eligible for a TPD discharge if they qualify for SSDI benefits or for SSI based on disability, the borrower's next continuing disability review has been scheduled at 3 years, and the individual's entitlement to SSDI benefits or eligibility for SSI based on disability has been continued at least once. This meant that a borrower who has a determination of Medical Improvement Possible (MIP) that is continued as an MIP would be eligible for a discharge. However, upon additional review, the Department has determined that the requirement that the borrower be continued as an MIP is not necessary. Instead, in this final rule the Department has adjusted the requirements to allow a borrower who qualifies for SSDI or SSI benefits based on disability to be eligible for a discharge if the borrower's continuing disability review is scheduled at 3 years. The Department reached this conclusion after reviewing research reports from SSA that we had not seen when drafting the NPRM. In a September 2020 report filed to Congress about its fiscal year 2016 continuing disability reviews, SSA noted that more than 97 percent of adult beneficiaries who were initially assigned the MIP determination are found to still be disabled even after second and later reviews.[145] This includes mailer deferrals, which are medical continuing disability reviews. The fact that all but a very small number of individuals initially assigned the MIP determination have their disability continued upon review suggests that requiring a borrower who receives such a designation to wait for a discharge under the proposal in the NPRM is not outweighed by the possibility of identifying the potentially small number of borrowers who may not have their disability status continued. Accordingly, this change to grant a discharge upon the initial MIP determination best meets the Department's goals of making the TPD process simpler for borrowers to navigate and capture additional circumstances that meet the requirements of the HEA.

Changes: We have adjusted § 674.61(b)(2)(iv)(C)(2), § 682.402(c)(2)(iv)(C)(2), and § 685.213(b)(2)(iii)(B) to note that a borrower is eligible for a discharge upon a determination that they qualify for SSDI benefits or for SSI based on disability and the borrower's next continuing disability review has been scheduled at 3 years.

Closed School Discharge (§§ 674.33(g), 682.402(d), and 685.214)

General Support for Closed School Discharge Regulations

Comments: Many commenters expressed general support for the proposed closed school discharge regulations, including providing automatic discharges after 1 year of closure, noting that these changes will broaden eligibility which will increase the number of borrowers who receive forgiveness, remove administrative burden and complexity for borrowers who have been harmed by a school closure, and simplify the eligibility process while reducing the number of students who are eligible for a discharge yet do not receive one.

Discussion: The Department thanks commenters for their support and agrees with them on the benefits of these changes to closed school discharges.

Changes: None.

[145] *https://www.ssa.gov/legislation/FY%202016%20CDR%20Report.pdf.*

General Opposition to Closed School Regulations

Comments: Several commenters expressed a variety of concerns with the proposed closed school discharge regulations. In the view of these commenters, the proposed regulations:

- Do not consider or acknowledge past orderly closures that have been implemented in consultation with and approval from accreditors and state educational agencies.
- Risk being overinclusive due to inaccurate student status data.
- Create incentives for students to reject teach-out options and delay their education.
- May result in unnecessary discharges for borrowers who have every intention of returning to their program of study through an approved teach-out after 1 year.
- May encourage borrowers to take a discharge and then transfer credits.

These commenters recommended:

- Returning to a 3-year period before granting an automatic closed school discharge because many students choose to voluntarily take a break between attending the closed school and the teach-out institution.
- Only allowing those students who were unable to complete their programs because their schools closed to seek closed school discharges.
- Disqualifying a borrower for a discharge if they accept teach-out at another institution or transfers credits.

Discussion: The Department respectfully disagrees with the proposals from these commenters. We believe that the final rules, with the modifications from the NPRM identified later in this section, provide reasonable protections for students who attend closing schools without adding unnecessary burdens to schools. Below we each address each of the components of the comment summary.

With regard to past orderly closures, we disagree that the final rule does not consider this issue. In fact, the conditions that lead to a discharge in this rule better align with what occurs during orderly closures. An orderly closure generally involves an institution doing a combination of teaching out its own students and establishing a teach-out agreement that gives borrowers a clear path to finishing their studies. A borrower who follows either of those paths and finishes would not receive a closed school discharge. Unfortunately, the far more common occurrence is that borrowers face abrupt closures. Under this rule, a poorly managed closure that lacks a teach-out agreement will be more likely to result in discharges for borrowers.

The Department disagrees with the commenters who argued that concerns about the Department's student completion information undercut the rationale for these regulatory changes. The Department is responsible for ensuring that it correctly awards discharges to borrowers who are eligible under the regulations. That is an operational matter and not regulatory. The Department also reminds commenters that it is the institution's responsibility to ensure it is entering accurate data about borrower completion status. The Department issues reminders to schools about this responsibility. In 2012, the Department clarified a series of institutional reporting requirements, including requirements to report student enrollment data even when the student has received Pell Grants but never a FFEL or DL program loan, and even when the student has received Perkins Loans but never a FFEL or DL program loan. While enrollment reporting issues were identified many years ago, those do not affect the regulatory changes, which focus on more recent information.

We also disagree with the argument that this final rule will create incentives for borrowers to take a discharge then simply transfer their credits. First, the requirement in the HEA is that the borrower is eligible for a discharge if they are unable to complete the program because the college closed. The intent is for the student to complete their program at the college they were enrolled in. In this final rule, the Department is also treating programs completed as part of a teach-out or as a continuation at another location of the institution as equivalent to the completion of the program because both approaches are the situations where the program is most likely to be similar to the one the borrower was enrolled in. By contrast, it is incredibly common for borrowers who transfer credits through other means to lose significant numbers of credits. An earlier study of credit transfer by GAO found that very few students transferred credits from private, for-profit colleges and that even when a student moved from one private for-profit college to another, they still lost 83 percent of their credits on average.[146] For students transferring from a private nonprofit college, the average student lost half or more of their credits.[147] The share of credits lost was a little bit better when transferring from public colleges, but those institutions also do not commonly close. Borrowers are thus highly likely to lose at least some credits when transferring colleges. The Department does not see how a borrower who is not able to transfer all their credits to another program and is thus forced to potentially pay to retake a course or pay for additional credits can be viewed as completing the same program.

The Department similarly rejects the suggestions for disqualifying borrowers for discharges if they simply accept a teach-out or transfer. Those borrowers are eligible for discharges under current rules because they did not complete the program. Having the act of transferring or taking a teach-out disqualify a borrower for a closed school discharge would thus be contrary to the statute.

Changes: None.

Discharge Without Application

Comments: Many commenters were generally supportive of the proposed automatic closed school discharge provision after 1 year. Other commenters opposed automatic discharge after 1 year and proposed the Department maintain automatic discharge after 3 years or eliminate the automatic discharge provision entirely. Some of those commenters also argued that the Department did not correctly present statistics in a report from GAO about the extent to which borrowers who received an automatic discharge had defaulted or faced struggles on their loans. Several commenters believed that the proposed regulations were not sufficient to immediately support student loan borrowers that are harmed by the closure of their institutions. These commenters noted that the HEA requires the Secretary of Education to discharge the loans of students who are unable to complete their program due to school closure and proposed granting automatic closed school discharge relief to all students immediately upon a school's closure, regardless of whether the student transfers to another program. One commenter proposed that, as an alternative, the Department should grant automatic closed school discharges to all affected borrowers within 90 days after a school closure. Multiple commenters noted that, while they support automatic discharge provision after 1 year for students that do not complete a teach-out agreement, the Department should further clarify that students who do not accept a teach-out agreement are eligible 1 year post closure.

Discussion: We appreciate the support from commenters for the automatic discharge provision and disagree with those who propose lengthening it to 3 years or eliminating it entirely. As noted

[146] *https://www.gao.gov/assets/gao-17-574.pdf.*

[147] *https://www.gao.gov/assets/gao-17-574.pdf.*

by GAO, significant numbers of borrowers do not re-enroll when their college closes. In a September 2021 report, GAO found that 43 percent of borrowers whose colleges closed from 2010 through 2020 did not enroll in another institution or complete their program. As GAO noted, this showed that ''closures are often the end of the road for a student's education.'' [148]

The data obtained from GAO persuaded the Department that waiting 3 years from closure for issuing automatic discharges is too long. GAO's data found that 52 percent of the borrowers who received an automatic discharge had defaulted, while another 21 percent had been more than 90 days late at some point. Moreover, the majority of those who did default, did so within 18 months of closure. GAO also found that among the borrowers who did transfer, almost half had not finished their program within six years of switching schools. GAO also found that the borrowers who transferred but did not finish had a particularly low closed school discharge application rate.[149]

The high default rates of borrowers who do not re-enroll, especially the significant share defaulting within 18 months of closure, and the low application rates of borrowers who did not complete after enrolling elsewhere convince the Department that there are far too many borrowers missing out of closed school discharges that should be captured by an automatic process. As articulated in the NPRM, setting automatic discharges 1 year after the closure date for borrowers who do not re-enroll affords an opportunity to catch borrowers before they could default.

We agree that the final regulations should provide a more precise timeline for granting automatic closed school discharges. However, we feel that granting such discharges immediately, or 90 days after closure, is too soon. Borrowers need more time to decide on their options, and a borrower who intends to enroll in a teach-out or continue their program at another branch or location of the school may not do so within such a short time frame. As discussed above, we think the 1-year period properly balances giving students time to figure out whether to continue their program at another branch or location of their school or through a teach-out while still helping borrowers before they could default. We have clarified that the closed school discharge will be provided 1 year after closure for a borrower who does not continue the program at another branch or location of their school or through a teach-out. Prior language had said ''within 1 year,'' which was too vague.

We also agree that the proposed regulations could better clarify that the automatic closed school discharge applies to borrowers who accept a continuation of their program at another branch or location of their institution or a teach-out if they do not ultimately finish that continuation or teach-out. Therefore, in the final regulations, we specify that the automatic closed school discharge will be approved 1 year after the date of last attendance in the continuation of the program or the teach-out for a borrower who accepts either of those paths but does not complete the program.

Changes: We have revised the regulations in §§ 674.33(g), 682.402(d), and 685.214 to specify that an automatic closed school discharge occurs 1 year after the school closure date for borrowers who do not take a teach-out or a continuation of the program. For borrowers who accept a teach-out or a continuation of the program at another branch or location of the school but do not complete the program, their discharge would be done 1 year after their final date of enrollment in the teach-out or at the other branch or location of the school.

Comments: Multiple commenters proposed that the Department implement an automatic 1-year grace period between the school closure date and the date borrowers are entitled to the automatic discharge. These commenters noted that allowing for a 1-year grace period is a less burdensome and more just approach as opposed to requiring borrowers enter repayment for six months and then having the Department refund the borrowers six months later.

Discussion: The Department does not have the legal authority to extend the grace period on repayment. Grace periods are established by statute.

Changes: None.

Teach-Out Plans and Agreements

Comments: Several commenters stated that if the Department does not accept proposed suggestions to provide students with an immediate and automatic discharge after a closure, the Department should consider ways to better address teach-outs. These commenters noted that while teach-out agreements are subject to more stringent requirements than teach-out plans, they still only provide a reasonable opportunity for program completion and do not guarantee that students will be able to transfer all or even a majority of their credits, or access comparably priced programs. These commenters recommended that the Department strike the provisions denying a discharge to students who complete a teach-out plan or agreement. As an alternative, the commenters recommend that the Department strike the provision referring to teach-out plans and limit the exclusion of students who complete teach-out agreements to students who actually complete a comparable program in a reasonable amount of time. Additionally, the commenters noted that the Department could limit the exclusion to students who are able to transfer most or all their previously earned credits.

A few commenters recommended that the Department reconsider provisions allowing borrowers to receive a discharge where they did not complete a teach-out because this would sanction institutions that made a good faith effort to provide an alternative for students in the event of a closure. Other commenters argued that still providing discharges for borrowers who moved to another school through a transfer agreement could discourage the creation of such options.

Several other commenters stated the Department must create a strong incentive for schools to provide students with an opportunity to complete their program through an approved teach-out.

Some commenters recommended that the Department clarify the treatment of what happens if a borrower accepts a teach-out agreement but is unable to complete it due to circumstances in which a borrower was subject to an academic, disciplinary, or other ''fault'' dismissal.

Discussion: Under § 600.2 a teach-out agreement is defined as ''A written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study'' in the case of closure. Approved teach-out agreements that provide equitable treatment should not include cases where all or the majority of credits are not accepted, where charges are significantly higher, or the institution conducting the teach-out does not meet necessary licensure and accreditation requirements. The Department believes that the proposal provides necessary protections for students harmed by a closure, and more closely aligns with statutory language. The statute states that a borrower is eligible for a discharge if the student ''is unable to complete the program in

[148] *https://www.gao.gov/assets/gao-21-105373.pdf.*

[149] *https://www.gao.gov/assets/gao-21-105373.pdf.*

which such student is enrolled due to the closure of the institution.'' The Department believes that if a student continues the program at another branch or location of the school or through an approved teach-out agreement then it is reasonable to treat these as students finishing the program they were enrolled in at the school that closed. These pathways incentivize students to complete their program while providing protections in case they ultimately do not finish. The Department believes the inclusion of teach-out agreements or continuing the program at another branch or location in consideration of a closed school discharge incentivizes institutions to engage in an orderly closure, which would reduce an institution's potential liability. In the event a student accepts a teach-out agreement or a continuation of the program at another branch or location and finds that the institution is not the right fit or the student is unable to complete the program, the student remains eligible for an automatic discharge 1 year after their last date of attendance because the student was unable to complete their program due to the closure. Additionally, the Department believes that a student being unable to complete a teach-out because of academic, disciplinary, or other fault dismissal, will be an exception and maintains its current proposal.

The Department reminds commenters that the providing of discharges for a borrower who accepts but does not finish a teach-out agreement is not a change from current practice. Under current regulations, a borrower who transfers but then does not finish the program is still eligible for a discharge. However, previously, they were not eligible for an automatic discharge. But as the GAO report mentioned earlier notes, very few of the borrowers who do engage in such a transfer still apply for a discharge. Accordingly, the Department believes keeping the automatic discharge option for those borrowers is appropriate.

The Department disagrees with suggestions to make students ineligible for a discharge if they accept a transfer agreement. The language in the HEA is tied to the borrower's completion of the program. A teach-out or a continuation of the program at another branch or location of the school is designed to be analogous to the program the borrower was in. A transfer agreement does not provide the same protections that a teach-out does, such as requirements around the equitable treatment of students.

Changes: None.

180-Day Lookback Window

Comments: Multiple commenters expressed support for changes that extend the period that a borrower who withdraws from a closed school is eligible to receive a discharge from 120 days to 180 days. One commenter noted that the extension provides needed additional time and builds in consistency across loan types. Several commenters opposed extending the lookback window to 180 days. The reasons for opposing the extension include that doing so provides too much uncertainty, a 180-day window should only occur when a borrower can demonstrate harm, and that 180 days is too long and allows discharges with no causal connection to why they did not finish. Some of these commenters suggested a 120-day lookback window would be more appropriate. While several commenters supported the change, these commenters suggested that the Department should lengthen the lookback window to 1 year and to make extending it further mandatory where extenuating circumstances are present. The commenters noted that a 1-year lookback window helps better protect students and is less burdensome to administer because the reality of school closures is that they typically occur after a sustained period of systemic failures in the administration of the institution.

Discussion: The Department appreciates the support for the 180-day lookback window and believes that it strikes the proper balance between capturing students who may have seen that a school was heading toward closure, without providing so long a period that a departure may be entirely unconnected to a closure. The Department notes that all loans disbursed on or after July 1, 2020, already have access to a 180-day lookback window so this is not a change for new loans going forward. While many institutions announce their ultimate closure with no warning, there are almost always warning signs along the way that an institution may be struggling or facing potential adverse actions that could either put its title IV aid at risk or result in it losing accreditation—two conditions that may affect an institution's decision to close. A 120-day lookback window would not provide enough protection for borrowers in case there is a decline in quality over the final academic year of an institution's operation. A 180-day lookback window is half a calendar year and will encompass a final term for an institution that operates on a semester basis. This allows that if a borrower was concerned about a school's situation in the final term in which it is in operation and decided to leave, their departure could be captured for a closed school discharge. The Department also reminds commenters that the Secretary retains the flexibility to extend the lookback window under exceptional circumstances in the more limited cases where going back further than 180 days may be warranted because of other significant events indicating a trajectory toward closure and in consideration of a precipitating events impact on student enrollment.

Changes: None.

Exceptional Circumstances

Comments: Several commenters expressed support for the exceptional circumstances provisions in the NPRM. One commenter recommended the inclusion of additional exceptional circumstances in the final regulations. The commenter recommended adding to the list of exceptional circumstances evidence of material reductions in instructional expenses or student services by the institution which the commenter believed could be indicative of an institution's disinvestment in its students and programs and be predictive of a future closure. The commenter also recommended adding an institution's placement on heightened cash monitoring under § 668.162(d)(1) (known as HCM1) if that status was not resolved prior to closure. The commenter noted that while an institution could be placed on HCM1 for a variety of reasons, some of those reasons are extremely serious, such as ''severe'' findings in a program review or by the institution's auditor. The commenter believed that including HCM1 on the list of ''exceptional circumstances,'' would provide the Department with an impetus to consider the reasons why an institution was placed on HCM1 and would still provide the Department flexibility to choose not to extend the look-back window if the reasons for HCM1 do not rise to a sufficient level of concern. In addition, the commenter recommended that the Department also consider including placement on the reimbursement payment methodology, as defined in § 668.162(c), as one of the factors on the list of ''exceptional circumstances'' since that is a significantly more serious financial responsibility status than HCM2. The commenter also believed that the Department should consider cases in which a majority of the students attending an institution might be affected by a program discontinuation. The commenter noted that there may be circumstances in which a significant

share of programs might not have closed at an institution, but that a small number of programs which include the majority of students at that institution might be discontinued, which should rise to the level of an ''exceptional circumstance.'' Therefore, the commenter encouraged the Department to add the situation of when a majority of the students attending the institution might be affected by a program discontinuation as an exceptional circumstance. Finally, the commenter recommended that the Department consider instances where an institution makes misrepresentations regarding its financial health to students, shareholders, or any government agency.

A few commenters recommended that the Department ensure the lookback window includes whenever a closing school announced its intentions to go out of business because schools can avoid liability by announcing that they will close more than 180 days in advance. One commenter pointed out that schools may publicly announce that they are going out of business up to a year before school closure and that such an announcement should be included as an exceptional circumstance.

Multiple commenters proposed making the extension of the lookback window automatic at the sign of the first occurrence of any exceptional circumstance. These commenters cited evidence that the Department has not always extended the window even though it has had the ability to do so.

Finally, several commenters opposed the additional list of exceptional circumstances and proposed the Department omit the proposal while others proposed that the Secretary should be required to include a rationale to demonstrate how a triggering event harmed the withdrawn student before approving a discharge based on exceptional circumstance. One commenter suggested that the Department should not include or expand the Secretary's exceptional circumstance authority, specifically identifying instances where schools are placed on probation by their accreditor because schools are often placed on probation and these statuses do not show sufficient legitimate risk of closure.

Discussion: The ''exceptional circumstances'' provisions are intended to allow the Secretary the flexibility to extend the lookback window as the Secretary deems necessary. The Department does not believe that every example of an exceptional circumstance included on the list would apply to every school closure or be related to the eventual closure in every instance. Therefore, we do not believe that exceptional circumstances should be automatic or that the regulations need to include more specificity as to the conditions under which the Secretary may extend the lookback window. Similarly, the examples provided under exceptional circumstances are just that—illustrative examples. The list is not intended to be an exhaustive list of circumstances or a list that will apply in every instance of a closed school discharge, and the Department sees no value in adding additional items to the list or providing additional clarity on when the Secretary will rely on an exception to extend the window. We note that the Secretary may take the recommended additional ''exceptional circumstances,'' as well as other circumstances not enumerated here, into consideration in determining that it is necessary to extend the 180-day lookback window. In addition, in cases that involve misrepresentation to students, it may be more appropriate for the borrower to pursue relief under the BD regulations. Finally, we note that in deciding to extend the 180-day lookback window, the Secretary will consider an event's impact on students in deciding to execute an extension.

We disagree with the commenters that proposed further limitations on the exceptional circumstances authority. The circumstances behind institutional closures will vary, and it is important to preserve flexibility for the Secretary to acknowledge situations that are exceptional.

Changes: None.

Closure Date

Comments: A few commenters expressed concern with the proposed regulations under §§ 674.33(g)(1)(ii)(A), 682.402(d)(1)(ii)(A), and 685.214(a)(2)(i) that would specify that, for purposes of a closed school discharge, a school's closure date is the earlier of the date that the school ceases to provide educational instruction in most programs, as determined by the Secretary, or a date chosen by the Secretary that reflects when the school had ceased to provide educational instruction for most of its students. These commenters believed that under the proposed regulations a school that was still providing educational instruction and still had enrolled students could be considered a closed school for discharge purposes, without consideration of whether students could complete. A few commenters proposed that the Department withdraw the proposed definition of closure date or offer additional clarity. Other commenters recommended that the Department provide a clear and singular definition of ''closure date.''

Other commenters recommended that the Department clarify the meaning of ''most programs'' and ''most of its students'' in § 685.214(a)(2)(i) and clarify whether the Department will employ any thresholds for these determinations. Still other commenters recommended that the Department clarify the preamble language in the NPRM stating that the provisions will not apply to small institutions that remain open but that close ''a program or two.'' These commenters stated that the preamble language is too imprecise. A few commenters recommended that the Secretary consult with accreditors and the State to make determinations of closure on a case-by-case basis. Others requested that the Department clarify the language and include it as regulatory text in the final regulation. Some commenters also asked that the Department not treat an institution that is conducting an internal teach-out as an instance of trying to adjust the closure date to avoid the lookback period.

Discussion: We agree that the proposed language could lead to confusion. The language was only intended to establish a closure date for a school that has ceased overall operations. A school that has remained open would not be considered a closed school. The Department has clarified the language to state that, if a school has closed, its closure date for purposes of determining the beginning date of the 180-day lookback window, would be the earlier of: the date, determined by the Secretary, that the school ceased to provide educational instruction in programs in which most students at the school were enrolled, or a date determined by the Secretary that reflects when the school ceased to provide educational instruction for all of its students. This language is important to protect against a situation where an institution could intentionally keep a single, small program open long enough to avoid the 180-day lookback window, otherwise denying closed school discharges to borrowers.

Regarding the terms ''most programs'' and ''most of its students,'' these terms are referring to dates ''determined by the Secretary'' or ''chosen by the Secretary.'' Since these dates are established by the Secretary at the Secretary's discretion, there is no need to provide a specific definition of the word ''most'' for the purpose of these regulations. However, the revisions to §§ 674.33(g)(1)(ii)(A), 682.402(d)(1)(ii)(A), and 685.214(a)(2)(i) further clarify that changes to the closure date need to be tied to an

institution that did cease operations should address many of the commenters' concerns.

Regarding the internal teach-out, these often are only offered to a small subset of students and finish after the closure date. The borrowers who finish through an internal teach-out would not be eligible for a closed school discharge since they completed their program at the institution.

Changes: We revised §§ 674.33(g)(1)(ii)(A), 682.402(d)(1)(ii)(A), and 685.214(a)(2)(i) as described above.

Terms in Need of Further Clarification

Comments: A few commenters believed that the proposed regulations contained several undefined or weakly defined terms for key aspects of the closed school discharge regulations. Commenters recommended that the Department more effectively address and define ''closed school'' as it applies to approved additional locations of an institution that has not closed.

Commenters recommended that the Department clarify what the Department considers a ''significant share of its academic programs'' in § 685.214(h)(9). Commenters requested that the Department specify whether a significant share means 50 percent or more of an institution's programs were discontinued, or whether a higher threshold must be met before the Department would consider it an exceptional circumstance for purposes of extending the 180-day lookback period.

Discussion: Regarding the treatment of additional locations, the regulations define ''school'' as a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered title IV eligible. The only difference between this definition and the definition in the current closed school discharge regulations is the addition of the term ''title IV'' before the term ''eligible'' which adds clarity to the definition. The Department has intentionally defined school in this manner in the closed school discharge regulations because the Department's longstanding policy is that when an additional location closes, that additional location is treated as a closed school for the purposes of a closed school discharge, regardless of whether the main campus stays open. The eligibility for the closed school discharge only applies to that location, though. In other words, a closure of an additional location does not make students who attended other locations eligible for a closed school discharge. The one exception to this is when the main campus closes, in which case the closure is treated as the closure of the entire institution.

The term a ''significant share of its academic programs'' is used in connection with exceptional circumstances that may justify an extension of the 180-day lookback window, as determined by the Secretary. Since the determination to extend the lookback window is at the Secretary's discretion, the Secretary would determine whether a school has discontinued a significant share of its academic programs.

Changes: None.

Comments: A few commenters opposed the Department's proposal to define a borrower's program as multiple levels or classification of instructional program (CIP) codes if the school granted a credential in one program while the student was enrolled in a different program. Other commenters supported the proposal, emphasizing concerns that some bad actors have historically awarded retroactive degrees to prevent the amount of closed school discharge a borrower might be entitled to, and further limiting potential liabilities to the institution.

Discussion: Under the definition in the final rule, the Secretary may define a borrower's program as multiple levels or CIP codes if:

- The enrollment occurred at the same institution in closely proximate periods;
- The school granted a credential in a program while the student was enrolled in a different program; or
- The programs must be taken in a set order or were presented as necessary for borrowers to complete to succeed in the relevant field of employment.

Just because a school offers stackable credentials does not mean the Department would automatically apply this provision. Rather, it gives the Secretary flexibility to guard against closing schools that may award credentials inappropriately, to prevent students from qualifying for closed school discharges.

Changes: None.

Comparable Programs

Comments: Many commenters supported removing the ''comparable program'' exclusion because it provides needed additional time for students that may withdraw prior to closure and provides greater consistency across loan types. Some of these commenters noted that the comparable program exclusion has prevented borrowers who were harmed by their school from obtaining needed relief.

Other commenters opposed the elimination of comparable program from consideration. Some of these commenters stated that eliminating consideration of transfer would incentivize borrowers to take a closed school discharge and then transfer the credits they have earned, resulting in a windfall for the borrower. These commenters stated that the Department should incentivize students to transfer and complete regardless of whether there is a formal teach-out agreement, and that the Department should encourage teach-outs rather than discharges.

One commenter noted that, under the Department's determination of closure, a student who lives in close proximity to a campus that takes courses online and is able to successfully complete the program in which they are enrolled would still be eligible for a discharge and states that this is irreconcilable with the HEA since the student would be able to complete their program.

Discussion: The Department is concerned that the current treatment of borrowers who transfer or accept a teach-out is overly confusing and that borrowers do not understand that if they do not complete a comparable program, they are still eligible for a discharge. As a result, borrowers who should be eligible because they transfer and do not complete often never apply for a closed school discharge.

The final rule places a greater emphasis on completion in determining who is ineligible for a closed school discharge. Students that continue, but do not complete, their program maintain eligibility for automatic discharge. This addresses the aforementioned concerns about low application rates for students that transfer and do not finish.

In reviewing the amendatory text for closed school discharges, and in light of the concerns raised about how borrowers who enroll in an online program at the same institution could be affected, the Department is further clarifying the way discharge eligibility would work. In continuing with the policy in the NPRM, a borrower who accepts and completes a teach-out approved by the accrediting agency and, if applicable, the school's State authorizing agency, would not be eligible for a discharge because such an arrangement is designed to give the borrower an opportunity to finish their program. In keeping with existing practice, a borrower who accepts the teach-out but does not finish would maintain access to the discharge, but this rule would give them an automatic discharge 1 year after their last date of enrollment in the teach-out.

In the final rule, the Department has amended the language that previously related to a teach-out performed by the closing institution to instead say a continuation of the program at another branch or location of the school. This means that if a borrower transfers to another branch or location of the same school and finishes the program, they too would lose access to the discharge on the grounds that they did finish their program. Similar to the teach-out, a borrower would receive an automatic discharge 1 year after their last date of attendance if they accept but do not finish the program continuation at another branch or location of the school. This acknowledges that even though the borrower continued their program, they may have decided the continuation did not work for them, such as they did not like moving from a ground-based to online option or the other location was too far away.

The Department declines to put other transfer arrangements, or a transfer done by the student on their own, that leads to them completing on the same footing as a teach-out or continuation of the program at another branch or location of the school. Such options do not have the same protections for the borrower in terms of program similarity. They also open up issues, such as determining what share of credits have to transfer to have that completion elsewhere count as the same program. The Department is concerned about denying the possibility of an automatic discharge to a borrower who transfers with minimal to no help from their original school and essentially starts over. The teach-out and continuation paths identified by the Department best align with the concept in the HEA about giving closed school discharges to borrowers who are unable to complete their programs by defining the instances in which what the borrowers finish are most likely to be the same program.

Changes: We have revised §§ 674.33(g), 682.402(d), and 685.214(c) to clarify that a borrower who continues the program at another branch or location of the school would receive a discharge 1 year after their last date of attendance at the branch or location if they do not complete the program. We have removed the references to a teach-out provided by the school.

Operational Considerations

Comments: Commenters recommended that the Department clarify how the Department proposes to operationalize automatic closed school discharges, especially given the proposed language regarding the assessment of closed school discharge liabilities against open institutions.

Commenters also recommended that the Department clarify how it would control for third-party reimbursement in the context of automatic closed school discharges.

Commenters suggested that the Department administer the closed school survey the Department used in the past to determine whether a closed facility truly is a closed school for purposes of the final regulations.

Commenters requested that the Department outline the number of automatic closed school discharges we have issued and the process to notify the Department of the expiration of a borrower's 1 year period prior to eligibility.

One commenter noted the Department will have to improve its data collection process from institutions and accreditors to implement the closed school discharge process.

Discussion: We thank the commenters for their recommendations. However, we do not believe that it is necessary to modify the regulations as requested. The operational process for automatic closed school discharge is under development and will be in place by the effective date of these regulations. At present, the Department does not plan to administer the closed school survey.

With respect to the potential assessment of liabilities for closed school discharges against open schools, there is no change to existing Department policy. The Department has clarified the definition of closure date to capture that this would only apply when a school has in fact closed. Longstanding Department policy is that if a school closes a branch campus or additional location, the borrowers at that campus or location do become eligible for closed school discharges, and if the school maintains other locations the ones that are still operating can face the liabilities associated with those discharges.

Changes: None.

Comments: Commenters asked about an internal document that the Department uses to determine whether we consider a school to be closed. The Department stated in the NPRM that the document would appear in Volume 2 of the Federal Student Aid (FSA) Handbook. Commenters requested that it be released before the release of that volume of the Handbook, since Volume 2 has historically not been released until the February after the start of the award year. In the commenters view, this means that institutions will not be aware of the Department's closed school criteria until six months after the regulations are effective.

Discussion: The Department believes it is important to first publish the document in the FSA Handbook so that all the relevant resources are available. We note that, under our traditional schedule, Volume 2 of the Handbook will be published before the effective date of the closed school discharge regulations. We also note that an older version of the chart was published during the negotiated rulemaking sessions.[150]

Changes: None.

Institutional Liabilities

Comments: A few commenters expressed the concern that the proposed changes fail to provide any procedural protections for institutions or their affiliates or principals to allow them to present evidence to defend against an application or recoupment. Commenters argued that the proposed changes to pursue liabilities against affiliated persons violate PPA rules.

Discussion: The Department has been evaluating closed school discharge applications for many years and does not believe that an adversarial process is needed for borrowers to qualify for closed school discharges. However, for the Department to hold a school liable for a closed school discharge, the Department would have to initiate an administrative process against the institution under 34 CFR part 668 to establish the liability. Additionally, the Department disagrees that pursuing liabilities against affiliated persons where applicable is in violation of existing rules. It is a statutory requirement in the HEA, which in Sec. 438 states the Secretary ''shall subsequently pursue any claim available to such borrower [who received a closed school discharge] against the institution and its affiliates and principals or settle the loan obligation pursuant to the financial responsibility authority under subpart 3 of part H.''

Changes: None.

Efforts To Assist Borrowers

Comments: Commenters recommended that the Department remove the revocation and denial provisions relating to reinstatement of a borrower's discharged loans for failure to cooperate in subsequent actions against their schools. The NPRM included proposed technical changes to § 685.214(e), which requires that a borrower cooperate with the Secretary

[150] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/schoolclosureofbrancampuses.pdf.*

in any judicial or administrative proceeding against the borrower's school. If the borrower fails to provide requested testimony, documents, or a sworn statement, the Secretary revokes the discharge or denies the borrower's application for relief. Commenters believed that borrowers who have suffered from a school closure, and in many cases suffer economic instability and other hardships, may have justifiable reasons for not responding to a mail or email communication from the Department that may follow weeks, months or even years after the borrower receives a discharge.

Discussion: The requirements that a borrower who has received a closed school discharge must cooperate with enforcement actions taken by the Department are a longstanding feature of the existing closed school discharge regulations. As the commenter notes, we are only making minor technical changes to these provisions. The Department believes that these provisions are an important tool for recouping closed school discharge liabilities from schools.

Changes: None.

Comments: Multiple commenters suggested additional measures to assist borrowers affected by closing schools, through the disclosure of information such as:

- Mandating that the institution provide borrowers with notices informing them of their rights shortly after announcing that the institution will close.
- Requiring institutions to explicitly share their accreditation probation status.
- Displaying warnings relating to possible school closures prominently on a school's website.
- Delivering warnings of possible school closures electronically to admitted and enrolled students.
- Setting up lines of communication with borrowers to inform them about the status of their application and other options for continuing their education.
- Requiring that an institution inform the Department it will close concurrently with its public announcement of closure.

Discussion: We appreciate the recommendations for additional steps the Department may take to assist borrowers in closed school situations by providing additional information. Many of these recommendations relate to activities that we believe are better addressed through guidance to closing schools and direct communication with borrowers, rather than as regulatory requirements. Similarly, we believe that recommendations regarding the operational activities of the Department are better addressed through the Department's procedural rules, rather than through regulations. The Department notes that institutions are already required to share a probation status issued by their accrediting agency.

Changes: None.

Comments: Commenters recommended that the Department extend the November 1, 2013, automatic discharge date backwards to open the door to automatic relief for more borrowers and include information about what the process for discharge may look like for individuals who are entitled to a discharge prior to 2013.

Discussion: In the NPRM, as in these final regulations, there is no cut-off date for eligibility for an automatic closed school discharge. The process for closed school discharges before November 1, 2013, and on or after November 1, 2013, will not be substantially different.

Changes: None.

Comments: One commenter recommended reimbursing a borrower who has received a closed school discharge for loan payments that the borrower has already made, not just discharging the remaining balance on the loan.

Discussion: The closed school discharge regulations already provide for refunds or payments made by the borrower on the loan which is subject to a closed school discharge. Section 685.214(b) of the Direct Loan regulations specifies that a closed school discharge relieves a borrower of any past or present obligation to repay a loan and qualifies a borrower for reimbursement of payments made voluntarily or through enforced collections.

Changes: None.

Comments: Commenters stated that they believe that the Department does not possess the authority to promulgate a regulatory discharge structure based upon the statutory language. In the view of the commenters, the statute provides clear direction: borrowers are entitled to a closed school loan discharge when they are unable to complete their program due to the closure of the school. Automatic discharges, look-back periods, and other features of the closed school discharge regulations are not provided for in the statute. Commenters also expressed the concern that the Department's stated intent to increase the number of closed school discharges does not find support in the statute.

Discussion: As noted above, Sec. 410 of GEPA provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. Further, under Sec. 414 of the Department of Education Organization Act, the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Department. These general provisions, together with the provisions in the HEA, authorize the Department to promulgate regulations that govern closed school discharge standards, process, and institutional liability. To streamline and strengthen the closed school discharge process, we believe it is critical that the Department proceed now in accordance with its statutory authority, as delegated by Congress, to finalize these regulations that protect student loan borrowers while also protecting the Federal and taxpayer interests.

Changes: None.

False Certification Discharges (§§ 682.402(e), 685.215(c) and 685.215(d))

Comments: Many commenters supported the proposed regulations that would streamline the false certification discharge process. In particular, commenters supported establishing standards that apply to all claims regardless of when the loan was first disbursed; removing the provision that any borrower who attests to a high school diploma or equivalent does not qualify for a false certification discharge; expanding the types of documentation the Department considers when a borrower applies for a false certification discharge; and enabling groups of borrowers who experienced the same behavior from their institutions to apply together.

Discussion: We thank the commenters for their support.

Changes: None.

Comments: Several commenters asked the Department to provide that institutions are not liable for discharged amounts if the borrower submits to the school a written attestation that the borrower has a high school diploma or equivalent. Commenters also expressed concerns that granting false certification discharges due to a disqualifying condition may preclude students from receiving student loans since the need to scrutinize and evaluate disqualifying conditions would place a burden on institutions to rely on background checks to avoid liability. Additionally, several commenters suggested that a student must be required to attest they do not have a disqualifying condition or institutions can only be liable if a

student reported the condition but the institution still certified the loan. A few commenters recommended specifying the implementation time frame for these regulations and whether the Department would place retroactive requirements on the institution for prior periods. Numerous commenters requested clarification on the change from disbursement date to origination date.

Discussion: These final regulations are intended to ensure that a borrower can receive a false certification discharge if the borrower was coerced or deceived by their school and had reported not having a valid high school diploma or equivalent. A written attestation indicating that the borrower had a high school diploma or its equivalent would not necessarily relieve a school of liability for a false certification discharge. However, for the Department to hold a school liable for the discharge, the Department would have to go through an administrative process under part 668, subpart H to establish the liability.

The Department notes that the disqualifying condition criteria for a false certification discharge are well established in the existing regulations. These eligibility criteria are under current§ 685.215(a)(1)(ii). The Department is making no changes to the regulatory text in this section. Schools should already comply with this regulation.

The requirements specified in these final regulations will apply to false certification discharge applications received on or after the effective date of these regulations. The effective date for these regulations is discussed under **DATES** above.

Relying on the disbursement date instead of the origination date allows institutions time to remedy an already completed false certification that a student was eligible for a loan. Utilizing the origination date will ensure that institutions may be held accountable for their misconduct even if it is subsequently corrected prior to disbursement.

Changes: None.

Comments: A few commenters recommended that only State attorneys general be allowed to submit applications for group false certification discharges, consistent with the accompanying BD regulations. These commenters further stated that since the Department has decided not to allow legal services representatives to submit group BD applications, the same should apply for false certification discharge. Other commenters suggested the Department should require some procedure to ensure accountability from State attorneys general and legal aid organizations. Alternatively, one commenter recommended that state authorizing agencies be added to the list of entities eligible to request group claims. Several commenters asked the Department to clarify how the Department will process group claims, including appropriate due process protections for institutions subject to such claims.

Discussion: The Department has existing authority to grant group false certification discharges and has done so in the past. Group discharges are particularly useful for borrowers who attended the same school and who attest to similar violations for which there is common evidence that would allow for a discharge for a group of borrowers. Unlike BD discharges, which have been well-publicized in the media in recent years, many borrowers do not know of their right to apply for a false certification discharge. An opportunity for a group discharge is particularly important for these borrowers. In addition, the regulatory language providing for a group discharge will make it less difficult for a borrower advocate to compel action on the part of the Department, because it will specifically require the Department to act on a group discharge application from a State attorney general or a nonprofit legal services representative. The Department also notes it updated the BD regulations to allow nonprofit legal assistance organizations to also submit requests for group consideration. Regarding accountability for State attorneys general or nonprofit legal services, the Department notes that we have no regulatory authority over such entities. However, group claims submitted to the Department will be reviewed and either approved or denied based on the merits of the claim, as with claims submitted by individual borrowers. The due process rights of all parties will be respected. As noted earlier, any attempt to assess liabilities against an entity through a group claim will be subject to the process in part 668, subpart H. Finally, the Department recognizes the specialized expertise of State attorneys general and nonprofit legal services representatives in help borrowers understand their rights to apply for false certification discharges. The Department encourages other entities with knowledge of facts that would support potential group claims to work directly with State attorneys general or nonprofit legal services representatives.

Changes: None.

Public Service Loan Forgiveness (PSLF) (§ 685.219)

Comments: Many commenters expressed support for the proposed PSLF regulations, including the revised definitions, expansion of eligibility, payment counting flexibility, automation, and reconsideration. Commenters recommended the Department continue to streamline PSLF requirements where possible. A few commenters submitted technical corrections and recommendations. Several commenters further stated that the Department should prioritize the swift implementation of the regulations. Other commenters stated that eligibility for PSLF should not be expanded because of the cost to taxpayers.

Discussion: We thank the many commenters who wrote in to support our efforts to improve the PSLF program. Generally, we do not address technical or other minor changes or recommendations that are out of the scope of this regulatory action or that would require statutory changes. Cost impacts will be discussed in the Regulatory Impact Analysis section.

Section 482(c) of the HEA states that any regulatory changes initiated by the Secretary that have not been published in final form by November 1 prior to the start of the award year shall not become effective until the beginning of the second award year after such November 1 date. Consistent with the Department's objective to improve the implementation of PSLF, the Secretary intends to exercise his authority under section 482(c) to designate the simplified definition for full-time employment in PSLF as a provision that an entity subject to the provision may, in the entity's discretion, choose to implement prior to the effective date of July 1, 2023. The Secretary may specify in the designation when, and under what conditions, an entity may implement the provision prior to the effective date. The Secretary will publish any designation under this subparagraph in the **Federal Register**.

The Secretary does not intend to exercise his authority to designate any other regulations in this document for early implementation. The final regulations included in this document are effective July 1, 2023.

Changes: None.

Qualifying Employer and Definitions

Comments: Several commenters suggested that we expand eligibility for PSLF to include labor union employees; veteran service organizations; medical interns, residents, and fellows; marriage and family therapists, clinical social

workers, and professional counselors; attorneys providing public services and critical public defense services; Peace Corps and AmeriCorps volunteers; Fulbright English Teaching Assistants; translators and interpreters; and those working in national laboratories and nonprofit organizations, whether religious or not, if they file an annual tax-exempt IRS Form 990. One commenter recommended that the Department deem periods of service as a caregiver under the VA's Program of Comprehensive Assistance for Caregivers to be eligible service for PSLF purposes.

One commenter requested that PSLF eligibility expand to include an option for servicemembers to transfer PSLF eligibility to their married spouse.

Another commenter encouraged the Department to include the Federal Job Corps program as a qualifying employer because its mission and services meet the definition of public service. Job Corps members are engaged by the U.S. Department of Labor to manage the operation of Job Corps campuses and deliver services.

Additional commenters suggested that the Department add Certified B Corporations and Public Benefit Corporations to the list of qualifying employers.

Another commenter encouraged the Department to include specific guidance that Federal Reserve Banks are qualifying employers.

Discussion: The Department is responding to the comments about eligibility for certain occupations solely in the context of eligibility if a borrower provides these services at a private nonprofit organization. Many commenters asked the Department to consider these occupations for borrowers who work at private for-profit organizations as well. The Department will publish a separate final rule addressing the questions of eligibility for borrowers employed by private for-profit entities. This includes the discussion of early childhood education and all other occupations, including the ones mentioned in this comment summary. This final rule does not speak to the issue of any changes to the eligibility of private for-profit employers to serve as qualifying employers for the purposes of PSLF. It does address a related yet different question, which is whether a private nonprofit or government employer should be able to treat a contractor as if they are an employee or employed by that qualifying employer. That is a different issue, as it is only focused on who is considered an employee of a nonprofit or government employer, rather than the overall question of which employers qualify.

From the initial years of the PSLF program, the Department's regulations have established eligibility for PSLF based on whether the borrower works for a qualifying employer, not their specific job. As a result, anyone doing the jobs mentioned by the commenters while employed at a qualifying employer was eligible for PSLF. Borrowers are not permitted to transfer their PSLF eligibility to their spouse for any reason, which includes active-duty military employment. Under the Sec. 455(m) of the HEA, a borrower must work for a qualifying employer to be considered for PSLF. Eligible not-for-profit organizations include an organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, and a not-for-profit organization that is not tax-exempt under section 501(c)(3) of the Internal Revenue Code, but that provides a qualifying service. However, the Department's regulations have consistently provided that a labor union is not a qualified employer for PSLF purposes. Labor unions are not 501(c)(3) organizations, nor do most of their full-time equivalent employees provide a qualifying service.

Job Corps is a program offered to young adults that is intended to improve the quality of their lives through vocational and academic training aimed at gainful employment and career pathways. Individuals participating in Job Corps programs are not employees of the program. To the extent any Job Corps participants work for a private for-profit employer, that issue will be addressed in the future final rule.

We have modified some definitions and added other definitions to provide additional clarity to the types of services that employers must provide to be considered a qualifying employer.

We will address Certified B corporations and public benefit corporations that are private for-profit employers in the future final rule.

We appreciate the comment requesting clarification on the inclusion of Federal Reserve Banks as qualifying employers for the purposes of PSLF. Employees who work at the Board of Governors of the Federal Reserve Board are considered government employees and qualify for PSLF. We will address employees of the Federal Reserve Banks in the future final rule regarding the eligibility of for-profit employers.

The proposed definition of ''public health'' includes those engaged in the following occupations (as those terms are defined by the Bureau of Labor Statistics): physicians, nurse practitioners, nurses in a clinical setting, health care practitioners, health care support, counselors, social workers, and other community and social service specialists. Therefore, borrowers working in these areas are eligible for PSLF if they work for an eligible employer. Borrowers working for a private for-profit employer will be addressed in the future final rule.

Attorneys providing public interest legal services and critical public defense services are eligible for PSLF if they are employed by an organization that is funded in whole or in part by a Federal, State, local, or Tribal government. As noted above, any further discussion of eligibility for private for-profit employers will be discussed in a future final rule.

Peace Corps and AmeriCorps volunteers have always been and continue to be qualified for the purposes of PSLF.

Changes: None.

Comments: One commenter suggested that the Department is required to determine PSLF eligibility based on *either* a qualifying employer *or* a qualifying job, as those employers and jobs are defined in the statute.

Discussion: After the addition of PSLF to the HEA in 2007, the Department engaged in negotiated rulemaking to develop proposed regulations to implement the program. During that process, the Department reviewed the text and legislative history of the PSLF provision and determined that it was consistent with Congressional intent to focus on the services provided by the qualifying employer rather than on the services provided by the individual employee. To do otherwise would be to have two different standards for different borrowers depending on their type of employer. The negotiating committee agreed with this approach and reached consensus on the proposed rules. The Department has consistently retained that approach since that time. Despite making other changes to PSLF, Congress has not made any statutory changes to require the Department to determine a borrower's eligibility based on the individual employee's activities rather than on the services offered by the employer. Accordingly, the Department does not agree with the comment.

Changes: None.

Comments: Several commenters expressed concern that the proposed definition of the term ''non-governmental public service'' requires services to be provided directly by the employees. Commenters believe that the inclusion of a ''direct service'' component is not only undefined in the

regulations but is counter to Congressional intent. A few commenters expressed concern that the definition of public service could exclude veteran service organizations and suggested revising the definition to ensure that any definition of ''non-governmental public service'' include providing services to veterans or their families.

A few commenters suggested that the proposed definitions of ''non-governmental public service'' and ''school library services'' should be updated to clarify that employment by a school library or in other school-based services includes employment at public charter schools. Several commenters further argued that the proposed definition of ''public service for the elderly'' may not encompass all public services that could be provided to elderly individuals and urged the Department to either lower the age for assistance to the elderly or remove a precise age.

Discussion: We believe it is important to define non-governmental public service as services provided by employees of a nonprofit organization where the organization devotes a majority of its full-time equivalent employees to work in at least one of the areas designated in the HEA: emergency management, civilian service to military personnel and military families, public safety, law enforcement, public interest law services, early childhood education, public service for individuals with disabilities and/or the elderly, public health, public education, public library services, school library, or other school-based services. We agree with commenters that the word ''directly'' does not provide any additional clarity to the definition and will remove it.

Charter schools that are either government entities or tax-exempt under § 501(c)(3) of the IRC are considered qualifying employers for the purposes of PSLF. A nonprofit charter school that does not fit into either of those classifications would be evaluated based on the services it provides. We will address comments related to the eligibility of a private for-profit charter school in a future final rule considering any changes to whether a private for-profit employer can serve as a qualifying employer for PSLF purposes.

In addition, we have clarified the definition of ''civilian service to the military'' to mean providing services to or on behalf of members, veterans, or the families or survivors of members or veterans of the U.S. Armed Forces.

We believe that age 62, which is the youngest age for individuals to obtain Social Security retirement benefits, is an appropriate age to use for the purposes of identifying public services to the elderly.

Changes: The Department has removed the word ''directly'' from the definition of ''non-governmental public service.'' We reworded the definition of public health in § 685.219 (b).

Comments: A few commenters suggested replacing the term ''teacher'' in the definitions section of the regulations with the term ''educator'' to include school psychologists, school counselors, and specialized instructional support personnel who are employed full time by a local education agency under a contract that mirrors a teacher's contract.

Discussion: We believe that the proposed definition of ''public education service,'' which includes the provision of educational enrichment and support to students in a public school or a school-like setting, including teaching, adequately addresses commenters concerns.

Changes: None.

Comments: A few commenters stated that the definition of ''Government employee'' should specify that service as a member of the U.S. Congress is not qualifying public service employment for the purposes of this section. Other commenters requested we remove, ''as a member of the U.S. Congress is a governmental employee'' because this provision does not fit the new definition of ''non-governmental public service.''

Discussion: We thank the commenters for this suggestion. The Department does not plan to remove these words or define the term ''Government employee'' in these regulations. Under Sec. 455(m)(3)(B) of the HEA, service in Congress does not qualify for PSLF.

Changes: None.

Tax Exempt Organizations

Comments: Several commenters stated that 501(c)(1) and 501(c)(6) tax-exempt organizations whose purposes and governing documents are consistent with 501(c)(3) tax-exempt organizations should be included as qualifying employers. Other commenters suggested adding a facility defined by sections 1819(a) or 1919(a) of the Social Security Act to the definition of a qualifying employer.

Discussion: We thank these commenters for the suggestions to include 501(c)(1) and 501(c)(6) tax-exempt organizations, whose purposes and governing documents are consistent with 501(c)(3) tax-exempt organizations to the Department's definition of qualifying employer. We do not, however, believe there is sufficient basis to automatically qualify any type of 501(c) organization beyond the 501(c)(3) category that Congress specifically included in the statute. We also do not agree that any facility listed under the Social Security Act, such as a skilled nursing facility, should automatically be included as a qualifying employer for the purposes of PSLF.

Changes: None.

Comments: A few commenters stated that religious conduct would receive an unconstitutional financial benefit if religious organizations are considered qualifying employers. These commenters further stated that religious services were rightly previously excluded from PSLF and should continue to be excluded.

Discussion: The Department believes that the current rules do not provide improper aid to religious organizations and are consistent with the Constitution. The current regulations place religious individuals and entities on equal footing with their secular counterparts by allowing such individuals and entities to qualify for the same benefits available to others.

Changes: None.

Comments: A few commenters expressed concerns regarding the revised PSLF definitions and argued that the proposed definition of ''non-governmental public service'' is contrary to the text and purposes of the HEA. They contended that the requirement that a majority of the employer's full-time equivalent employees be engaged in providing one of the specified services would unlawfully eliminate eligibility for individuals who currently qualify for PSLF.

A few commenters further stated that the proposed definition of ''public education service,'' which would require public education services to be provided to students in a public school or a school-like setting, deviates from established Department practice in administering and determining PSLF eligibility. These commenters suggested that the Department implement a holistic evaluation of employers to determine PSLF eligibility based on whether the organization and its employees provide a meaningful public service.

One commenter proposed to expand PLSF eligibility to include all those who work to advance the public interest.

Several commenters suggested that the proposed definitions fail to consider the substantial reliance interests of individuals such as the interests of employees who have reasonably relied upon the Department's past and current certification of eligible employment to select jobs that qualify for PSLF; the interests of public service organizations

that have relied upon the Department's current interpretation to recruit and retain employees by presenting the organization as a qualifying PSLF employer; and the interests of organizations that currently qualify for PSLF and may continue to do so if the proposed rule goes into effect, but which could subsequently fail to meet the requirements for PSLF due to employee hiring, departures, layoffs, or changes to the organization's structure.

In addition, several commenters stated the Department needs to take further action to clarify employment requirements for nonprofit organizations by explicitly removing any mention of the primary purpose condition, as required by *American Bar Association* v. *U.S. Department of Education.*[151]

Discussion: We thank these commenters for expressing concerns about the Department's definition of non-governmental public service. However, we believe requiring an employer to have a majority of their full-time equivalent employees be engaged in providing one of the specified services is consistent with the HEA and will not eliminate eligibility for individuals who currently qualify for PSLF. We also do not believe there is sufficient basis to automatically qualify any type of non-governmental organization beyond the 501(c)(3) category that Congress specifically included in the statute.

The Department reviews other nonprofit employers as it receives employment certifications from their employees. The new regulations will help the Department determine whether the employer provides one of the services specified in the HEA. This will improve the Department's ability to provide guidance to employers and employees alike. We note that there is no requirement that the borrower work for the same qualifying organization for the full 10-year period.

The primary purpose test was at one time used by the Department to determine whether a nonprofit organization which was not a 501(c)(3) organization provided a specific public service so that its employees could qualify for PSLF. The Department has not used this test for several years, nor did we include such a test in the current or proposed regulations; therefore, we cannot remove it.

The Department defines a non-governmental qualified employer as an employer that has devoted a majority of its full-time equivalent employees to working in at least one of the following areas: emergency management, civilian service to military personnel military service, public safety, law enforcement, public interest law services, early childhood education, public service for individuals with disabilities and/or the elderly, public health, public education, public library services, school library, or other school-based services. We believe that the definition of public education service, which requires public education services to be provided to students in a public school or in a school-like setting, is consistent with the Department's current practice in administering and determining PSLF eligibility.

Changes: None.

Full-Time Employment

Comments: Many commenters supported the proposed definition of ''full-time'' employment that required borrowers to demonstrate they worked at least 30 hours a week across one or more jobs, but also requested we apply a retroactive determination for full-time employment based on the definitions and consideration for part-time employment.

Discussion: We thank the many commenters who supported our proposed change to the definition of ''full-time.'' We believe the revisions will provide clarity to borrowers seeking PSLF. Applications submitted after the implementation date that include periods of employment that predate the effective date of these regulations will be reviewed under this new definition. Section 455(m) of the HEA requires that borrowers be employed full-time to qualify for PSLF. The Department cannot include part-time employment for the purposes of PSLF unless part-time employment at multiple qualifying jobs adds up to 30 hours per week.

Changes: None.

Comments: Many commenters supported the proposed credit hour conversion to determine full-time employment for adjunct faculty.

Discussion: We appreciate the support of these commenters.

Changes: None.

Comments: A few commenters suggested that to make the calculation of eligibility more equitable for adjunct faculty working at more than one institution with different term lengths, the regulations should be revised to base the determination of the minimum number of hours that need to be attained for PSLF credit using the 3.35 multiplier for each credit or contact hour taught by the faculty member. A few commenters thought the Department should increase the conversion rate.

Discussion: During the negotiated rulemaking process, the Department adopted the 3.35 conversion factor suggested by negotiators. Additionally, we explained that this could apply to contact hours as well. For example, if a borrower was teaching six hours a week and had two office hours a week, this borrower would multiply eight by 3.35 which equals 21 total hours worked per week. This conversion factor is the minimum rate employers should use based upon a semester-hour schedule. Employers would continue to have flexibility to adjust this conversion factor upward or to account for trimesters, quarters, or other types of academic calendars if they think a different figure better captures the number of hours an adjunct professor is working. We also clearly defined ''non-tenure track faculty'' to eliminate ambiguity. We also defined ''full-time'' to include working in qualifying employment in one or more jobs for the equivalent of 30 hours per week as determined by the Secretary which qualifies the borrower for PSLF if the borrower is working:

(1) through a contractual employment period of at least eight months over a 12-month period, as in the case of primary and secondary school teachers and professors and instructors in higher education; or,

(2) in the case of non-tenure track faculty employment, by either—

(a) teaching at least nine credit hours per semester, six credit hours per trimester, or 18 credit hours per calendar year; or,

(b) multiplying each credit hour taught per week by 3.35 hours; or

(c) counting student-contact hours as attested by the borrower and substantiated by the employer on a form approved by the Secretary.

(3) When determining whether a borrower works full-time, the Secretary includes vacation or leave time provided by the employer or leave taken for a condition that is a qualifying reason under the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1))). We also adjusted the definition of full-time to note that the treatment of teachers on an employment contract being considered to work for 12 months would also apply to instructors in postsecondary education. The original language was a nonexhaustive list, and this change adds clarity.

Changes: We modified § 685.219(b)(i)(B) to include professors and instructors in higher education.

Comments: One commenter suggested the Department allow employers who pay their employees based on caseload (rather than an hourly rate) to certify the employee is working full-time by

[151] 370 F. Supp. 3d 1 (D.D.C. 2019).

reporting an average of 30 or more hours on the employer certification form.

Discussion: We thank the commenter for this suggestion. We believe the definitions of ''full-time'' and ''qualifying employer'' provide adequate information for the employers to certify whether their employee is working full-time. Under the regulations, an employee must work the equivalent of 30 hours per week to be considered full-time. The employer is able to determine when an employee has met that threshold.

Changes: None.

Comments: One commenter suggested the Department require self-attestation for the purposes of determining full-time employment. Another commenter expressed concern that some employees who work in public service may not receive a W–2 form and may not be able to prove work in qualifying employment.

Discussion: The Department appreciates the points raised by these commenters. A borrower who does not receive a W–2 would not be eligible for PSLF except, as provided in these final regulations, for a borrower who works as a contracted worker for a qualifying employer in a position or providing services which, under applicable state law, cannot be filled or provided by a direct employee of the qualifying employer. We believe that the employer certification, along with other information on the PSLF application, will provide sufficient information to allow the Department to determine a borrower's employment full-time status for the purposes of PSLF.

Changes: None.

Consolidation

Comments: Many commenters supported the Department's proposal to allow borrowers to keep credit toward PSLF when they consolidate their loans. However, several commenters noted that the NPRM was unclear on the process of determining the treatment of consolidation loans for PSLF purposes. Some commenters argued that the Department should allow all loans in a consolidation to receive credit toward PSLF equal to the maximum amount of qualifying payments the borrowers have already made. Other commenters objected to such an approach, noting that it would allow a borrower to consolidate a loan and potentially receive credit for years' worth of payments toward PSLF when in actuality there were few, if any, payments toward PSLF on one or more of the underlying loans. Other commenters suggested the Department allow prior payments made on FFEL Program loans to count toward PSLF.

Discussion: The Department agrees with commenters that the treatment of qualifying payments for PSLF after loan consolidation was unclear. The Department's goal in allowing borrowers to keep any credit they had made toward PSLF is to ensure they keep the progress they made, not to award additional credit toward forgiveness they have not earned. To that end, the Department will award borrowers qualifying payments equal to a weighted average of the loan balances being consolidated. In other words, if a borrower has 60 qualifying payments on a $20,000 loan and consolidates that loan with another $40,000 in loans with no qualifying payments, then the consolidation loan would be assigned 20 qualifying payments ($20,000 divided by $60,000 times 60). The Department believes this approach is better for the borrower than keeping the qualifying payment clock unchanged but only applying it to part of the consolidation loan. To benefit from PSLF a borrower has to spend some time on an IDR plan, since if they stayed on the standard 10-year plan, they would pay the loan off at the same time as receiving forgiveness. Since IDR payments are based on the borrower's income and are only affected by the balance amount on certain IDR plans, if a borrower's payment amount exceeded what they would owe on the standard 10-year plan, partial cancellation may not significantly change their monthly payment amount and the borrower would still have to make as many as 120 additional payments to get the remaining balance forgiven. The Department is unable to accept the changes recommended by the commenters with respect to payments on FFEL loans, because those are prohibited by statute.

Changes: We have amended § 685.219(c)(3) to note that a borrower will receive a weighted average of the payments the borrower made on the Direct Loan prior to consolidating.

Deferment, Forbearance, and Default

Comments: Many commenters supported counting certain periods of deferment and forbearance toward PSLF. These commenters further urged the Department to count all such periods toward PSLF to reduce unnecessary complexity, address administrative failures by student loan servicers, and fulfill the program's goal of alleviating the burden of Federal student loans for borrowers in public service. These commenters also suggested that borrowers should not lose progress toward forgiveness when a servicer pauses a borrower's payments to process paperwork. Additionally, the commenters opined that these borrowers should not be penalized for following bad advice from a servicer or when servicer misconduct occurred. They noted that recent Federal investigations concluded that student loan servicers have steered borrowers into forbearance, made errors during loan transfers, and failed to advise borrowers on IDR plans.

A few commenters further urged the Department to expand the hold harmless provision to count payments for periods of default from previously defaulted borrowers. One commenter suggested we count periods of time spent rehabilitating defaulted loans as time toward forgiveness. Other commenters suggested these individuals should be allowed to make a payment that is equal to or lesser than the amount of the lowest IDR plan at the time, rather than an amount equal to or greater than the amount they would have paid at the time on a qualifying repayment plan. Other commenters advised that the Department strengthen oversight of loan servicers to avoid future forgiveness denials and ballooning debt.

Several commenters shared their experiences with servicers incorrectly putting the borrower into forbearance and detailed other improper servicer actions. Several commenters recommended counting $0 IDR payments during bankruptcy toward PSLF qualifying payments.

One commenter argued that the Department does not have the authority to allow periods of time spent in forbearance or deferment to count as qualifying payments for PSLF.

Discussion: The Department recognizes that there have been past issues with servicing Federal student loans. We have taken steps to address the impact of these servicing errors through the limited PSLF waiver that allows borrowers to receive credit for past periods of repayment that would otherwise not qualify for PSLF.[152] We will also award credit toward PSLF for borrowers who spent 12 or more consecutive months or a cumulative total of 36 or more months of forbearance for those periods of time if borrowers certify qualifying employment, this includes time in the past that servicers have paused payments while processing borrowers'

[152] *https://studentaid.gov/announcements-events/pslf-limited-waiver.*

paperwork for extended periods.[153] The Department has created the Fresh Start initiative which provides defaulted borrowers who do not qualify for PSLF a path to get out of default and regain potential eligibility for PSLF.

In the proposed regulations, the Department also expanded the types of forbearances and deferments that qualify for PSLF through these new regulations. Qualifying borrowers are statutorily entitled to deferments and certain forbearances. We have to determine whether the statute requires borrowers to give up these rights to apply for PSLF. After further review of the legislative history and language of the PSLF provisions, we do not see anything which suggests Congress intended to require borrowers to give up their rights to these benefits to qualify for PSLF. As discussed in the NPRM, the Department carefully reviewed the different types of deferments and forbearances and proposed awarding credit for ones where a borrower would likely be either engaged in qualifying employment and thus face a confusing tradeoff of pausing payments or receiving credit toward forgiveness or have a high likelihood of a $0 payment on an IDR plan and thus there would not be a meaningful difference were they to have been enrolled on an eligible IDR plan. Awarding credit for deferments and forbearances beyond the ones identified by the Department would not be appropriate because they could be in situations where the borrower would be required to make a payment greater than $0 on IDR or there's no indication that the individual would otherwise be engaging in qualifying employment. In some cases, such as the unemployment deferment, it would not be possible for a borrower to engage in qualifying employment for PSLF since a borrower cannot receive that deferment if they have full-time job.

The regulations also provide a reconsideration process, which will enable borrowers to request a review of the PSLF status of their employer or the number of qualifying payments.

With respect to time while payments are administratively paused as servicers recalculate payments on an IDR plan or transfer them to the PSLF servicer, the Department agrees with commenters to allow those periods to count toward PSLF, provided the borrower still engages in qualifying service. These forbearances will be captured under § 685.205(b)(9), which is already in the regulations as a type of forbearance that would count toward PSLF. The Department had been concerned about this being a path for borrowers to gain significant credit simply by applying repeatedly. However, the Department is working on changes related to the Fostering Undergraduate Talent by Unlocking Resources for Education (FUTURE) Act, which will allow borrowers who provide the necessary approval to the Department to automatically recalculate payments every year using data filed to the IRS. Those borrowers are unlikely to see a delay in having their payment account updated. Similarly, under planned improvements to the student loan servicing the Department is planning to eliminate transfers to specialty servicers for programs like PSLF, further reducing the incidence of months paused for administrative reasons.

For all other deferments and forbearances, we have created a hold harmless provision that will allow borrowers who have been encouraged and placed in forbearances for long periods of time to make payments equal to or greater than what they would have paid in order to count that time spent in forbearances as time toward forgiveness. This process is less burdensome than trying to substantiate which periods of deferment or forbearance may be a result of steering or bad advice versus which ones are not. The hold harmless option would allow borrowers to pay what they otherwise would have paid during the time they spent in a forbearance or a deferment and have that time count toward PSLF rather than an amount equal to or greater than the amount they would have paid at the time on a qualifying plan. The Department announced a payment account adjustment in April 2022 that included adjustments to borrowers' accounts for certain deferments prior to 2013 and extended periods of any type of forbearance. Those adjustments will pick up significant periods that might otherwise have been subject to the hold harmless provision. The Department's regulations cannot waive statutory requirements, and the statute is clear that we cannot count time in default toward PSLF and that includes time spent in loan rehabilitation. Borrowers must make 120 qualifying payments to receive credit toward PSLF. Borrowers on IDR plans with a $0 payment remain eligible for PSLF.

Changes: None.

Comments: A few commenters suggested adding a separate Peace Corps deferment instead of having this deferment be included in the AmeriCorps forbearance. Commenters also proposed retroactively counting all service of Peace Corps and returned Peace Corps volunteers regardless of loan status or payments.

Discussion: A borrower may apply for an Economic Hardship deferment based on Peace Corps service which is separate from the AmeriCorps forbearance. Borrowers who are Peace Corps volunteers would likely have a $0 payment under an IDR plan which is a qualifying repayment plan for PSLF; however, they may choose to apply for an Economic Hardship deferment instead and receive credit toward PSLF forgiveness. Typically, AmeriCorps volunteers are working and receiving payment during their service time. Therefore, these borrowers are eligible for a forbearance which counts toward time to forgiveness under these regulations. The Department evaluates each PSLF application to determine if a borrower should receive credit for the months for which they provided information on the form. While we do not retroactively count payments by Peace Corps or returned Peace Corps, PSLF applicants will have a full review and assessment of any period of employment covered by any future application.

Changes: None.

Single Standard, Waiver Expansion, COVID, IDR, and FFEL

Comments: Several commenters expressed concerns regarding the expiration of temporary waivers and the need for a single Federal standard regarding PSLF. These commenters further stated that borrowers will have difficulty navigating multiple standards and the confusion will cause borrowers who are entitled to PSLF benefits not to receive them. Commenters encouraged the Department to retroactively ensure prior qualifying employment and subsequent payments would count toward PSLF qualifying payments.

Several commenters urged the Department to include in the PSLF regulations provisions in the Limited PSLF Waiver that allow borrowers with FFEL loans to have payments on those loans count toward PSLF. These commenters stated FFEL loan borrowers only have a year to take the steps to consolidate into the Direct Loan program and get credit for past payments under the Limited PSLF Waiver and asked the Department to extend the deadline on the limited PSLF waiver. Other commenters noted that to qualify for PSLF, the borrower must make required payments on a Direct Loan; payments on FFEL or Perkins loans do not count toward forgiveness. Several commenters asked that we lower the number of required payments

[153] *https://studentaid.gov/announcements-events/idr-account-adjustment.*

from 120 months to 60 months and one commenter requested we forgive loans based on a percentage rate of 20 percent each year.

A few commenters stated that while borrowers were automatically placed into forbearance with 0 percent interest rates through August 31, 2022, and the time in forbearance is considered counting as payments toward the minimum requirements for forgiveness, the borrower must have maintained full-time employment at a qualifying employer. These commenters contended that this was an unrealistic obligation during the worst public health crisis in 100 years and that many nonprofits had to lay off workers due to the pandemic at no fault of the worker.

Other commenters suggested that any payment under IDR should count toward PSLF if the borrower qualifies for PSLF. These commenters recommended the Department clearly state in regulations that any month that would count toward IDR forgiveness would be counted as qualifying time toward forgiveness for PSLF. Several commenters urged the Department to ensure PSLF regulations align with future proposed IDR regulations.

Discussion: The Department understands the importance of aligning PSLF and IDR regulations and will strive to do so where appropriate. We have adopted some of the benefits provided under the temporary waiver into these regulations, such as allowing payments made on a Direct Loan prior to consolidation to still be counted toward forgiveness after consolidation. There are other places where we have taken a different approach. For instance, the limited PSLF waiver treats any month in repayment as a qualifying payment. The Department cannot change in regulation the statutory requirements that dictate which repayment plans are eligible for PSLF, but we have made changes that will help borrowers count payments they make toward PSLF by allowing partial, late, and lump sum payments to count. Other elements, such as the hold harmless provision, which provides borrowers a recourse of action when servicers either provided misinformation or steered borrowers into extended forbearance, go further than what the limited PSLF waiver provides. Section 455(m) of the HEA requires that borrowers be employed full-time at qualifying employers and make 120 payments to qualify for PSLF. These rules cannot waive statutory provisions or retroactively grant qualifying payments to borrowers prior to the inception of the program. Instead, the purpose of these regulations is to define and clarify the requirements for PSLF. The benefits provided under the waivers and the expiration date for the waivers are separate and apart from these rules. Under the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act) (Pub. L. 108–76, 20 U.S.C. 1098bb(b)) authority, the Secretary announced waivers and modifications of statutory and regulatory provisions designed to assist ''affected individuals.'' Under 20 U.S.C. 1098ee(2), the term ''affected individual'' means an individual who—

- Is serving on active duty during a war or other military operation or national emergency;
- Is performing qualifying National Guard duty during a war or other military operation or national emergency;
- Resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency; or
- Suffered direct economic hardship as a direct result of a war or other military operation or national emergency, as determined by the Secretary.

Based on this authority and due to the national pandemic, the Secretary has provided a number of waivers to the requirements for the PSLF program and also paused payments, with those months counting toward forgiveness if the borrower has qualifying employment.

Establishing a single standard that includes all benefits of the waivers and merges the new regulations is not feasible because elements of the waiver, such as counting any month in repayment as a qualifying payment regardless of whether a borrower made a payment or their repayment plan or granting credit for payments made on a commercial FFEL loan, can only be provided on a time-limited basis. The Department believes that these rules streamline processes, clearly define new terms, and revise existing terms.

Changes: None.

PSLF Reconsideration and Application Changes

Comments: Several commenters approved of the proposed reconsideration process and recommended that the Department lengthen the time period in which a borrower can request reconsideration beyond the proposed 90 days. These commenters stated that to file a robust reconsideration request, many borrowers will need to access loan and PSLF records from servicers, as well as information from employers of years past. These commenters further claimed that the proposed reconsideration window would be costly and inefficient for the Department, as pushing borrowers to file hasty requests would be likely to lead to unwarranted denials and repeat reconsideration requests.

Other commenters suggested the Department not allow the same servicers to be tasked with reconsideration of any determinations or denials made by that servicer.

Discussion: We appreciate the commenters' support of the opportunity for reconsideration. We believe, however, that many borrowers possess the needed records for reconsideration at the time they submit their initial application or would be able to obtain them and request reconsideration within 90 days. The reconsideration request allows for a review of accuracy because the borrower believes the Department made a mistake or did not have all information necessary to make the correct determination at the time of the initial review. We believe that through the reconsideration process, one of the benefits could be global fixes if the Department identified mass errors in applications that were previously denied.

The regulations do not address how the Department uses its contractors to perform certain roles in the program.

We appreciate the commenters' concern about the costs associated with the regulatory action. We provide detailed information about the costs in the Regulatory Impact Analysis section.

Changes: None.

PSLF Qualifying Payments

Comments: Many commenters suggested that the number of qualifying payments for PSLF should be reduced. Other commenters suggested that the number of qualifying payments should be dependent on the type of institution the borrower attended. A few commenters suggested borrowers should be eligible for PSLF after a specific number of years, rather than after making a specific number of qualifying payments. A few commenters stated the amount or percent of relief should be tied to the number of qualifying payment years. Other commenters stated that all student loans should be forgiven when the borrower meets a specific age threshold. These commenters expressed concerns regarding the duration of student loans and that low-paying public service occupations make it difficult to make other needed payments toward necessities.

One commenter noted that the proposed regulations allow a borrower

to request loan forgiveness after making the 120 monthly qualifying payments but expressed concern about the Department allowing for lump-sum monthly payments. The commenter suggested that § 685.219(e)(1) should be revised to clarify that the borrower may request loan forgiveness only after making the 120 monthly qualifying payments and while performing 120 months of qualifying service.

Discussion: The HEA requires that a borrower make 120 months of qualifying payments to receive forgiveness under PSLF. The changes to the number of qualifying payments and time to forgiveness suggested by the commenters would require a statutory change and cannot be accomplished through regulation.

The Department appreciates the comment about the updating the regulations to include the borrower may request loan forgiveness after making both the 120 months of qualifying payments and qualifying service. The Department will amend the regulatory text.

Changes: The Department will amend § 685.219(e)(1) to specify that a borrower may request loan forgiveness after making the 120 months of both qualifying payments and qualifying service.

Eligibility for Physicians Working in Texas and California Hospitals

Comments: Several groups of commenters responded to the Department's directed question related to PSLF eligibility for physicians in States where they are ineligible to work for qualified employers due to State laws, such as those in California and Texas. These commenters stated that qualified California and Texas physicians who work at nonprofit hospitals but are not directly employed by them should have equal access to PSLF like their colleagues in areas that are not impacted by State law.

Other commenters questioned how the Department would be able to establish that physicians in those States were not employees of hospitals exclusively due to State law as opposed to other circumstances when physicians are employed at nonprofit hospitals but are paid by physician groups or work as independent contractors. Other commenters noted that if State law prohibits a public service organization from directly employing a licensed physician, eligibility for loan forgiveness can be demonstrated by a written certification signed by an authorized official of the public service organization. Other commenters noted similar issues such as hospitals not hiring psychiatric pharmacists in States such as Hawaii. One commenter also argued for the inclusion of certified midwives that work for a physician group that provides services to nonprofit hospitals in California.

A few commenters also noted that since physicians are not eligible for PSLF under these arrangements in other states, physicians in Texas and California should not be eligible. Other commenters disagreed with the Department's proposed expansion of the definition altogether.

Discussion: These final rules do not speak to one issue raised by commenters in response to the NPRM—whether and in what circumstances private for-profit employers, including early childhood organizations, should be treated as qualifying employers for the purposes of PSLF. That issue and the responses to comments related to it, will be addressed in a future final rule.

We thank the commenters for their suggestions to expand eligibility for PSLF to certain and distinct contract employees who provide an eligible service for PSLF but are prohibited from being a full-time employee of an otherwise qualifying employer due to State law. The Department is aware of this situation existing for physicians at some nonprofit hospitals in Texas and California, where rules that have been in place for decades prevent their direct employment by the hospital. Other borrowers may be in a similar situation.

Based on the information provided by the commenters, the Department has determined that this situation is distinct from other types of contractual employment. A hospital must have doctors to provide the needed care to carry out its mission, but in this situation the only option is to bring on contractors to fill gaps or expand capacity because the hospital is legally prohibited from pursuing any other staffing model. In these cases, the employer is limited to hiring someone only as a contractor. Congress intended to support certain organizations and their employees by providing PSLF but limited the benefit to employees. These State laws mean that certain borrowers in these States are barred from PSLF solely because of the State law. For the reasons expressed by the commenters, the Department has decided to address this unequal treatment by allowing borrowers in the narrow and specific situation of a borrower who works as a contractor for a qualifying employer in a position or providing services which, under applicable state law, cannot be filled or provided by an employee of the qualifying employer to qualify for PSLF. We believe that this relates to a relatively limited universe of borrowers. This change does not expand the range of qualifying employers, but rather who can be captured under a qualifying employer. Accordingly, in situations such as the one raised by a commenter who works as a certified midwife, eligibility would be based on whether the specific adjustment allowed in this rule also applies to them.

As discussed above, the Department will publish a separate final rule addressing the comments raised concerning allowing private for-profit employers to serve as qualifying employers for PSLF. This rule does not speak to that issue.

Changes: The Department has amended the definition of the term ''employee or employed'' to include an individual who works as a contracted employee for a qualifying employer in a position or providing services which, under applicable State law, cannot be filled or provided by a direct employee of the qualifying employer.

Eligibility for Other Contractors

Comments: A few commenters suggested expanding the definition of employee or employed to mean any individual who is hired and paid by a public service organization, including contractors.

The Department received a range of comments arguing for expanding PSLF to other types of contractual employment relationships beyond the specific case of physicians at certain nonprofit hospitals in Texas or California. These ranged from suggestions for expansions to specific occupations to calls for the inclusion of all borrowers who work as contracted workers at any qualifying organization. Other commenters added that the Department should focus on the service provided and not the employers' status and further stated that private-practice medical practitioners that get reimbursed from Tricare or TriWest (or other qualifying providers) for providing public healthcare for Active-Duty Military and Veterans should get credit. Several commenters urged the Department to include contracted nurses and nurse practitioners as eligible employees for PSLF. Another commenter suggested that we provide clarification that qualifying employers may certify the public service work of contracted employees retroactively.

Many commenters supported extending PSLF eligibility to certain self-employed independent contractors who are working on a full-time basis with a qualifying employer, who are not employed directly by the qualifying employer, and who may receive tax

forms with stated profession other than W–2s, including 1099 forms.

Discussion: As discussed above, the Department will publish a future final rule addressing comments related to expanding eligibility of private for-profit organizations to serve as qualifying employers for PSLF. This rule does not speak to that issue. Instead, this response addresses the question of whether there should be other situations when a government or private nonprofit organization can certify the employment of a contractor.

The Department has decided to allow borrowers in the narrow and specific situation of working as contracted workers for a qualifying employer in a position or providing services which, under applicable State law, cannot be filled or provided by a direct employee of the qualifying employer to qualify for PSLF. An employee who works under this condition may receive a Form 1099 which would be acceptable instead of a W–2. As the Department explained in its rationale for this limited exception earlier in this document, the reasons that justify allowing this targeted exception do not apply to the use of contractors more generally.

Changes: None.

Comments: Other commenters noted that while there might be some pushback to include contractors and that contractors tend to earn higher salaries, the borrower must be enrolled in the PAYE or IBR plan, which requires financial hardship to be eligible.

Discussion: The Department thanks the commenters for their feedback. Unless a borrower works as a contractor for a qualifying employer in a position or providing services which, under applicable State law, cannot be filled or provided by a direct employee of the qualifying employer, employer, the borrower would not be considered working for a qualifying employer for the purposes of PSLF.

Changes: None

Certification and Other Forms

Comments: Several commenters mentioned that qualifying organizations are likely willing to sign PSLF forms on behalf of contractors since they are likely already completing PSLF forms as qualifying employers and often track the number of hours worked for the independent contractors they hire. One commenter argued that they do not believe that a company's willingness to sign a verification form for an employee has practical utility and recommends that the Department use the same approach here as for all other employers. Another commenter requested the Department include contracted public defenders, certified by their local governments, as a qualifying employer and permit employer certification for contracted public defenders. This approach would allow an employee to substantiate their periods of qualifying employment using other avenues of documentation, such as W–2s, if the employer is unwilling to certify employment (or if the employer has closed). The commenter reminded the Department that the Privacy Act of 1974 provides that the Department shall ''collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.''

Discussion: The Department appreciates the suggestions from the commenters. We are cognizant of the rights of individuals under the Privacy Act of 1974 and take every precaution to protect those rights. We further believe that the PSLF and Temporarily Expanded PSLF certification and application is an appropriate means of collecting information and certifying that a borrower is working full-time at a qualifying employer. Additionally, we determine PSLF eligibility based on the services provided by the employer and not by the individual's specific job or job description. As stated earlier, the Department has permitted the use of Form 1099s in the limited condition described above. The Department will also review borrower's alternate documentation if an employer refuses to certify the certification and application form.

Changes: None.

Early Childhood Educators Who Work for For-Profit Entities

The Department thanks commenters for responding to the questions we asked in the NPRM and for providing comments related to Early Childhood Educators who work for for-profit entities. We received many comments related to the eligibility of Early Childhood Educators who work for for-profit entities as well as suggestions to include employees of for-profit entities in many other occupations as well as removing any limitation on the eligibility of for-profit employers so long as they provide a qualifying service.

The Department is separating this issue for a future final rule because we received significant and detailed comments in response to our questions around the possible treatment of for-profit companies that provide early childhood education as qualifying employers for PSLF. These comments included a number of proposals that address operational, legal, and policy considerations, which the Department needs additional time to consider. That rule will be published after November 1, 2022. These Final Rules do not address this issue.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) must determine whether a regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

The Department estimates the quantified annualized economic and net budget impacts to be $71.8 billion in increased transfers among borrowers, institutions, and the Federal Government, including annualized transfers of $7.4 billion at 3 percent discounting and $7.8 billion at 7 percent discounting, and annual quantified costs of $6.3 million related to paperwork burden. Therefore, based on our estimates, OIRA has determined that this final action is ''economically significant'' and subject to OMB review under section 6(a)(3) of Executive Order 12866. Notwithstanding this determination, based on our assessment of the potential costs and benefits (quantitative and qualitative), we have determined that the benefits of this final regulatory action justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in

Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives such as user fees or marketable permits to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations as these policies are better than the alternatives considering the facts. The focus of this regulatory package is to improve title IV HEA program administration. In choosing among regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action will not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

As required by OMB Circular A–4, we compare the final regulations to the current regulations. In this regulatory impact analysis, we discuss the need for regulatory action, potential costs and benefits, net budget impacts, and the regulatory alternatives we considered.

1. Major Rule Designation

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

2. Need for Regulatory Action

The Department has identified a significant need for regulatory action to address regulatory burdens, alleviate administrative burden, and ensure Federal student loan borrowers are more easily able to access the loan discharges to which they are entitled under the HEA. Accordingly, these final regulations will alleviate some of the burden on students, institutions, and the Department, as discussed further in the Costs and Benefits section of this RIA.

In recent years, outstanding Federal student loan debt has increased considerably and, for too many borrowers, that burden has been costly. More than 1 million borrowers defaulted on a Federal student loan each year in the periods prior to the nationwide pause of student loan interest and repayment first implemented by the Department and then extended by Congress in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Millions of others fell behind on their payments and risked default. For those who have defaulted, consequences can be significant, with many borrowers having their tax refunds or other expected financial resources garnished or offset, their credit histories marred, and their financial futures put on hold.

We continually examine our regulations to improve the Federal student loan programs and it was the primary goal of this negotiated rulemaking. This NPRM specifically addresses regulatory changes to discharges that will help borrowers to reduce or eliminate debt for which they should not be responsible to pay based upon discharge programs authorized by the HEA. The American Rescue Plan Act of 2021 modified the Federal tax treatment of student loan discharges through December 31, 2025, by excluding such discharges from gross income for Federal income tax purposes.

The Department seeks to reduce the burden for students and borrowers to access the benefits to which they are entitled through several provisions in these final regulations. This includes streamlining the BD regulations and establishing a process for group consideration of claims from borrowers with common claims or affected by the same institutional act or omission; restricting the use of mandatory arbitration and class action waiver requirements imposed by imposed by institutions participating in the Direct Loan program; reducing the burden caused by interest capitalization; ensuring totally and permanently disabled borrowers have the ability to access and maintain a discharge more easily; allowing borrowers to automatically access a closed school loan discharge; easing the process of accessing false certification discharges; and clarifying the rules borrowers must comply with in the PSLF program. Throughout these final regulations, we accommodate and, where possible, require, that these benefits are provided automatically, so that borrowers are not required to submit unnecessary paperwork to benefit from provisions included in the HEA.

These efforts to reduce burden for students and institutions will also indirectly reduce the burden on the Department by, for example, limiting the need for adjudication of individual claims for BD in some cases, simplifying the criteria that need to be checked to determine if payments count toward PSLF, and limiting the need for the Department to process paperwork by providing discharges on a more automatic basis for borrowers whose schools close or when a borrower has a total and permanent disability.

These final regulations will affect each of the three major Federal student loan programs. This includes the Direct Loan program, which is the sole source of Federal student loans issued by the Department today, as well as loans from the FFEL Program, which stopped issuing new loans in 2010 and the Perkins Loan Program, which stopped issuing new loans in 2017. Changes to TPD and closed school discharges will affect all three programs. Changes to false certification will affect FFEL and Direct Loans. Changes to interest capitalization, BD, arbitration, and PSLF will only affect Direct Loans.

Borrower Defense: Borrowers whose colleges take advantage of them, such as by misrepresenting job placement rates or other important information about the program, are eligible for a BD discharge on their loans. However, the process—which was rarely used prior to 2015—has resulted in many borrowers filing claims that remain pending due to burdensome review processes and differing standards and processes depending on when the borrower took out their loan. These final BD

regulations make these policies more consistent, regardless of when the borrower took out the loan, and create a more timely and effective process for reviewing borrowers' claims. The Department also seeks to implement measures that will reduce the burden on institutions of participating in BD proceedings with the changes to group claims and recoupment. Allowing group claims ensures that institutions with large numbers of outstanding claims will likely only have to respond once to a request for information regarding the allegations that could lead to an approved BD claim. While the standards in this rule will apply to borrower defense claims pending on or received on or after July 1, 2023, the Department will only seek recoupment for discharges tied to conduct that would be approved under the applicable regulation based on the loan disbursement date. Additionally, separating the approval of BD claims from recoupment of loan discharge costs from the institution also limits the burden on educational institutions, when we seek to establish liabilities from a discharge paid. The use of pre-existing processes for recoupment proceedings also means institutions will not need to learn and participate in an entirely new liability and appeals process.

Pre-Dispute Arbitration: Often, schools that have taken advantage of borrowers have required borrowers to participate in private arbitration proceedings. These pre-dispute arbitration agreements require borrowers to agree to the terms before a conflict ever arises and often dictate whether the borrower can appeal the decision. Though pre-dispute agreements are not inherently predatory in practice, they can be applied in predatory ways toward borrowers such as undermining borrowers' rights to avail themselves of certain loan discharges, depriving borrowers of the protections in the HEA. We have seen arbitration applied across different industries including consumer protection and employment, and in the realm of education, pre-dispute arbitration agreements are often linked to propriety education enrollment agreements.[154] Additionally, while the Department is aware of arguments that arbitration lowers the costs of dispute resolution for borrowers relative to litigation, a study of consumer finance cases analyzed by the Consumer Financial Protection Bureau found that most resulted in no determination on the merits of the allegation by the arbitrator, and those that did (and where counsel was retained) resulted in attorney's fees awarded at a similar rate to both consumers and companies.[155]

The Department observed several issues and problems around pre-dispute arbitration and class action waivers. First, institutions may use arbitration clauses in enrollment agreements to effectively discourage borrowers from pursuing complaints. This enables an institution to avoid financial risk associated with its wrongdoing and shift the risk to the taxpayers and Federal government through subsequent BD discharges. Additionally, borrowers cannot have their day in court because some enrollment agreements prevent their ability to participate in lawsuits, including class action litigation. This further insulates institutions from the potential financial risk of their wrongdoing and the lack of transparency surrounding institutions' arbitration requirements and limits on class actions.

Interest Capitalization: Virtually all struggling borrowers likely saw their balances increase due to interest capitalization. Interest capitalization may have occurred due to time in forbearances or deferments. Furthermore, because the interest on an unsubsidized loan accrues while the borrower is enrolled in school, a capitalization event following the in-school grace period affects any borrower who has one of these types of loans. Eliminating interest capitalization stops compounding the costs and makes loans more affordable for borrowers. While eliminating interest capitalization does not remove borrowers' debt burden, it will help to increase affordability for students whose balances might continue to grow. That is particularly true for the low-income or struggling borrowers who tend to use deferments and forbearances more heavily, and thus see more capitalizing events throughout their repayment periods.

Total and Permanent Disability Discharge: Another area in which the current regulations create gaps for borrowers is related to total and permanent disability discharges. For borrowers who are unable to engage in gainful employment due to a disability, their student loan debt become exceedingly burdensome, leaving many in dire financial circumstances, despite being eligible for discharges of their Federal student loans under the HEA. Some eligible borrowers are not fully aware of existing relief pathways, but for those who are aware of TPD discharges, they face a complex and onerous procedure to ensure borrowers continue to meet the statutory test of not being able to engage in gainful employment to acquire and maintain discharges.

The Department has identified several aspects of the TPD discharge process that will be improved through regulation. First, the Department currently administers a 3-year post-discharge income monitoring period, for which the documentation requirements are burdensome for affected borrowers. Since 2013, loans for more than half of the 1 million borrowers who received a TPD discharge were reinstated because the borrower did not respond to requests for income documentation, although an analysis conducted by the Department with Internal Revenue Service (IRS) data suggests that 92 percent of these borrowers did not exceed the earnings threshold, and that these results are similar for borrowers whose discharge is based on an SSA disability determination or physician's certification process. Second, borrowers who currently qualify for TPD discharges based on SSA disability determinations must be in SSA's Medical Improvement Not Expected (MINE) category to qualify, although there are other circumstances that may support a discharge based on an SSA disability determination under the terms of the HEA. For borrowers applying for a TPD discharge based on a disability determination by the SSA, acceptable documentation for the TPD discharge is limited to the notice of award that the borrower receives from the SSA and for borrowers applying for a TPD discharge based on a physician's certification, only a Doctor of Medicine or a Doctor of Osteopathy may certify the TPD discharge form. This final regulation aims to mitigate and to streamline total and permanent disability discharge process.

Closed School Discharge: Borrowers have also faced the negative financial impacts of institutions closing, often without adequate warning, interrupting borrowers' ability to continue and complete their desired educational programs. Many of these borrowers were left with debt but no degree, sometimes facing new barriers to education such as finding an easily accessible new institution and potentially losing many credits that are nontransferable. Historically, borrowers who do not

[154] Habash, T. and Shireman, R., (April 28, 2016). *How College Enrollment Contracts Limit Students' Rights, The Century Foundation.* Retrieved from *https://tcf.org/content/report/howcollege-enrollment-contracts-limit-students-rights/.*

[155] Consumer Financial Protection Bureau. (2015.) ''Arbitration Study: Report to Congress.'' *https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.*

finish their programs are far more likely to risk default than those who graduate, so closures can negatively affect borrowers' ability to make their payments, creating a need for improved processes for closed school discharges.

Several aspects of the closed school discharge process have limited the ability of borrowers to receive closed school discharges. Final regulations published in the **Federal Register** on November 1, 2016, provided for automatic closed school discharges to borrowers who were eligible for a closed school discharge but did not apply for one, and who did not enroll elsewhere within 3 years of the institution's closure. Final regulations published on September 23, 2019, eliminated this provision. These final regulations will reinstate a form of the 2016 provision.

Closed school discharges for borrowers who withdrew from a school prior to the school closing are also not consistent across years in the discharge window available to borrowers. Additionally, the Secretary may extend the closed school discharge window under ''exceptional circumstances.'' The nonexhaustive list of exceptional circumstances provided in the regulations does not include many events that may occur on the path to closure and could reasonably be associated as a cause of that closure. In addition, the September 23, 2019, regulations removed some of the exceptional circumstances that were included in the prior regulations, such as ''a finding by a State or Federal government agency that the school violated State or Federal law,'' and that remain highly relevant factors in some college closures. This final regulation aims to remedy these issues.

False Certification Discharge: The Department also identified opportunities to improve false certification discharges. These are discharges available to borrowers under the HEA if the institution that certifies the borrower's eligibility for the loan does so under false pretenses, such as when the borrower did not have a high school diploma or equivalent and did not meet alternative criteria; when the borrower had a status that disqualified them from meeting legal requirements for employment in the occupation for which they are training; or if the institution signed the borrower's name without authorization.

One challenge the Department identified with false certification discharges is that there are different standards and processes for false certification discharges depending on when the loan was disbursed, which can create confusion for borrowers. These final regulations streamline the false certification discharge process for student loan borrowers, establish standards that apply to all claims regardless of when the loan was first disbursed, and provide for a group discharge process. These final rules will also reduce the burden on borrowers to prove eligibility for false certification discharges if they did not have a high school diploma, if the institution falsely signed the borrower's name for the loan, or if the borrower had a disqualifying condition (those that would prevent the borrower from obtaining employment due to applicable State requirements related to criminal record, age, physical or mental condition, or other factors) at the time they took out the loan.

Public Service Loan Forgiveness: The HEA provides forgiveness of remaining balances for borrowers who make 120 qualifying payments on their loan while working in qualifying employment in public service. However, the Department is concerned that too many borrowers have found it difficult to navigate the program's requirements due to unclear or complex definitions and overly stringent requirements regarding the payments made on the loan. For instance, the current regulations leave the definition of what constitutes full-time employment up to interpretation by each employer. This creates inconsistency, such as when one employer considers 40 hours a week as full-time employment and another employer may consider 35 hours as full-time employment, so a borrower employed 35 hours a week may be denied or granted qualifying employment depending on their employer, despite working in the same type of work. There are also situations where professors and contingent faculty have difficulty obtaining employer certification of their qualifying employment because their employers are unsure of what conversion factor to use in converting course load into hours worked per week.

The Department will improve the PSLF application process and automate the discharge process in instances where the Secretary has enough information to determine eligibility for forgiveness. This will significantly reduce burden on the borrower and the Department's burden, to review and approve applications. The current PSLF application process is difficult for many borrowers, who often struggle both with meeting the complex terms of the program and with the process of applying to demonstrate their eligibility.

3. Summary of Comments and Changes From the NPRM

The Department made several significant changes to borrower defense from the NPRM as well as some changes to interest capitalization, closed school discharges, and total and permanent disability discharges. The Department did not make any non-technical changes to arbitration and class action waivers or false certification discharges. Table 1 below provides a summary of the key changes from the NPRM to the final rule.

BILLING CODE 4000–01–P

Table 1—Summary of Key Changes in the Final Regulations

Provision	Regulation Section	Description of change from NPRM
Borrower defense to repayment		
Definitions	§ 685.401	Adjusting the definition of borrower defense to repayment to note that the act or omission caused detriment to the borrower that warrants relief in the form of a full discharge of amounts remaining on the loan associated with the claim, a refund of all payments made to the Secretary, restoring eligibility to federal financial aid for a borrower in default, and updating or deleting credit reports. In determining whether a detriment caused by an institution's act or omission warrants relief under this section, the Secretary will consider the totality of the circumstances, including the nature and degree of

		the acts or omissions and of the detriment caused to borrowers. Redefining the State law standard to only apply to reconsideration requests on loans issued prior to July 1, 2017. Creating a definition of third-party requestor and legal assistance organization and clarifying the definition of final Secretarial action.
Group process	§ 685.402	Granting a legal assistance organization the ability to also request consideration of a group claim, with accompanying definitions in § 685.401. Granting institutions an opportunity to respond to group claim requests prior to the Secretary issuing a decision on whether to form the group. Lengthening the time to decide on forming a group to 2

		years instead of 1 but shortening the time to decide a claim after forming a group to 1 year.
Individual process	§ 685.403	Clarifying the definition of a materially complete application to ask borrowers to provide more detail on the nature of the school's act or omission and how it affected them and adding requirement that mirrors current practice of requiring applications to be submitted under penalty of perjury.
Group process based on prior Secretarial final actions	§ 685.404	Removing possible types of actions to reflect the updated definition in § 685.401 that defines final Secretarial actions as an exhaustive list of actions under part 668, subpart G, denying the institution's application for

		recertification or revoking the institution's provisional program participation agreement.
Adjudication of borrower defense applications	§ 685.406	Clarifying that the Secretary is the one making the final decision on an adjudication outcome following recommendation from the Department official. Add that the timeline for deciding an individual claim is the later of July 1, 2026 or 3 years after an application is materially complete.
Reconsideration	§ 685.407	Allowing third-party requestors to seek reconsideration of denied claims and updating the limitations on State law reconsideration requests to loans issued prior to July 1, 2017.
Discharge	§ 685.408	Removing discussion of partial discharges to match the updated

		definition in § 685.401 that provides a full discharge for all approved claims.
Recovery	§ 685.409	Clarifying that the Department will not seek to recoup on approved discharges for claims associated with loans issued prior to July 1, 2023, unless they would have been approved under the standards of the regulation in effect at the time of the loan's disbursement.
Interest capitalization		
Partial Financial Hardship	§ 685.209(a)(2)(iv)(A)(1)	Removing the section that provides that accrued interest is capitalized when a borrower no longer has a partial financial hardship under the PAYE repayment plan.
Alternative Payment Plan	§ 685.208(1)(5)	Removing the section that provides that any unpaid accrued interest is capitalized when a borrower is repaying under the alternative

		repayment plan.
Total and permanent disability discharge		
Types of SSA disability determinations that can result in a discharge	§ 674.61(b)(2)(iv)(C)(2), § 682.402(c)(2)(iv)(C)(2), and § 685.213(b)(2)(iii)(B)	Removing the requirement that a borrower who qualifies for SSDI benefits or SSI based on disability and the borrower's next continuing disability review has been scheduled at 3 years must have that disability status renewed at least once to qualify for a TPD discharge
Clarification of eligibility under SSA determinations	§ 674.61, § 682.402, and § 685.213	Adjusting wording to better reflect SSA terminology about its disability determinations. These changes do not change the underlying policies.
Closed school discharge		
School Closure Date	§§ 674.33(g)(1)(ii)(A), 682.402(d)(1)(ii)(A), and 685.214(a)(2)(i)	Clarifying that the Secretary's ability to determine an earlier closure date is based on the date that the school ceased to provide

		educational instruction in programs in which most students at the school were enrolled or the date when the school ceased to provide educational instruction for all of its students.
Eligibility for a discharge	§§ 674.33(g), 682.402(d), and 685.214(c)	Clarifying that a borrower who continues the program at another branch or location of the school would receive a discharge 1 year after their last date of attendance at the branch or location if they do not complete the program. Removing the references to a teach-out provided by the school.
Public Service Loan Forgiveness		
Definition of employee or employed	§ 685.219(b)	Will add a new definition to employee or employed to include a borrower who works as a contractor for a qualifying employer in a position or providing

		services which, under applicable state law, cannot be filled or provided by a direct employee of the qualifying employer.

BILLING CODE 4000–01–C

Comments: Commenters argued that the model created by the Department to estimate the net budget impact of the changes to borrower defense understated the costs because it did not properly account for the growth in loan volume associated with borrower defense claims received by the Department. The commenter argued that the new standards would generate an increase in the number of claims filed compared to the past and that was not captured in the regulatory impact analysis.

Discussion: We disagree with the commenters. The estimates in the NPRM and this final rule reflect the anticipated changes in costs from this regulation, not the overall cost of borrower defense discharges. Claims that would have been approved under prior regulations thus do not and should not show up in the cost estimates in this rule because the regulatory changes here are not changing the outcome on those claims. As such, any increases in borrower defense applications that would have been approved regardless of this regulation do not show up in the cost estimates in this regulatory impact analysis.

The budgetary effects in the regulatory impact analysis reflect reasonable assumptions made by the Department. In general, the Department has seen a significant decline in the filing of borrower defense claims associated with more recent enrollment. Of the approximately 376,000 cases opened since July 1, 2020, only 11,300 are from borrowers whose self-reported first enrollment date was on or after July 1, 2020.[156] Similarly, of the more than 150,000 individual claims the Department has approved so far, 80 percent are covered by the 1994 regulations. While the Department will continue to review claims and may approve additional ones associated with more recent conduct, this bears out the assumptions that the loan volume associated with borrower defense will be significantly higher for past cohorts than in more recent years. The Department also notes that there is a difference between the total volume associated with a submitted borrower defense claim and the estimate about the amount of volume that results in approved claims. The Department's estimates are focused on the share of volume associated with conduct associated with approved claims. We believe that the estimate that shows the share of volume associated with conduct that could lead to an approved borrower defense claim declining over time is correct. Many of the institutions that produced the largest amount of borrower defense claims closed years ago. Many others with a significant number of claims have seen enrollment declines. Additionally, the number of lawsuits and investigations related to institutions from actors such as State attorneys general has also declined over time. As such, we do not see indications of a likely increase in conduct that leads to an approved borrower defense claim.

Changes: None.

Comments: Commenters argued that the Department should withdraw the regulation because of the significant cost of the regulations.

Discussion: We disagree with the commenters. We have concluded that the benefits from this rule exceed its costs. The specific types of benefits are discussed in greater detail in the costs and benefits section of this regulatory impact analysis.

Changes: None.

Comments: Commenters argued that instead of citing approval estimates from the regulatory impact analysis for the 2016 and 2019 regulations the Department should have conducted its own analysis of the approval rate under the 2016 regulation to justify its conclusions as to the Department's preferences for recreating elements of the 2016 regulation.

Discussion: There is not a straightforward way to calculate an approval rate for claims associated with the 2016 regulation. To date, the Department has approved nearly 123,000 individual claims covered by the 1994 regulation, just over 17,000 claims associated with the 2016 regulation, and just over 13,000 claims associated with both. However, there is not an appropriate denominator to use to calculate an approval rate. In 2020, the Department issued denial notices to tens of thousands of borrowers, including many covered by the 2016 regulation. However, those denial notices were challenged in court and the Department stipulated in October 2020 that we would not issue any further denials until the *Sweet* v. *DeVos* lawsuit was resolved on the merits. A settlement agreement on that case that received preliminary approval in July 2022 would rescind those denial notices. Other claims may not have received an individual approval notice but have since been included in a group discharge of claims. Still other claims have not received a decision of either approval or denial. The result is that any reported approval rate would risk excluding elements that could meaningfully affect the number.

Changes: None.

Comments: Commenters argued that the Department's budget estimates underestimated the harm to institutions by underestimating the amount of funds it expects to recoup. Commenters pointed to higher recoupment estimates in the 2016 and 2019 regulations and procedural changes in the NPRM for institutions to challenge liabilities as arguments that the recovery rate should be higher.

Discussion: The Department disagrees with the commenters. The estimates in this rule reflect what the Department expects to recoup from institutions resulting from the changes in this regulation. The estimates are not reflective of borrower defense discharges overall.

[156] Department of Education analysis of borrower defense claims based upon the date the claim was filed and the first enrollment date reported by the borrower.

To date, the Department has yet to complete a recoupment effort for approved borrower defense claims. The Department has received some funds from institutions as part of bankruptcy negotiations that offset the expense of some of the transfers from the Federal Government to students when it discharges a loan due to an approved borrower defense claim. But the overwhelming majority of approved borrower defense claims have come against institutions that are no longer in business and have no further resources to potentially reimburse the Department for costs. The Department initiated a recovery proceeding in August 2022 for the only set of claims approved to date against an institution that is still operating. However, that process is not complete. The large share of approved claims associated with closed schools argues in favor of a gap between volume associated with approved claims and amounts recouped.

The structure of the Federal standard will also affect recoupment. As noted in the preamble, the Department will not seek to recoup on the cost of discharges associated with loans disbursed prior to July 1, 2023, unless those claims would have been approved under the standard in the regulation in effect at the time those loans were disbursed. This concept is also now reflected in regulatory text. By applying a single standard to all claims, some claims may be approved that would not have been approved under the standard in effect at that time. Finally, we remind commenters that the budgetary effects from discharges and savings from recoupment in the regulatory impact analysis reflect the effect of this rule, not borrower defense discharges overall.

Changes: None.

Comments: Commenters argued that the Department's analysis of the budgetary impact of the borrower defense rules was inaccurate because it did not incorporate the effects of the proposed settlement in the *Sweet* v. *Cardona* litigation.

Discussion: In July 2022, the proposed settlement in *Sweet* v. *Cardona* received preliminary approval. However, the settlement is not final. It would thus be inappropriate to factor this settlement into the baseline for estimating the cost of borrower defense discharges. We discuss the effect of the potential settlement on the net budget impact of the BD provisions in the Net Budget Impact section. Overall, if the settlement is approved, the effect would be to reduce some of the transfers to borrowers in the form of approved BD claims due to this regulation because those borrowers would instead receive settlement relief that discharges their loan. Those discharges from settlement relief are not BD discharges. Claims that are granted settlement relief but would not have been approved under this regulation do not affect the net budget impact of this regulation, since they would not have resulted in a transfer to the borrower in the form of a loan discharge nor the possibility of a transfer from the institution to the Department through a recoupment effort.

Changes: None.

Comments: Commenters argued that the Department did not sufficiently explain why it anticipates that 75 percent of group claims would be approved versus 12 percent of individual claims.

Discussion: The underlying budget estimates for this rule are derived using the same model and data that the Department uses for its annual estimates of the student loan programs, with specific assumptions related to BD added in. That model uses a statistically significant sample of administrative data from the National Student Loan Data System to estimate costs both based upon the cohort of when loans are disbursed as well as by different risk groups, such as whether a borrower is a first- or second-year student, the sector of school they attend, and other factors. The model is subject to an annual external audit and changes to overall assumptions must be approved by the OMB. This ensures that we are using the same data and the same consistent procedures we employ to produce other cost estimates, such as those in the President's annual budget request to Congress.

In establishing the parameters to estimate the effects of the borrower defense rule the Department drew on its experience with administering the different borrower defense regulations to estimate approval rates. We also considered these rates in comparison to the regulatory impact analysis in the 2016 regulation, since that regulation bears more similarities to this final rule than the 2019 regulation does. To date, all approved individual BD claims have been approved by reaching conclusions about an institution's conduct from common evidence the Department has across a range of borrowers and applying those findings to approve individual claims. Many of those findings that were initially used to grant individual approvals were also later used to grant a group discharge of claims. For instance, the Department approved individual claims at Corinthian Colleges, ITT Technical Institute, Marinello Schools of Beauty, and Westwood College before later discharging loans for groups of borrowers who attended those institutions. In constructing its estimates for the NPRM, the Department anticipated that in the future it is more likely to approve those claims first as a group rather than doing individual approvals followed by a discharge of a group of claims.

The higher estimated approval rate for the group claims also reflects the requirements for submitting an application to consider a group. A materially complete application requires evidence beyond sworn borrower statements, which means that if the Department forms a group, it will be beginning that consideration process with a greater evidence basis than it is likely to possess for most individual claims. By contrast, an individual claim only requires a sworn borrower statement for submission. Commenters should also recall that the Department can decide whether to form a group. It is unlikely the Department would form a group where the evidence indicating a likelihood of approval is low. The process for individual claims is different since borrowers decide to initiate those and it is thus reasonable to expect a wider range of quality.

Establishing an approval rate for claims based upon past experience is further complicated by ongoing litigation. The Department issued denials of tens of thousands of claims, but those were then challenged in court. The Department has since committed to not issue further denials until there is a decision on the merits in the litigation. We, therefore, did not factor those claims into estimates of how many claims would be approved or denied. Similarly, for the group claims the Department has only issued approvals so does not have a corresponding number of denied group applications. Instead, as noted above, we estimated that group claims would have a very high likelihood of approval, since a group would be unlikely to be formed if the chance of success was low. Were the Department to base its estimates solely upon the past approvals it has done, then the relevant approval rates would have been 100 percent for group claims. The historical group claim figure does not include any claims that might be denied and, thus, likely overstates the approval rate going forward. For individual claims, the historical approval rate is 47 percent. That figure is also overstated. The denominator is the total number of claims filed by borrowers at two institutions, DeVry University and the Court Reporting Institute, whose enrollment overlapped

with the period in which we approved findings that made allegations that match our approved findings. The Department is only including those two institutions because all other approvals to date either started as or eventually became group discharges, and we are only including the more limited time period because that is what we have adjudicated to date. The numerator is the number of those borrowers whose applications include allegations that are supported by the Department's findings. A more comprehensive individual approval rate would use a denominator that includes all claims filed, not just those from borrowers who enrolled in the same period as the approved findings. It would also include claims from institutions where we do not have findings. Any approval rate that accounted for all those factors would be a small fraction of that 47 percent approval rate.

In determining how to adjust the group and individual figures downward, we also looked at past estimates from the 2016 regulation. That regulation did not split apart estimates for individual versus group claims. Accordingly, we think the overall estimate, which ranged from 50 to 65 percent of volume associated with group claims seemed overall lower than what we might anticipate when making calculations solely for group claims. Accordingly, we took an estimate that adjusts downward from what the Department has approved to date and upward from the 2016 regulation to a range of 60 to 75 percent, depending on risk group. As for individual claims, the Department considered that the total number of institutions covered by individual claims would be greater than those for group claims, since the Department has at least one individual claim against almost every institution of higher education. However, that significant breadth of claims is less likely to produce approvals since to date no individual claim has been approved without the presence of common findings. The Department also looked at the estimates for claim approvals in the 2019 final rule, which are more analogous to individual claims because that regulation did not allow for group claims. That rule estimated that between 5.25 percent and 7.5 percent of volume associated with applications would be approved. The Department adjusted those estimates upward since this final rule does not include several elements of the 2019 rule that would have led to denials, such as a statute of limitations or the need to show that an act or omission by the school was made with knowledge that it was false, misleading, or deceptive, or that it was made with a reckless disregard for the truth. Accordingly, we think a range of between 8 and 12 percent of volume associated with individual claims reflects the lower likelihood of approval, while also noting that changes in this rule will produce higher approval estimates than the 2019 regulation. As with other prior regulations, the Department estimates the likelihood of a claim being successful at a higher rate at proprietary institutions based upon the fact that to date all approved claims have been associated with that sector. Finally, we note that the Department has yet to approve any borrower defense claims associated with a public or private nonprofit institution. Basing those estimates on adjustments to estimates from previous regulations ensures a greater consistency in estimation given that there is no other data from which to draw upon.

Changes: None.

Comments: One commenter argued that the Department should have conducted an analysis of the impact of the rule on third-party marketers.

Discussion: The Department disagrees. We have provided an analysis showing the anticipated effects of the rule on institutions. Considering cost impact on third-party marketers would result in double-counting because the actions of third-party servicers are attributed to the institution. We have accounted for the effects on third-party servicers as a cost for institutions; counting again would be duplicative.

Changes: None.

Comments: A few commenters argued that the Department failed to abide by the Data Quality Act. They argued that the regulatory impact analysis lacked supporting documentation or analysis for its proposals to use presumptions and several other elements of the regulation related to borrower defense and arbitration. Similarly, a commenter argued that the Department did not undertake impact studies and financial analyses of the rules to understand the effect on institutions and the students they enroll.

Discussion: The Department disagrees with the commenters. All of the budget estimates produced in the regulatory impact analysis are done using the Department's model for estimating the budgetary effects of the student loan programs, which is audited annually and draws data directly from administrative systems maintained by Federal Student Aid. The Department looked at data on actual borrower defense claims received to model the anticipated effects of that rule, including looking at the type of college associated with claims, when borrowers enrolled, and the levels of debt. The Department does not think there is a better available data source for looking at this issue than our own administrative data and the official model used to estimate costs. Commenters did not identify any instances where they thought a data source used lacked objectivity. The Department believes drawing on the administrative data it has that presents a comprehensive view of borrower defense claims filed to date. Moreover, the Department believes that the model it uses to produce formal cost estimates of the Federal student loan programs ensures consistency between regulatory and other cost estimation work. As noted above, the model is annually audited and subject to approval from the OMB. It is also used across both regulations and estimations for the Department's financial statements, and the annual President's budget request.

The Department also disagrees with the commenter who raised concerns about the lack of impact studies. The regulatory impact analysis provides estimates of the financial effect of the rule in terms of the cost of approved claims to the Department, the deterrent effect of the policy, and the amount of funds we anticipate recouping.

Changes: None.

Comments: Commenters also stated that the Department did not conduct an impact analysis related to the prohibition on pre-dispute arbitration agreements and class action waivers.

Discussion: With respect to the commenters who stated that we did not sufficiently explain our analysis supporting the prohibition on pre-dispute arbitration agreements and class action waivers, we disagree and point to the Regulatory Impact Analysis from the NPRM. We also disagree with the assertion that we failed to engage the current regulation's justifications in a meaningful manner and provide the basis for our proposals, both of which we specifically addressed.[157]

Changes: None.

Comments: One commenter argued that the Department did not properly balance the benefits of removing paperwork burdens associated with the TPD income-monitoring period with the potential cost to taxpayers.

Discussion: We agree that protecting federal funds from fraud and error is a necessary and important function of the Department. We note that, under the Paperwork Reduction Act, the

[157] 87 FR at 41913–41918.

Department is obligated to reduce paperwork burden where possible. As we noted in the preamble to the NPRM, we have not found the income monitoring requirement to be a useful measure of a borrower's continuing eligibility for a TPD discharge. The commenter alleges that the Department does not address the paperwork burden benefits of this change. In fact, we stated in the preamble to the NPRM:

> These proposed rules would eliminate the Post-Discharge Monitoring form (TPD–PDM) from the collection and will create a decrease in overall burden from the 1845–0065 collection. The forms update would be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes would be assessed to OMB Control Number 1845–0065, Direct Loan, FFEL, Perkins and TEACH Grant Total and Permanent Disability Discharge Application and Related Forms [NPRM, p. 41970]

The NPRM went on to state that ''burden will be cleared at a later date through a separate information collection for the form'' [NPRM, p. 41973]. Far from being arbitrary and capricious, this is our standard practice for evaluating paperwork burden that is primarily a result of requiring individuals to complete a Federal form.

Changes: None.

Comment: One commenter asked that the Department expand on the effects of removing the limitation on providing automatic discharges for schools that closed prior to November 1, 2013, and show the costs of that change in the regulatory impact analysis.

Discussion: The commenter's request reflects an assumption that the Department is able to retroactively award discharges for schools that closed prior to the effective date of the regulations. The Department, however, is unable to retroactively implement the regulation. It would thus be inappropriate to show additional effects associated with those older closures.

Changes: None.

4. Discussion of Costs and Benefits

The final regulations are broadly intended to provide benefits to borrowers by improving the administration of specific aspects of Federal student loan programs, including through clearer guidelines and processes for obtaining the benefits and protections that the HEA provides them. These changes are particularly important for borrowers who have difficulty keeping up with their payments, who often end up in forbearance, delinquency, or default, and as a result, see their balances grow through interest accrual and capitalization. Some borrowers may struggle to manage their student loan debt because they were misled due to acts or omissions by the school they attended. This caused them detriment rather than delivering the education promised, which could justify relief in the form of a discharge of the remaining balance of the loan, a refund of payments made to the Secretary, and other changes as applicable to credit reporting and removing a borrower from default. Or they may have a loan that was certified under false pretenses and never should have been made. Others may have debts from an education that they could not complete because a school closed, putting them at significant risk of default. In other cases, a borrower may face major repayment challenges because they have a total and permanent disability that prohibits them from engaging in gainful employment for prolonged periods of time. There are also borrowers who may not be struggling, but who are engaging in service to the United States and need promised relief so they can continue in their public service positions. The rule will help borrowers to thrive economically by avoiding repayment difficulties and default, as well as other contributors to financial instability.

The Department also believes that these final regulations will provide critical support to underserved borrowers, thereby enhancing equity. For instance, Black borrowers are disproportionately likely to face repayment difficulties and growing balances. Within recent cohorts, Black college graduates faced a likelihood of default that was five times larger than that of white borrowers.[158] Black borrowers enter repayment after earning a bachelor's degree with higher debt than borrowers in other racial groups, and also continue to see their balances increase rather than fall.[159]

Family income, college completion status, and the type of college a student borrowed to attend are additional factors that relate to repayment difficulties. One study finds that students who borrowed to attend 2-year for-profit colleges were 26 percent more likely to default than those who borrowed at 4-year public colleges, and that family income is a strong predictor of default risk.[160]

Using data from the College Scorecard, a different analysis finds that across all institution types, undergraduate non-completers have substantially higher default rates compared to those who completed a degree or credential.[161] Borrowers in these groups also spend more time with their loans in forbearance and are more likely to see their balances increase after entering repayment.[162]

The remainder of this subsection of the RIA summarizes the conclusions and information on which the Department relied, such as technical studies, assumptions, data, and methodologies, to develop this regulation.

4.1 Borrower Defense

These final regulations improve the process for adjudicating BD claims and for recouping from institutions the cost of discharges associated with approved claims where possible. The Department anticipates that these final regulations will have many benefits for borrowers, as well as some reduction of burden for institutions of higher education. In total, the Department believes the expected increase in BD discharges and the expected increase in recoupment, as compared with the 2019 regulations, would deter behavior that could form the basis for a BD claim and ensure more borrowers are able to access a loan discharge, as provided for in the HEA.

The final regulation will establish a uniform Federal standard for initial adjudication of BD claims, regardless of when a loan was disbursed, which will streamline administration of the BD regulations and increase protections for students. However, institutions will not be subject to recoupment actions for applications that are granted based upon this regulation that would not have been approved under the applicable standard that would have been in effect at the time the loan was disbursed. A uniform standard also will significantly reduce the time necessary to determine eligibility and relief for BD claims, ensuring that borrowers would receive faster determinations. The use of a uniform Federal standard for initial

[158] Scott-Clayton, J. (2018). The looming student loan default crisis is worse than we thought. Brookings Institution Evidence Speaks Report, vol. 2 #34. Retrieved from: *https://www.brookings.edu/research/the-looming-student-loan-default-crisis-is-worse-than-we-thought/.*

[159] Scott-Clayton, J. (2016). Black-white disparity in student loan debt more than triples after graduation. Brookings Institution Evidence Speaks Report, vol. 2 #3. Retrieved from: *https://www.brookings.edu/wp-content/uploads/2016/10/es_20161020_scott-clayton_evidence_speaks.pdf.*

[160] Hillman, N.W. (2014). College on credit: A multilevel analysis of student loan default. *The Review of Higher Education,* 37(2), 169–195.

[161] Itzkowitz, M. (2018, August 8). Want More Students To Pay Down Their Loans? Help Them Graduate. Third Way report. Retrieved from: *http://thirdway.imgix.net/pdfs/want-more-students-to-pay-down-their-loans-help-them-graduate.pdf.*

[162] Department analysis of the 2004/2009 Beginning Postsecondary Students Study, estimated via PowerStats (table references: ivbztb and qobjsb).

adjudication will also ensure all borrowers receive a consistent review, unlike current rules that outline different requirements depending on when a loan was disbursed.

The Federal standard will provide a clearer path for approval of BD claims where the Department's review of the evidence shows that the institution's act or omission caused detriment to the borrower that warrants relief in the form of a full discharge of remaining loan balances, a refund of all payments made to the Secretary, and other benefits. This balances assistance for harmed borrowers while limiting the approval of immaterial claims. We also add aggressive and deceptive recruitment as grounds for a BD approval. The Department is adding this category based upon its experience in administering the BD regulation and because the Department is concerned about instances in which aggressive and deceptive recruitment tactics have caused detriment to borrowers by preventing them from making an informed choice. We also will restore the categories of breach of contract and judgment as grounds for a BD claim, which were included in the 2016 regulation but removed in the 2019 regulation. We have also expanded the category of judgment to include final Department actions against an institution that could give rise to a BD claim. This is limited to actions under part 668, subpart G, denying the institution's application for recertification, or revoking the institution's provisional program participation agreement under § 668.13, based on the institution's acts or omissions that could give rise to a borrower defense claim related to a substantial misrepresentation, substantial omission of fact, or aggressive and deceptive recruitment. To clearly delineate that omission of fact is a form of misrepresentation, we have listed it separately.

These final regulations also provide clearer protections for borrowers while their cases are under consideration by Department officials, by placing a borrower's loan in forbearance or stopping collections activity while the case is being adjudicated. Interest accumulation will cease immediately in the case of a group claim or after 180 days for an individual claim. Individual claims will be adjudicated within 3 years from the receipt of a materially complete application, with adjustments to address claims pending on the effective date of this regulation. Group claims will be adjudicated within 1 year from the formation of a group, which will occur within 2 years of receipt of a complete application. Previously, there was no timeline for adjudicating BD claims. As a result, many borrowers who filed claims have been waiting for years to have their claims adjudicated. Of nearly 81,000 claims submitted in 2017, for instance, more than 14,000 (nearly one in five) remain pending. Nearly one in five claims submitted in 2018 and over one in four claims submitted in 2019 also remain pending.[163] Certainty about how long it will take to decide a claim will help borrowers better judge whether they think they have a claim they want to submit since they will have an understanding that it could take several years to receive a decision. It will also let them plan for whether they want to turn down a forbearance and continue to pay their loans or not.

The Department's failure to render a decision by the end of the timeline will render the loans unenforceable. Loans in such a circumstance will not be considered subject to a BD claim so an institution will not face a recoupment action for the cost of those loans. This will also provide a benefit to borrowers, who would see their loan discharged if we are unable to render a decision on their claim within the deadlines.

The Department has included a group process for BD claims. This process was eliminated in the 2019 regulations. Through a group claim the Department may consider evidence in its own possession as well as requests from third parties to render a single decision on similarly situated borrowers who all attended the same institution, regardless of whether they all applied for BD relief. This will ensure a more efficient process. The inclusion of third-party requestors to initiate a group claim will provide a formal path for the Department to receive additional evidence that will help it make sound decisions on claims. The Department estimates that as much as 75 percent of BD volume associated with private for-profit colleges could be associated with group claims, with the rates in public and private nonprofit sectors a minority of volume. While the staff time required to investigate the evidence behind a group claim could be longer than what is needed for an individual claim, applying the same adjudication result to a group of borrowers will result in an overall reduction in staff time. Approving group claims will also result in the filing of fewer individual claims, as the approved group claims will result in discharges for borrowers who have not yet applied, eliminating the need for such borrowers to submit applications. On net, these actions will save time for both borrowers and the Department, thereby generating real social benefits.

All approved claims will receive a full discharge of remaining loan balances associated with the claim, as well as a refund of amounts previously paid to the Secretary. This eliminates a previously proposed complex process for the potential calculation of partial discharges. It also simplifies the adjudication standards by noting that an approved claim must involve circumstances that warrant this form of relief. All borrowers with approved claims to date have been approved for a full discharge.

If a claim is not approved, a reconsideration process will allow a borrower to submit new evidence that was not available in the initial application. This process will afford borrowers an opportunity to be considered under a State law standard if a decision under the Federal standard does not result in an approved claim and the loans were first disbursed prior to July 1, 2017.

By increasing relief to borrowers with claims that merit approval, improving the BD standard, restoring a group process, and providing a reconsideration process, these final regulations will result in additional transfers from the Department to borrowers, or from institutions to borrowers when the Department successfully recovers from the institutions. All borrowers will fall under a single, more expansive rule and those whose claims are approved will be able to receive relief more quickly and efficiently, which generates real benefits to society.

This process will also afford institutions an appropriate opportunity to respond. The Department's allowance for group processes in the final regulations means that institutions will have an opportunity to respond before a group is formed as well as during the adjudication process if the Department does decide to form a group. That means an institution needs to respond only twice regarding a group claim, instead of sending responses to hundreds if not thousands of individual claims. While institutions will be expected to provide a response within 90 days when contacted, the separation of approval and recovery processes means that institutions will not be expected to engage in extended challenges to claims for which the Department decides not to pursue recoupment.

In the past, the Department has seen institutions attempt to increase

[163] Department analysis of data retrieved from the CEMS Borrower Defense System in June 2022. Values were rounded to the nearest 10.

enrollment by resorting to conduct that later leads to BD approvals. For instance, the Department has found that some institutions guarantee borrowers that they would get a well-paying job. They also aggressively marketed inflated job placement rates to encourage students to enroll in their institution. Holding institutions accountable for this type of misrepresentation, as well as adding in aggressive recruitment as a type of conduct that can lead to approved BD claims, will benefit institutions that do not engage in these tactics. This is because approved BD claims may deter institutions from providing students with inaccurate information and from using aggressive recruitment tactics, helping institutions with better conduct and outcomes more successfully compete for enrollment.

The final rules provide for a process to recover the discharged amount from institutions after the adjudication of BD cases. Recovery from institutions is important to offset costs to the Federal government and taxpayers from approved BD claims. It also holds institutions accountable for past behavior and will help to deter future practices that could form the basis for additional BD claims.

As noted earlier, the Department will apply the BD standards in this rule to all claims pending on or received on or after July 1, 2023, but recoupment would only occur if the claims would have been approved under the standards for the relevant BD regulation in effect at the time the loans were disbursed. The Department believes there will still be a deterrent effect even in situations where a claim is approved but recoupment doesn't occur. If an institution is still engaging in similar behavior that led to the approved BD claim on a loan disbursed earlier, they will have a strong incentive to cease that behavior to reduce the risk of future recoupment efforts. Similarly, institutions that are not currently engaging in a behavior that could lead to an approved BD claim would be dissuaded from adopting practices that have been shown to lead to approved claims.

Costs of the Regulatory Changes:

As detailed in the Net Budget Impact section, the changes to BD are expected to reduce transfers from affected borrowers to the Federal government as their obligation to repay loans is discharged. We estimate this transfer to have an annualized net budget impact of $903 million and $819 million at 7 percent and 3 percent discount rates, respectively. This will be partially reimbursed by affected institutions with the annualized recoveries estimated at $36.9 and $37.1 million at 7 percent and 3 percent discount rates. The Department anticipates that all costs are transfers, other than minimal costs related to implementation. If the Department recoups the forgiven dollars from institutions, they are transfers from institutions to borrowers. Otherwise, they are transfers from the Federal budget to borrowers. Details about these estimates are in the Net Budget Impacts section of this document.

In the Federal standard for defense to repayment claims, a claim could be brought on any of the following grounds: substantial misrepresentation, substantial omission of fact, breach of contract, aggressive and deceptive recruitment, and a State or Federal judgment or final Department action against an institution that could give rise to a BD claim. The first two grounds incorporate and expand part 668, subpart F, which currently defines three categories of misrepresentation, relating to the nature of education programs, the nature of financial charges, and the employability of graduates. Aggressive recruitment is added as a new ground for a BD application and is outlined in part 668, subpart R. The Federal standard will be applied to all borrowers regardless of when their loans were disbursed. BD applications that are currently awaiting adjudication upon the effective date of the regulations will be adjudicated based on the final regulations. Since these regulations expanded on the categories in which borrowers may be eligible for a BD claim, these pending cases could be approved where they otherwise may not be under existing regulations. In addition, the Department expects an increase in the number of BD applications when the regulations go into effect due to the expanded categories of institutional misconduct. However, as explained in the discussion of benefits of the BD rule, the Department also expects a deterrent effect from the regulations as institutions adjust their behavior, even in circumstances where an institution is not subject to recoupment.

The regulations expand group BD claims by including a process initiated by third-party requestors and a process based on prior Secretarial final actions, as well as the general authority for the Secretary to form a group. With these changes, the Department expects that individuals who have a valid BD claim they could assert, but who were previously unaware of their eligibility or unfamiliar with the process, could become members of a group claim. The Department will award a full discharge to all borrowers with approved claims by adjusting the Federal standard to note that an approved claim requires the Department to conclude that the institution's act or omission caused detriment to the borrower or borrowers that warrants this form of relief.

The reconsideration process could increase costs in the form of burden for the Department, although these costs are likely to be small. There are two possible outcomes for a BD application: denial or approval. The Department expects some borrowers whose BD applications are denied to seek reconsideration, which will increase administrative costs and time compared to previous regulations that do not have reconsideration processes. Historically, just under 7 percent of the borrowers who received a denial notice had filed a request for reconsideration.[164] In addition, third-party requestors may also seek reconsideration. The change made by the Department from the NPRM to the final rule to limit reconsideration under State law to loans issued prior to July 1, 2017, will also reduce the costs of reconsideration, as there are more limited instances where the Department would have conducted another review under a different standard.

While these final regulations will result in higher short-term costs for the Federal government in the form of transfers to borrowers, the Department expects that some of these payments will be recovered from institutions over time. While the Department will likely be unable to recover from institutions that are no longer operating when BD claims are adjudicated, the final regulations will increase the likelihood that the Department could recover from relevant institutions before they are closed because (1) group claims against an institution will increase the expected benefit of recovering from the institution since they will result in large discharge amounts if approved; (2) the Department is expected to respond to group claims within 1 year of deciding to form the group, which will increase the possibility that the institution is still in operation; and (3) the streamlined claims process will allow the Department to act more quickly on BD applications. As a result, the costs in the form of transfers to borrowers that will result from the final BD regulations could be smaller for the Federal government in the long term as it receives transfers from institutions.

Benefits of the Regulatory Changes:

[164] Department analysis of data retrieved from the CEMS Borrower Defense System in October 2022 combined with historical information on cases previously determined ineligible for relief.

The final regulations will result in administrative cost savings for the Department, efficiencies for institutions in responding to claims, and benefits to borrowers. In addition, borrowers may benefit from a deterrent effect of these final regulations.

The Department anticipates that establishing a process for recoupment from institutions and providing for a faster adjudication process will assist it in recovering more funds from institutions on claims associated with future loan disbursements because those schools will be less likely to have closed by the time liabilities are assessed than is the case under current regulations.

The Department also believes that a stronger and more expansive BD process will result in changes in institutional behavior that benefit borrowers. For instance, past title IV policy changes to increase accountability, such as the cohort default rate measure and the 90/10 rule, encouraged institutions to change their practices to respond and conform to new regulations. Accordingly, we expect that, over time, institutions will engage less frequently in acts or omissions that could give rise to a BD claim, which, in turn, will generate benefits to borrowers. Discouraging the type of acts or omissions that would lead to approved borrower defense claims will increase the likelihood that borrowers are presented with more accurate and transparent information about the cost of their programs, ability to transfer credits, employment outcomes, and other key things that are necessary for making an informed decision. Institutions will also want to avoid being overly aggressive in pursuing students, furthering the ability of prospective borrowers to understand the decision they are making. A greater focus on transparency and lessening aggressive sales tactics will in turn put greater pressure on institutions to make sure they are delivering better value for students, since making false promises could lead to the possibility of discharges and then recoupment. Overall, when students are able to make better decisions, they will be more likely to consider and enroll in programs and institutions that generate either lower debt or a greater earnings gain.[165]

Borrowers who will be most affected by the final regulations tend to be relatively disadvantaged, which influences the nature and scale of benefits we describe below. To date, BD applicants have disproportionately attended schools in the proprietary sector, and proprietary schools disproportionately serve students of color, women, low-income students, veterans, and single parents.[166] Of more than 554,000 BD claims received from 2015 through June 2022, more than 420,000—about three out of four BD applicants—attended proprietary institutions. Meanwhile, just 5 percent of applicants attended public institutions.[167] These numbers understate the share of borrowers who attended private for-profit institutions because the data reflect the institution's sector at the time a borrower applied, not when they attended. That means a borrower who attended a college when it was a proprietary institution but applied after it became a nonprofit is considered an applicant from a nonprofit institution.

Borrowers who received Pell Grants while enrolled and borrowers who struggle to repay their loans and default will benefit from these final regulations. Among the more than 144,000 approved individual claims, 88 percent were from borrowers who had also received a Pell Grant at some point.[168] This is slightly higher than overall share of BD applicants who received a Pell Grant, which was 82 percent. At least 22 percent of applicants are currently in default on their loans, consisting of approximately 95,000 borrowers.[169] This number does not include borrowers previously in default who have had their claims approved and discharged, but it does include some borrowers whose claims have been approved and are in the process of being discharged. As a result, it potentially understates the degree to which BD applicants have been in default.

The single Federal standard for initial adjudication, uniform BD regulations, and a more streamlined process (such as awarding a full discharge for approved claims) will reduce the staff time per borrower needed to adjudicate BD applications. These savings will largely come from being able to apply consistent rules across all borrowers while still ensuring that each case receives a thorough and rigorous review to determine whether their claims should be approved or denied.

The group process will significantly reduce the staff time required to investigate and adjudicate BD cases on a per-borrower basis. The final regulations include several means by which the Department can pursue a group process. Specifically, a group process can be initiated by the Department based on either common evidence from cases being adjudicated or prior Secretarial final action, or a State or legal assistance organization may request that a group process be initiated.

When the Department initiates a group process, it will be considering the possibility of approval for tens of borrowers all at once, if not hundreds or thousands. While the scope of this work will require significantly more time than reviewing any one individual claim, it is far more efficient than review on a per-borrower basis. In addition, the evidence available during group claims is expected to be more extensive than what the Department may possess for an individual claim. The process for group claims tied to prior final actions by the Secretary will be particularly efficient because the Department will draw upon prior work done by the agency, minimizing the amount of duplication in investigation that needs to occur. This will result in a significant saving of Department staff time and ensure faster adjudication for borrowers, as well as a straightforward process for subsequent recoupment. This process is more efficient than how the Department has addressed BD claims to date. For those claims, it has first worked to reach common findings, a process similar to what would be done to determine a group claim. But after reaching those common findings for approval, the Department then conducts reviews of individual claims to determine if the allegations provided by the borrower match the common findings. This results in a second step of claim review that has disqualified some borrowers who may have experienced the misconduct that led to approvals, but whose claims did not necessarily articulate those experiences. Such a secondary review will not be necessary in the group process, though the Department will continue to review borrower eligibility to ensure findings are applied appropriately only to affected borrowers. The time saved

[165] Michael Hurwitz & Jonathan Smith, 2018. ''Student Responsiveness To Earnings Data In The College Scorecard,'' Economic Inquiry, Western Economic Association International, vol. 56(2), pages 1220–1243, April. Dynarski, Susan, CJ Libassi, Katherine Michelmore, and Stephanie Owen. 2021. ''Closing the Gap: The Effect of Reducing Complexity and Uncertainty in College Pricing on the Choices of Low-Income Students.'' American Economic Review, 111 (6): 1721–56.

[166] Cellini, S.R. (2022). For-Profit Colleges in the United States: Insights from two decades of research. *The Routledge Handbook of the Economics of Education,* 512–523.

[167] Department analysis of data retrieved from the CEMS Borrower Defense System in June 2022. School Type is determined using the ''School Type'' field on each case in the system. Each value is rounded to the nearest 10.

[168] Analysis of data from the National Student Loan Data System, early October 2022.

[169] Analysis of administrative data of BD applications received, early October 2022.

using a group process benefits borrowers, as well as the Department.

The use of group processes can also provide some efficiencies for institutions in the process of responding to claims. Institutions have to respond to individual claims separately, which could require them to respond to hundreds if not thousands of separate claims from similarly situated borrowers. By contrast, a group approach will require institutions to offer only a single response prior to the formation of the group and a second during adjudication if the Department decides to form a group.

The regulations will also result in significant benefits to borrowers who qualify for a BD approval. Those who have their claims approved will receive a significant benefit as they will no longer have to repay the loans associated with their claim. This results in a transfer from the Department to the borrower. It is the Department's experience that many borrowers who have borrower defense claims approved are those who have had difficulty repaying their loans since the institution did not fulfill its obligations to its students. We anticipate that result will remain true under these regulations. Moreover, the borrower will receive refunds of amounts previously paid to the Secretary, an additional benefit. For all applicants, the regulations will help to reduce the burden of applying where the Department is able to identify eligible borrowers for loan relief but where the borrowers might not know they are eligible or how to access relief. These borrowers who are eligible for BD discharges, but may not know how to access relief, are unlikely to have benefited from the education they received and may be distressed borrowers who are delinquent, in default, or have previously defaulted on their student loans. These loan repayment struggles create further barriers for borrowers' personal financial circumstances, and also add to the Department's administrative burden when there are borrowers in the system who are eligible for a discharge but instead are in default. The regulations will allow more eligible borrowers to access relief through group claims, which will bring benefit to both borrowers and the Department. Although the borrowers could have received relief by applying individually, we see substantial benefit to them receiving this relief sooner through the group process.

The Department believes that the expansion of eligibility for BD claims and the reintroduction of a rigorous group process will result in positive change in institutional behaviors due to the deterrent effect. Past Federal sanctions of institutions resulted in a considerable enrollment shift away from sanctioned institutions and similar types of institutions that did not face sanctions. Though these sanctions were not sector specific, they had greater effects on proprietary institutions and resulted in a shift of enrollment toward public institutions. This shift resulted in reductions in both student borrowing and on defaults on federal student loans.[170] Research also finds that public sector enrollment generates higher earnings relative to proprietary school enrollment. Attending a public certificate program is associated with $2,144 higher annual earnings or $28,600 to $49,600 in lifetime earnings per diverted student in present value terms at 7 percent and 3 percent discount rates, respectively, relative to attending a proprietary certificate program.[171] When institutions were sanctioned in the past under other accountability rules, students who would have attended a sanctioned institution instead switched sectors and experienced improved outcomes. Thus, we can expect gains to students in the form of reduced debt, lower chances of default, and increased earnings. Moreover, as noted earlier, the Department believes that the deterrence effect will occur even if the institution does not face a recoupment action related to approved claims. Improved behavior on the part of institutions should benefit students even if they remain enrolled at the same institution. Even if they do not face financial consequences for an approved claim, an institution would want to stop engaging in such behavior in the future to avoid the possibility of recoupment actions tied to future loans.

A deterrence effect will also benefit institutions that do not engage in conduct that leads to approved BD claims. The Department has seen in the past that some institutions with poor outcomes have used fraudulent or misleading materials in marketing and recruitment to attract new students. This may place institutions that remain truthful about their outcomes at a competitive disadvantage in attracting and enrolling students. Curbing the conduct that leads to approved BD claims thus helps institutions that never engaged in those behaviors in the first place. It is possible that in some limited circumstances tied to the worst behavior, the approval of BD claims could result in the exit of an institution from the Federal financial aid programs. An institution that engages in problematic practices for years could face significant liabilities from approved BD claims that they cannot afford. As with deterring institutions from engaging in misleading or other questionable practices, having the institutions with the worst behaviors exit the Federal aid programs will provide benefits to all other institutions that are operating in a more truthful and ethical manner.

4.2 False Certification Discharge

False certification discharges provide relief to borrowers whose institutions falsely certified their eligibility for a Federal student loan. The Department's 2019 regulations stated that borrowers who took out loans after July 1, 2020, are ineligible for a false certification discharge if they attested to having a high school diploma or equivalent. For loans disbursed after July 1, 2020, the regulations are unclear regarding the ability of a borrower to seek a false certification discharge for a disqualifying status. After these regulatory changes, we observed a sharp decline in the number of borrowers and total amounts of false certifications discharged in 2021. The number of borrowers who were granted false certification discharge was 400 in 2020 but was only 100 in 2021, and the total amount of false certification discharges was $4.8 million in 2020 but only $0.8 million in 2021, suggesting that borrowers were facing increased barriers to accessing false certification discharges to which they were entitled.

[170] Cellini, S.R., Darolia, R. and Turner, L.J. (2020). ''Where Do Students Go When For-Profit Colleges Lose Federal Aid?'' *American Economic Journal: Economic Policy,* 12 (2): 46–83.

[171] Department analysis based on results in Cellini, Stephanie Riegg and Nicholas Turner, 2019. ''Gainfully Employed? Assessing the Employment and Earnings of For-Profit College Students Using Administrative Data.'' *Journal of Human Resources.* 54(2): 342–370. Calculation assumes earnings impact is a constant $2,144 each year, which is conservative since the estimated earnings impact appears to grow with time since program exit, and that students spend 40 years in the labor market after starting at age 25.

Table 2—False Certification Discharges, by Calendar Year

Calendar Year	Borrowers	Amount ($ M)	Average per borrower ($ K)
2019	300	3.8	12.7
2020	400	4.8	12.0
2021	100	0.8	8.0
Total	800	9.4	11.8

The effects for borrowers could be significant. In 2020, prior to the new regulations, the discharge approval rate was about 7.3 percent, and the average amount discharged per application was $9,310.

Table 3—Number of False Certification Approvals and Discharge Amounts, by Reason

Application Status	Discharge Type	7/1/19 to 6/30/20	7/1/20 to 6/30/21	2020 calendar year estimated	2020 subtotal
Applications Approved	FC – ATB	520	145	330	470
	FC – DQS	30	10	30	
	FC – UNS	200	30	120	
Applications Denied	FC – ATB	3500	1510	2510	6000
	FC – DQS	1500	770	1130	
	FC – UNS	3530	1190	2360	
Loans Discharged	FC – ATB	1170	250	710	980
	FC – DQS	50	40	50	
	FC – UNS	400	40	220	
Amount Discharged	FC – ATB	$5,764,280	$1,274,520	$3,519,400	$4,404,220
	FC – DQS	$219,130	$305,600	$262,370	
	FC – UNS	$1,161,290	$83,610	$622,450	
Average amount discharged per application					$9,310
Average amount discharged per loan					$4,510
Average approval rate					7.3%

Data source: Federal Student Aid (FSA)

Note: 2020 calendar year is estimated with the average of 2020 and 2021 fiscal years. ATB stands for the ability to benefit, DQS for disqualifying status, and UNS for unauthorized signature. All figures are rounded to the nearest 10.

To address the decline in borrower access to necessary discharges on their loans, and to ensure the regulations governing these discharges are streamlined and understandable to eligible borrowers, the Department will apply one set of regulatory standards to cover all false certification discharge claims.

The uniform standard will improve borrower access to false certification discharges by clarifying that eligibility for the discharge begins at the time the loan was originated, not at the time the loan was disbursed. Current regulations for Direct Loan and FFEL Program loans also contain separate requirements for loans first disbursed before July 1, 2020, and loans first disbursed on or after July 1, 2020, which confuse borrowers and create equity issues for borrowers who may struggle to navigate this complexity. This uniform standard will ensure that more borrowers have access to the expanded eligibility and that they are not forced to navigate a complex and overlapping set of regulatory frameworks. As with the BD standard, we believe that this uniform standard will streamline the administration of the regulations and better protect students while reducing confusion among borrowers, institutions, servicers, and the Department.

The Department will rescind the requirement that any borrower who falsely attests that they have a high school diploma or its equivalent does not qualify for a false certification discharge. This will ensure that borrowers can seek a discharge if they were coerced or deceived by their institution of higher education and as a result reported having a valid high school diploma or its equivalent when

they in fact did not, further expanding access to false certification discharges.

These final regulations specify that the Secretary may grant a false certification discharge, including without an application, if the institution falsified Satisfactory Academic Progress (SAP) for the loans. We will grant group discharges based on the falsification of SAP and the Department would establish the dates and borrowers affected. The discharge will only cover loans for those borrowers for the period covered by the falsification of SAP and does not discharge all the borrower's other loans or all loans at the institution. The Department is aware of problematic practices by institutions that have falsified SAP, which is a basic eligibility requirement for continued access to title IV, HEA aid, and believes that this addition will ensure that borrowers whose institutions falsely confirmed their eligibility through these practices have access to loan relief, and that institutions may be held accountable for their actions.

These final regulations will remove the requirement that borrowers submit signature specimens when applying for discharge due to unauthorized loan, unauthorized payment, or identity theft, and replace the need that a borrower provides a judicial determination of identity theft with the ability to submit alternative evidence. This will expand access to false certification discharges by reducing the burden of document preparation on borrowers and simplifying the application process.

These final regulations will also establish a group process for awarding discharges to similarly situated borrowers. In part, this addition was in response to negotiators who noted that the Department has rarely utilized its authority to grant group false certification discharges. As a result, borrowers will receive more equitable and consistent treatment because they will be able to access relief on their loans regardless of whether they applied, based on evidence the Department collects or has in its possession. A State attorney general or nonprofit legal services representative will be able to submit an application for a group false certification discharge to the Department. This will ensure a more efficient process than is typically available, whereby third-party requestors and other stakeholders will be able to contribute directly to the fact-finding process required before adjudicating the application. The group process, and associated improvements, will also help to significantly reduce staff time required to investigate and adjudicate individuals' applications when common facts and circumstances are present.

Costs of the Regulatory Changes:

Increased accessibility of discharges may encourage more borrowers to file claims or may result in additional discharges as a result of borrowers' access to a group process. The Department expects an increase in the Federal government's expenditure and an increase in the time in processing the claims in the short term, but a minimal long-term cost. The Department anticipates the costs associated from these changes will be transfer costs. The short-term increase in expenditures will come from the following regulations.

The Department will rescind the provision that any borrower who attests to having obtained a high school diploma or equivalent does not qualify for a false certification discharge on that basis. The Department is aware of numerous instances in which borrowers were forced or misled by their institution into attesting to holding a high school diploma, or into obtaining a diploma on false pretenses. In cases where such evidence is available, the Department believes the institution should be held accountable for its misconduct, and the borrower should be able to access a discharge of their eligible loans. This could lead to more borrowers applying and being granted loan discharges in the future.

These final regulations will remove the requirement that borrowers submit signature specimens and replaces the provision of a judicial determination of identity theft with alternative evidence. Similarly, the Department anticipates that removing this barrier will allow more eligible borrowers to apply without having their applications rejected, and may, therefore, increase the costs of approved false certification discharges.

Benefits of the Regulatory Changes:

The process, which will be more streamlined, will ease the administrative burden on the Department for the review of claims and for appeals of denials that are escalated for further review. Most importantly, the process contemplates the benefits to the borrowers themselves who are entitled to discharges when their institution wrongfully saddles them with debt they are not eligible for and wastes their aid eligibility.

The Department also expects that there will be some behavioral impact as institutions respond to changes in the regulations and reduce their use of such predatory practices, since the Department could assess liabilities against the institution for the discharges. In addition, this deterrent of strengthening and streamlining these regulations is expected to offer some benefit to taxpayers. Therefore, the long-term transfer costs may be reduced.

Taken together, the final regulations will result in a more streamlined process, rescind limitations on borrower eligibility from current regulations, and remove and replace requirements, which are expected collectively to improve borrowers' accessibility to false certification discharge. The Department expects that these final rules will ensure more borrowers have access to relief. While this will increase costs to taxpayers through additional false certification discharges, the Department also anticipates that some of these costs will be recouped from the institutions responsible, and that these final rules will be more efficient.

4.3 Public Service Loan Forgiveness

These final regulations clarify the regulations to help borrowers better understand and access the program, particularly by simplifying the rules regarding what constitutes a qualifying payment, and to streamline the Department's processing of the applications it receives for forgiveness. Overall, we anticipate that these final regulations will increase the amount of loan forgiveness through PSLF.

These final regulations further clarify the definition of full-time employment that meets the terms of the program to address inconsistencies in how different employers may consider full-time employment and in how non-tenure track faculty are treated. Most of these changes are modest but will bring benefits to borrowers in the form of more consistent treatment. This may also provide additional clarity to employers, ensuring they can better understand the program and inform borrowers of their eligibility. These final regulations revise the definition of what it means for a borrower to be an employee or employed to include the narrow circumstance of someone who works as a contractor for a qualifying employer in a position or providing service which, under applicable State law, cannot be filled or provided by a direct employee of the qualifying employer. This revised definition will ensure physicians in California and Texas, and anyone else affected by a similar set of restrictions, will be eligible for PSLF benefits as this group were not intended to be excluded by the PSLF regulations.

Where possible, the Department will seek to automate the process of identifying public servants and accounting for their time worked to ensure they automatically receive

progress toward PSLF. The changes in the regulatory text that allow for a discharge when the Secretary has sufficient information will allow for this circumstance without needing to specify a specific match or source of data. This also recognizes that the Department cannot bind another agency with a matching agreement in its regulations. However, as noted in previous public announcements the Department is working to implement data matches with other Federal agencies that will enable it to account for Federal employees and service members and is exploring the feasibility of matches at the State level that may also provide the information needed to determinate PSLF eligibility. The benefit of these data matches for borrowers is increased access for those who would otherwise not have applied, but who may be eligible for relief on their loans. We anticipate an increase in the total amount of loans forgiven due to greater use of automation made possible by changes in these regulations. For instance, we are already aware of approximately 110,000 Federal employees who have completed some employer certifications and will thus benefit from the automatic match and another 17,000 service members in a similar situation. We anticipate there could be at least tens of thousands of more borrowers we might identify as eligible for credit toward PSLF from these matches. Additional matches in the future could help hundreds of thousands of borrowers. We also expect that borrowers identified for forgiveness through these data matches will have information that is validated by government agencies, ensuring greater program integrity among a larger share of applicants who receive forgiveness. However, because we have not yet conducted these matches, we cannot currently determine how many of the borrowers identified by these matches will have already applied for PSLF, and thus have an easier path to receiving forgiveness, or if these will be borrowers who had not previously applied for the program.

Automation will also have considerable benefits, both for the Department and for borrowers, in terms of reducing the administrative burden. While there are initial costs associated with developing the automation, the future cost savings far outweigh the development costs. As noted above, 127,000 borrowers who were civilian Federal employees or service members had employer certifications completed for some employment prior to any data match, and many others could opt to certify employment in the future. Automating the consideration of those borrowers' employment and/or PSLF applications will save time for borrowers and reduce the investment of staff resources required to analyze PSLF applications.

These final regulations create more flexible requirements around loan payments to ensure more eligible borrowers have access to PSLF, partially addressing the low success rate of PSLF applications. Currently, the regulations governing qualifying payments are extremely rigid. Payments must be made on-time, within 15 days of the due date, or they do not count as qualifying payments. Payments also must be made in full, so payments off by only a few cents or payments that are made in more than one installment are disqualified. Additionally, some public servants have opted for deferments or forbearances available to borrowers who are working in public service jobs—such as for AmeriCorps and Peace Corps—without realizing those months will not qualify for PSLF. Simpler payment rules and counting some deferments and forbearances will significantly reduce confusion and improve take up of the program. In addition, borrowers will benefit by being able to make qualifying payments, through the final rule's hold harmless provision, for prior deferment or forbearance periods where there was previously no qualifying payment possible. This change grants borrowers the ability to make up payments that did not previously qualify as well as not reset the clock toward consolidation.

These changes will increase costs to the government in the form of greater transfers to borrowers eligible for PSLF, as take-up of the benefit increases due to automation and as more borrowers become eligible for PSLF outside of the narrow constraints of the existing rules but consistent with the statutory purpose of the PSLF program. Borrowers who work in Federal agencies where data matching agreements are arranged will benefit as a higher fraction of eligible borrowers receive forgiveness and the burden in applying for benefits is reduced. All other things equal, among borrowers for whom receiving forgiveness becomes more likely, borrowers with higher debt levels, including some graduate borrowers, will experience greater amounts of loan forgiveness.

These final regulations formalize a reconsideration process and establish a clear timeline by which borrowers must submit a reconsideration request. These refinements will streamline the application process and provide a clearer timeline to apply for PSLF or request a reconsideration. The Department anticipates that this reconsideration process will increase administrative burden for the agency and for borrowers, but that it will allow for a fairer and more equitable process to access PSLF where borrowers believe the Department has erred in its determination.

Costs of the Regulatory Changes:

As detailed in the Net Budget Impact section, the changes to PSLF are expected to reduce transfers from affected borrowers to the Federal government as their loans are forgiven. We estimate this transfer to have an annualized net budget impact of $2.1 billion and $2.0 billion at 7 percent and 3 percent discount rate, respectively. The Department anticipates most of the budgetary impact will be transfers as borrowers more easily access PSLF benefits. In particular, we expect that the expansion of eligibility, the inclusion of additional payments as qualifying payments, and increases in take-up facilitated by automating the benefit where it is possible to identify eligible borrowers through a data match will increase transfers from the government to eligible borrowers. The revised definitions of qualifying services are not anticipated to impact a significant number of borrowers but will provide greater clarity about eligibility. This budget estimate is explained in greater detail in the net budget impact section of this regulatory impact analysis.

Benefits of the Regulatory Changes:

The Department anticipates several benefits based on these regulatory changes to PSLF. The Department seeks to reduce the burden of accessing PSLF benefits for borrowers who are employed by a nonprofit organization that provides non-governmental public services and streamline the process to obtain these benefits. The Department received over 917,000 employment certification forms in 2019, certifying that borrowers are working toward forgiveness, and 825,000 employment certification forms in 2020. The Department also received 96,000 forgiveness applications in 2019 and 135,000 forgiveness applications in 2020 from borrowers who may believe they completed the requirements of the program to qualify for forgiveness. Starting in late 2020, the combined form replaced the separate process of borrowers submitting employment certification forms and forgiveness applications. The Department received 130,000 combined forms in 2020 and 776,000 combined forms in 2021. However, after the announcement of the Limited PSLF Waiver in October 2021

that temporarily waived some program requirements through the end of October 2022, the Department has seen significant growth in applications compared to earlier periods. Due to the implementation of an automated process for some eligible borrowers as we described in the NPRM, we are anticipating decreases in the number of applications received because an application will not need to be submitted if the Department has the necessary information to assess whether the borrower met the PSLF requirements during the automated process. Under this process, a borrower will be notified if the borrower meets the requirements for loan forgiveness. After the borrower is notified, the Department will suspend collection and the remaining balance of principal and accrued interest will be forgiven.

By streamlining the PSLF process, the Department anticipates a reduction in the administrative burden and time savings for application processing. There will also be a burden reduction on qualifying employers as the employers will have a simpler time verifying what they are attesting to, such as the hours worked by the borrower.

We anticipate these regulations will impact tens of thousands of borrowers who will now qualify for PSLF under the clarified definitions of qualifying employment but previously did not qualify for PSLF. This is particularly due to the changes to the definition of employee or employed to capture a narrow and specific type of contractual relationship. The updated list of deferments and forbearances are anticipated to benefit a significant number of borrowers engaged in public service work who would otherwise not be able to consider those months toward forgiveness. Over the long run the Department hopes that hundreds of thousands of borrowers who would ordinarily have to apply for PSLF will receive student loan forgiveness without submitting an application. This includes military service members and Federal employee borrowers who will automatically receive credit toward PSLF using Federal data matches and the Department hopes that over time it will include some State-level matches as well.

4.4 Interest Capitalization

Interest capitalization occurs when any unpaid interest is added to a borrower's principal balance, further increasing the amount on which interest is charged. This raises the overall cost of repaying the loan. Prior to this rule, capitalization occurred when a borrower first entered repayment, after periods of forbearance, after periods of deferment for non-subsidized loans, and when borrowers switched out of various income-driven repayment plans. In this regulation, the Department ends capitalization in all circumstances that are not required by statute. This will result in ending capitalization that occurs when a borrower first enters repayment, after periods of forbearance, and upon leaving all IDR plans except for IBR.

The Department is concerned that interest capitalization can adversely affect student loan borrowers by significantly increasing what they owe on their loans, which may extend the time it takes to repay them. While there are circumstances where interest capitalization is required by statute, such as when borrowers exit a deferment period and when they leave Income-Based Repayment, the Department believes that it is important to eliminate capitalization events where it has the authority to do so. Despite counseling, some borrower misunderstanding of interest accrual and capitalization and resulting confusion about the accuracy of one's loan balance contributed to the most frequent type of borrower complaint received by the Department.[172] Qualitative evidence from focus groups with struggling borrowers also has shown that borrowers find capitalized interest to be complex and burdensome, noting that many borrowers do not realize which decisions result in capitalization and feel overwhelmed and frustrated by growing balances on loans.[173] A recent study suggests that among borrowers entering an IDR plan after becoming delinquent on their payments, most fail to recertify and, as a result, have their interest capitalize.[174]

Data from the 2003–04 Beginning Postsecondary Students Study (BPS), which tracked students from entry in 2003–04 through 2009 with an additional administrative match through 2015, sheds greater light on the distributional consequences of interest capitalization and the forbearance events that are a source of capitalization. The statistics that follow all concern students who first entered college in 2003–04 and borrowed a Federal student loan at some point within 12 years of entry (as of 2015). Among those students, 43 percent had a larger amount of principal balance outstanding in 2015 compared to what they originally borrowed.

Among borrowers who did not consolidate their loans (*e.g.,* the group for whom the growth in balance can be attributed to interest capitalization), 27 percent had a higher principal balance as seen in Table 4. Borrowers who are Black or African American, received a Pell Grant, and borrowers from low-income families are overrepresented in this group. Specifically, 52 percent of Black or African American borrowers had a higher principal balance compared to 22 percent of White borrowers. There are also differences based upon income, with 33 percent of Pell Grant recipients (versus 14 percent of non-recipients), and 34 percent of borrowers from families with income at or below the Federal poverty line at college entry (versus 22 percent of borrowers with income at least 2.5 times the Federal poverty line) having principal balances that exceed their original amount borrowed. Gaps also exist by attainment. Among borrowers who did not consolidate their loans, those who did not complete any degree or credential were 60 percent more likely to see their principal balance grow than bachelor's degree recipients.[175]

While the BPS data cannot break down the exact sources of interest capitalization, this analysis indicates that borrowers in the groups most likely to experience capitalization also are more likely to experience periods in forbearance, which is one cause of interest capitalization. Nearly 80 percent of Black or African American student loan borrowers in the BPS sample had a forbearance at some point within 12 years of first enrollment as seen in Table 4 below. Among American Indian or Alaska Native or Hispanic or Latino borrowers, the rates of forbearance usage were 64 percent and 59 percent respectively. By contrast, about half of white students used a forbearance.[176]

The results are similar by Pell Grant receipt and family income at college entry. Nearly two-thirds of Pell Grant

[172] Report by the FSA Ombudsman, in Federal Student Aid. (2019). *Annual Report FY 2019. https://www2.ed.gov/about/reports/annual/2019report/fsa-report.pdf.*

[173] Delisle, J. & Holt, A. (2015, March). *Why student loans are different: Findings from six focus groups of student loan borrowers.* New America Foundation. Retrieved from: *https://files.eric.ed.gov/fulltext/ED558774.pdf;* Pew Charitable Trusts (2020, May). Borrowers Discuss the Challenges of Student Loan Repayment. *https://www.pewtrusts.org/-/media/assets/2020/05/studentloan_focusgroup_report.pdf.*

[174] Herbst, D. (forthcoming). ''The Impact of Income-Driven Repayment on Student Borrower Outcomes.'' *American Economic Journal: Applied Economics.* Retrieved from: *https://djh1202.github.io/website/IDR.pdf.*

[175] Department analysis of the 2004/2009 Beginning Postsecondary Students Study, estimated via PowerStats (table reference: qobjsb).

[176] Ibid.

recipients who also borrowed had a forbearance at some point compared to just 40 percent of non-Pell students. Among borrowers from families with income at or below the Federal poverty line in 2003–04, 64 percent had a forbearance at some point compared with 46 percent of borrowers from families with income at least 2.5 times the Federal poverty line at college entry. Finally, 62 percent of borrowers who did not complete a degree or credential had a forbearance, compared with 46 percent of those who earned a bachelor's degree.

Data from the same study also show that the groups of borrowers that are more likely to have had a forbearance also had more total forbearances within 12 years of entering college. On average, Black or African American borrowers who had at least one forbearance had nearly six forbearances compared to four for white borrowers as seen in Table 4. Similarly, borrowers who received a Pell Grant and had a forbearance had an average of nearly five forbearances, compared to just over three for non-Pell students.[177] This means borrowers in these groups were subject to more capitalizing events than their peers.

BILLING CODE 4000–01–P

[177] Ibid.

Table 4—Principal Balance Growth and Forbearance Usage Among 2003–04 College Entrants Who Borrowed

Borrower type	Share of borrowers whose principal balance exceeds original amount borrowed within 12 years of entry (among those who did not consolidate)	Share of borrowers who had a forbearance at any time within 12 years of entry	Average number of forbearances among borrowers who ever had a forbearance within 12 years of entry
Race/Ethnicity			
All	27%	56%	4.5
Black or African American	52%	79%	5.7
White	22%	50%	4.0
Hispanic or Latino	25%	59%	4.5
American Indian or Alaska Native	***	64%	3.1
Asian or Native Hawaiian/ other Pacific Islander	13%	39%	3.0
Pell Grant Receipt			
Received a Pell Grant	33%	64%	4.8
Never received a Pell Grant	14%	41%	3.4
Family Income			
Family income at or below 100% FPL in 2003-04	34%	64%	5.0
Family income 101 – 250% FPL in 2003-04	31%	63%	4.7
Family income above 250% FPL in 2003-04	22%	48%	3.9
Attainment Status			
No degree or credential as of 2009	31%	62%	4.8
Earned undergraduate certificate or associate degree as of 2009	30%	61%	4.6
Earned bachelor's degree as of 2009	19%	46%	3.8

*** Reporting standards not met

Source: Beginning Postsecondary Students Study, estimated via PowerStats.

Capitalizing events present a significant burden to borrowers as they see their balances quickly rise with interest capitalization that is compounded over time. The events described in the table below are circumstances in which the final regulations eliminate interest capitalization.

Table 5 Capitalization Events Being Eliminated
Borrower who is repaying under the PAYE plan fails to recertify income, or chooses to leave the plan
Borrower who is repaying under the REPAYE plan leaves the plan
Negative amortization under the alternative repayment plan or the ICR plan
Exiting forbearance
Entering repayment for the first time
Default
Repaying under the alternative repayment plan
No longer has a partial financial hardship under the PAYE repayment plan

BILLING CODE 4000–01–C

Costs of the Regulatory Changes:

As detailed in the Net Budget Impact section, the changes to interest rate capitalization are expected to reduce transfers from affected borrowers to the Federal government as their obligation to repay loans is lessened by the removal of capitalizing events. We estimate this transfer to have an annualized net budget impact of $1.29 billion and $1.26 billion at 7 percent and 3 percent discount rate, respectively. The main effects associated with the regulations represent a transfer from the Federal government to the eligible borrower, primarily forgone revenue from payments on the higher balance and resulting increase in interest due to elimination the capitalizing events listed above. These final regulations will also create some administrative costs for the Department, which will have to compensate servicers for the cost of changes to their systems to remove capitalizing events. More details on budgetary effects are provided in the Net Budget Impact Section.

Benefits of the Regulatory Changes:

The Department anticipates that some borrowers may see the lack of capitalizing events for borrowers exiting certain IDR plans as enabling them to switch out of IDR and instead enroll in a Standard or other repayment plan. For some borrowers, this could mean that they pay less on either a monthly basis or over the life of the loan (*e.g.,* if they exit an IDR plan and enter an Extended or Graduated repayment plan with lower monthly payments).

The lack of capitalizing events can also have broader societal benefits by reducing debt burdens for groups that may be most affected by interest capitalization—borrowers from low-income families, Black borrowers, and borrowers who do not complete a college credential.[178]

4.5 Total and Permanent Disability Discharges

The Department is committed to simplifying the Total and Permanent Disability (TPD) discharge process for eligible borrowers. In addition to allowing for automatic discharges when a borrower is identified through a data match with the Social Security Administration (SSA), which was announced in summer 2021, the Department is also finalizing these regulations for TPD to ensure it provides relief to eligible borrowers uniformly across its loan programs, including Perkins, FFEL, and Direct Loans.

These final regulations expand the circumstances in which borrowers can qualify for TPD discharges based on a finding of disability by SSA. Currently regulations only allow borrowers to qualify for a discharge if SSA has designated the borrower's case as Medical Improvement Not Expected (MINE). In this status, an individual's disability status is reviewed at 5 to 7 years, which fits the requirement in the HEA that a borrower have a disability that is expected to result in death or that has persisted or is expected to persist for at least 60 consecutive months while the borrower does not engage in gainful employment. These final regulations add the following additional circumstances, when supported by appropriate data or documentation from SSA: (1) the borrower qualifies for Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) based on a Compassionate Allowance (applied where the applicant has an impairment that significantly affects their ability to function and meets SSA's definition of disability based on minimal, but sufficient, objective evidence; (2) SSA has designated the borrower's case as Medical Improvement Possible (MIP), (3) the borrower had a qualifying circumstance and has since begun to receive SSA retirement benefits; and (4) the borrower has an established onset date for SSDI or SSI that is at least 5 years prior to the TPD application or has been receiving SSDI benefits or SSI based on disability for at least 5 years prior to the TPD application. More borrowers will be eligible for TPD discharges based on a finding of disability by SSA with the addition of these categories.

These final regulations also eliminate the post-discharge income monitoring period. Currently, borrowers must supply their income information annually through a 3-year post-discharge monitoring period to ensure that they continue to meet the criteria for the program. If borrowers do not respond to these requests, their loans

[178] Department analysis of the 2004/2009 Beginning Postsecondary Students Study, estimated via PowerStats (table reference: ivbztb and qobjsb).

are reinstated, regardless of whether the borrowers' earnings are above set thresholds. The Department is concerned that high numbers of borrowers have their loans reinstated not because they fail to meet the criteria but simply because they fail to submit the required paperwork. The Government Accountability Office's (GAO) 2016 report on Social Security offsets reported that more than 61,000 loans discharged through TPD, totaling more than $1.1 billion, were reinstated in fiscal year 2015 alone; and that 98 percent of those were reinstated because the borrower did not provide the requisite information for the monitoring period.[179] Meanwhile, an analysis conducted by the Department using Internal Revenue Service (IRS) data suggests that 92 percent of these borrowers did not exceed the earnings criteria required to retain their eligibility.

These final regulations streamline the process for applying for a TPD discharge where automation is not feasible. These final regulations amend the TPD regulations to expand allowable documentation that can be submitted as evidence of a qualifying disability status, including the current practice of accepting a Benefit Planning Query Handbook. We note that while this change will clarify an option that already exists for borrowers, the Department's hope is that the added categories of disability determinations will reduce the need for borrowers to rely upon a Benefit Planning Query Handbook in particular, which comes with a fee and may not always have all the necessary information within it. The final rule also expands the list of medical professionals eligible to certify an individual's total and permanent disability to include nurse practitioners, physician assistants, and certified psychologists licensed at independent practice level by a State.

Costs of the Regulatory Changes:

As detailed in the Net Budget Impact section, the changes to total and permanent disability are expected to reduce transfers from affected borrowers to the Federal government as their obligation to repay loans is discharged. We estimate this transfer to have an annualized net budget impact of $1.5 billion and $1.4 billion at 7 percent and 3 percent discount rate, respectively.

As a result of expanding the SSA categories that qualify for TPD discharges, the Department estimates increased costs to the taxpayer in the form of transfers to the additional borrowers who will be eligible for, and receive, TPD discharges.

Because more borrowers will be able to retain their discharges and not see their loans reinstated, the Department also anticipates that this change will increase costs to taxpayers in the form of transfers in direct benefits to those borrowers.

These final regulations expand allowable documentation and the list of certifying medical professionals are expected to modestly increase the amounts discharged through TPD through transfers to affected borrowers, as more borrowers overcome these barriers and apply for discharges.

Benefits of the Regulatory Changes:

The Department believes that many more borrowers will be eligible for TPD discharges with the addition of SSA categories. The Department intends to update the data match with SSA, which if successful, could mean that borrowers who previously had to apply for a discharge through the physician's certification process would be identified through the match with SSA. Borrowers who fall into the MIP category currently may be applying under the physician's certification process, but the Department intends to try and capture some of these borrowers if we can successfully update the data match with SSA.

Eliminating the post-discharge income monitoring period will also ensure consistency between borrowers with an SSA determination of disability status and those with a determination by the Department of Veterans Affairs (VA). Total and permanent disability discharges based on determinations by the VA are not subject to a post-discharge monitoring period (though some veterans may apply for or receive a TPD discharge based on an SSA determination instead). The Department believes this change will reduce the burden that borrowers with a total and permanent disability face in retaining their discharge, as the time and effort involved in providing income information during the monitoring process will be eliminated.

The Department also believes that expanding allowable documentation and the list of certifying medical professionals will increase transfers to borrowers through discharges by lowering administrative burdens that borrowers face, including in reducing the costs that borrowers face in obtaining the necessary documentation of their disability.

4.6 Closed School Discharges

These final regulations improve access to closed school loan discharges for borrowers who are unable to complete their programs due to the closure of their institution. While there are many closures that occur in an orderly fashion with advance notice, the majority of students affected by closures in the last several years were mid-program and unable to complete their program at the college where they started.

Through these final regulations, the Department aims to expand eligibility for closed school discharges. In 2016, the Department issued regulations that provided automatic closed school discharges to borrowers who were eligible for a closed school discharge but did not apply for one and who did not enroll elsewhere within 3 years of the institution's closure.[180] A 2021 GAO report on college closures found that 43 percent of those eligible for a CSD had not re-enrolled 3 years later. GAO's data also found that 52 percent of the borrowers who received an automatic discharge had defaulted, while another 21 percent had been more than 90 days late at some point. Given this, these final regulations implement the automatic process for borrowers. These final regulations provide such automatic discharges 1 year after closure, which will significantly benefit affected borrowers.

Borrowers who left a school shortly before it closed can also receive a closed school discharge. However, the discharge windows have not been consistent across years for these borrowers. Loans made prior to July 1, 2020, were generally subject to a 120-day window, while borrowers with loans made after that date were subject to a 180-day window. These final regulations standardize the window, making it 180 days for all borrowers.

The Secretary can also extend this 180-day window under exceptional circumstances. However, the current non-exhaustive list does not include many events that may reasonably be associated with a closure, such as the accreditor issuing a show cause order. Additionally, the 2019 regulations removed items that were included in prior regulations, such as ''a finding by a State or Federal government agency that the school violated State or Federal law.'' [181] These regulations expand this

[179] Government Accountability Office. (2016). ''Social Security Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers with Obtaining Permitted Relief.'' (GAO Publication No. GAO–17–45.) Washington, DC: U.S. Government Printing Office. Retrieved from *https://www.gao.gov/products/gao-17-45.*

[180] 81 FR at 75926.

[181] 84 FR at 49788.

list to include this and several other items.

Finally, these final regulations provide clearer rules for when a borrower who transfers to another program could still receive an automatic closed school discharge. The past version of automatic closed school discharges required borrowers to apply for the discharge if they enrolled in another institution within 3 years of their original school's closure date. This is regardless of whether the new school they enrolled in accepted any credits or if the borrower finished. While a borrower who transferred but did not finish the program could apply for a closed school discharge, data from GAO show that very few of these borrowers did so. Excluding these individuals from the automatic closed school discharge in effect made the borrower's choice to continue their education needlessly high stakes. These final regulations address these concerns by stating that a borrower maintains access to an automatic discharge as long as they do not complete the program through a continuation of the program at another branch or location of their school or through an approved teach-out. Borrowers who accept but do not complete a continuation of the program or a teach-out agreement would receive a discharge 1 year after their last date of attendance at the other branch or location or in the teach-out.

Costs of the Regulatory Changes:

As detailed in the Net Budget Impact section, the changes to closed school discharge are expected to reduce transfers from affected borrowers to the Federal government as their obligation to repay loans is discharged. We estimate this transfer to have an annualized net budget impact of $758 million and $693 million at 7 percent and 3 percent discount rate, respectively. The Department will work to recover from institutions the amounts that the Secretary discharges and to leverage the processes already in place at § 668, part H. Based on historical closed school discharge data, the average discharge amount at the institutional level was $2.4 million based on discharge amounts from 573 closed institutions. Based on the same data, the majority of closed school discharge loan amounts (88.5 percent), were from closed proprietary schools. Table 6 illustrates the historical average closed school discharge amounts by institution type from 1991 through early April 2022, which are a good estimate of the discharge costs per loan by institution type for future closed school loan discharges.

Table 6—Closed School Discharge Amounts by Institution Group

Institution Group	Average Discharge Amount	Sum of Closed School Discharges	% of Total Closed School Discharges
Private 2 to 3 Years	$2,876	$5,771,862	0.41
Private 4 Years or More	$5,030	$106,347,003	7.60
Private Less Than 2 Years	$2,610	$1,461,896	0.10
Proprietary 2 to 3 Years	$3,265	$387,352,052	27.68
Proprietary 4 Years or More	$5,074	$823,679,386	58.85
Proprietary Less Than 2 Years	$3,002	$74,336,389	5.31
Public 4 Years or More	$3,258	$570,211	0.04
Public Less Than 2 Years	$3,692	$116,264	0.01

The Department will also incur costs associated with the closed school discharges. These costs will represent a transfer of benefits between the Federal government and the borrower. The Department will have to discharge the affected loans prior to trying to recover the funds from the institutions in order to provide a timely discharge for the borrower. Ultimately, the size of the transfer from the Department to borrowers would be the difference in funds between the discharge amount and the recovery amount from the institution. The Department will also incur administrative costs associated with the process of recovering funds from closed institutions, especially in cases where the institutions may be facing litigation, such as due to bankruptcy or legal violations. This represents net new costs to the Department.

Benefits of the Regulatory Changes:

Automatic loan discharges will significantly benefit affected borrowers who are eligible for a discharge. In particular, after entering repayment, affected borrowers may receive a discharge early enough to avoid default on their loans. The Department will also face a reduced administrative burden due to the reduced staff time required to review applications for borrowers who meet the eligibility criteria for a closed school discharge.

Lower-income students are also significantly more likely to benefit from closed school discharges. Of the more than 294,000 closed school discharges provided either through an application or automatically, 77 percent went to borrowers who also received a Pell Grant.[182] A closed school discharge will be particularly important for a Pell Grant recipient because it will also afford an opportunity to reset their Pell

[182] Analysis of data from the National Student Loan Data System, early October 2022. Data reflect all discharges coded as closed school discharges in the system.

Grant lifetime eligibility. This is critical given that these borrowers are likely to lose credits if they attempt to transfer to another program.

Regarding standardizing the closed school discharge window, the Department believes this will modestly increase eligibility for the discharge for some borrowers, though application rates for closed school discharge tend to be relatively low and are not likely to increase significantly. The Department is also expanding the non-exhaustive list of exceptional circumstances required for the Secretary to use their authority to extend the 180-day window. In certain cases, this will increase eligibility for closed school discharges, potentially by several years. However, this authority will be employed on a case-by-case basis and thus the overall impact is expected to be modest. In addition, automatic closed school discharge occurs 1 year after the school closure date for borrowers who do not take a teach-out or a continuation of the program at a branch or location of the school.

The Department believes that by removing the ''comparable program'' requirement and instead providing discharges for all borrowers unless they accept and complete an approved teach-out or finish a continuation of the program at another branch or location of the school will encourage borrowers to continue their education because they will still be able to keep their discharge if the teach-out or continuation option does not work for them. It also means a borrower who continues seeking higher education but loses all or most progress toward their degree will not have to worry about whether they will receive relief because they will receive an automatic discharge.

This approach will also encourage institutions to manage closures more carefully. In particular, institutions will have a stronger incentive to make sure borrowers have access to high-quality and affordable teach-out or continuation options; otherwise, the institution that is closing will face larger liabilities associated with closed school discharges. With higher-quality and affordable teach-outs or continuation options students will benefit from additional education. A large number of studies estimating the causal effect of college education on earnings suggest that each additional year of college generates annual earnings gains in the range of 7–15 percent.[183] Moreover, education generates social benefits in the form of productivity spillovers, reduced crime, and increased civic participation.[184]

4.7 Pre-Dispute Arbitration

These final regulations limit pre-dispute arbitration and class action waivers in institutions' enrollment agreements to ensure borrowers have access to fair processes and to provide insight and evidence to the Department that may be needed to adjudicate BD claims. Mandatory pre-dispute arbitration and class action waivers may allow institutions to minimize financial risk associated with wrongdoing and instead may shift the risk of wrongdoing to taxpayers and the Federal government through subsequent BD discharges. While the Department included a similar provision in its 2016 BD regulations, the prohibition was rescinded by the 2019 regulations.

Borrowers also may not understand the implications of agreeing to a mandatory pre-dispute arbitration requirement or a class action waiver and what that means for future attempts to seek relief. In a study on arbitration clauses, legal researchers surveyed a random sample of consumers and concluded respondents generally lacked an understanding about the terms of the arbitration agreement and what that meant for their ability to seek relief in court. These researchers expressed concern about whether the consent consumers provide when they enter into a contract that contains an arbitration clause is knowing consent, and therefore valid.[185]

By prohibiting Direct Loan-participating institutions from using certain restrictive contractual provisions regarding dispute resolution and requiring notification and disclosure regarding their use of arbitration, schools will be prevented from keeping complaint information hidden from borrowers facing potential BD issues faced by their borrowers. Keeping complaint and arbitration information hidden from public view hinders the Department's ability to investigate patterns of student complaints.

In addition, borrowers' ability to pursue individual and class-action litigation will make it difficult for schools to hide potentially deceptive practices from current or prospective students and will allow students who have been harmed by an institution to sue for damages and recoup their financial losses. Providing a litigation option could also mitigate the potential conflict of interest between the arbitrators and the institutions that hire them, leading to fairer outcomes for students. Taxpayer dollars will be better protected by ensuring that grievances from enrollees in problematic schools could be publicly aired through the court system.

The Department notes that the impact of these changes will be largely limited to the private for-profit sector. In a 2016 study by an independent think tank, researchers looked at enrollment contracts of more than 270 institutions across the country. None of the public colleges surveyed and only one private nonprofit college required its students to agree to arbitration as a condition of enrollment. Among private for-profit colleges, the researchers found significant differences depending on whether the institution participated in the Federal student financial aid programs. A majority (93 of the 158) private for-profit colleges that participate in the Federal aid programs used a forced arbitration clause compared to just one of the 49 that do not participate in the aid programs.[186]

Costs of the Regulatory Changes:

The costs associated with these final regulations would be affected by whether institutions are less likely to engage in behavior that could lead to an approved BD claim as a result of not using mandatory pre-dispute arbitration clauses or class action waivers. If institutions that engage in conduct that could lead to an approved BD claim do not change their behavior, then there could be a number of costs related to more grievances ending up in court. This will include the cost to students of seeking judicial intervention, though such costs may be offset if their claims in court are successful. Costs can also increase for institutions, as they tend to incur higher legal fees during litigation. Institutions will not only face higher administrative costs, but institutions are also likely to face higher number of settlements and the costs associated

[183] Oreopoulos, Philip and Uros Petronijevic (2013). ''Who Benefits from College? A Review of Research on the Returns to Higher Education,'' The Future of Children, Vol. 23, No. 1, pp. 41–65.

[184] Oreopoulos, P., & Salvanes, K.G. (2011). Priceless: The nonpecuniary benefits of schooling. *Journal of Economic perspectives,* 25(1), 159–84. Moretti, E. (2004). Human capital externalities in cities. In *Handbook of regional and urban economics* (Vol. 4, pp. 2243–2291). Elsevier. Moretti, E. (2004). Estimating the social return to higher education: evidence from longitudinal and repeated cross-sectional data. *Journal of econometrics,* 121(1–2), 175–212.

[185] Sovern, J., Greenberg, E.E., Kirgis, P.F. and Liu, Y., 'Whimsy Little Contracts' with Unexpected Consequences: An Empirical Analysis of Consumer Understanding of Arbitration Agreements (February 19, 2015). 75 Maryland Law Review 1 (2015), St. John's Legal Studies Research Paper No. 14–0009, *http://dx.doi.org/10.2139/ssrn.2516432.*

[186] Habash, T., and Shireman, R., ''How College Enrollment Contracts Limit Students' Rights.'' *The Century Foundation* (Apr. 28, 2018), *https://tcf.org/content/report/how-college-enrollment-contracts-limit-students-rights/.*

with them, as it is expected that the students will be able to reach more favorable decisions in court than during arbitration. These costs will, however, decrease if institutions currently engaging in conduct that could lead to an approved BD claim cease such conduct as a result of this change. These external factors do not represent any additional costs for the Department.

In addition to costs in the form of transfers to borrowers and administrative burden for the Department, there may be an increase in the time it takes to resolve disputes through non-arbitration means, as litigation proceedings rely on more detailed discovery and presentation of evidence than arbitration. Finally, bringing additional cases to court that have generally been resolved through arbitration may create a burden on the courts, leading to longer litigation time and increased costs for students and institutions.

Benefits of the Regulatory Changes:

Borrowers will see benefits due to the limitation on arbitration clauses and class-action waivers. Research indicates that the rate at which consumers receive favorable decisions in arbitration is quite low and the amounts they secure when they do are very small. Only 9 percent of disputes that go to arbitration end with relief for the consumer.[187] When a 2015 CFPB report looked at cases from one of the major arbitration companies it found that consumers won just over $172,000 in damages and $189,000 in debt forbearance across more than 1,800 disputes in six different financial markets. By contrast, the CFPB's analysis of individual cases brought in Federal court for all but one of these markets found that consumers were awarded just under $1 million in cases where the judge issued a decision. It is difficult to directly compare the success rate for an individual in arbitration compared to those who take their claims to court because the overwhelming majority of cases end in settlements in which the results are not easily ascertainable. The same CFPB study referenced above found that about 50 percent of the more than 1,200 individual cases filed in Federal court that were analyzed resulted in settlement. But the analysis could not determine what share of those settlements were favorable to borrowers.[188]

Given that pre-arbitration agreements are prevalent in for-profit institutions' enrollment agreements, these benefits will have a greater impact on Black students, who are more likely to attend for-profit institutions compared to other educational institutions.[189] The prohibition will also support these students in filing BD claims where warranted.

5. Net Budget Impacts

These final regulations are estimated to have a net Federal budget impact in costs over the affected loan cohorts of $71.8 billion, consisting of a modification of $19.4 billion for loan cohorts through 2022 and estimated costs of $52.4 billion for loan cohorts 2023 to 2032. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. Changes to the cost estimates for the final regulations involve an updated baseline that includes modifications for the limited PSLF waiver, the IDR account adjustment, the payment pause extension to December 2022, and the August 2022 announcement that the Department will discharge up to $20,000 in Federal student loans for borrowers who make under $125,000 as an individual or $250,000 as a family. Any additional changes are described in the relevant section for the various provisions.

The provisions most responsible for the costs of the final regulations are interest capitalization, PSLF, and TPD discharges. The specific costs for each provision are described in the following subsections covering the relevant topics.

5.1 Borrower Defense

As noted in this preamble, the regulatory provisions related to BD have undergone revisions starting in 2016 and then again in 2019 and the patterns of claim submission and processing have not reached a steady level to serve as a clear basis for estimating future claims. Additional claims are expected from existing loan cohorts, and the level and timing of claims from older cohorts is not likely to be indicative of claims for future cohorts, because BD was not an active area of loan discharges during the early years in repayment of those older cohorts. In addition, the institutions that to date have been among the largest sources of BD claims have been closed for many years. Therefore, we are using a revised version of the approach used to estimate the costs of BD for the 2016 and subsequent regulations to generate estimates for the BD provisions.

The Department's estimates were informed by looking at data from the borrower defense group within FSA about the number of claims received, the loan volumes associated with pending and approved claims, the type of school attended by the borrowers with submitted claims, and the years borrowers reported that they attended. We used this to establish assumptions about the source of BD claims and general cohorts associated with them. We then used data pulled from the National Student Loan Data System (NSLDS) that are used in the scoring baseline and applied the assumptions described in this net budget impact analysis to generate the budget impact estimate.

As a reminder, these estimated costs reflect costs resulting from this regulation relative to baseline, not the overall cost of BD discharges. The estimated cost of the BD changes is a modification to cohorts through 2022 of $4.2 billion and a cost of $3.0 billion for cohorts 2023–2032. Where possible, we adjusted the assumptions made about school conduct, borrowers' chances of making a successful claim, and recovery rates to reflect information from pending claims.

More than three-quarters of BD claims are from borrowers who attended proprietary institutions, which does not include some borrowers who attended proprietary institutions that are now categorized as private nonprofit institutions. Just 5 percent of BD claims are from borrowers who attended public institutions. These amounts include institutions that have a significant number of claims and, therefore, may be more likely to have a group claim process applied to them. This is reflected in the school conduct assumption in Table 7.

While there are many factors and details that would determine the cost of the final regulations, ultimately a BD claim entered into the student loan model (SLM) by risk group, loan type, and cohort will result in a reduced

[187] Shierholz, H.. ''Correcting the Record: Consumers Fare Better under Class Actions than Arbitration.'' *Economic Policy Institute,* 1 Aug. 2017, *https://www.epi.org/publication/correcting-the-record-consumers-fare-better-under-class-actions-than-arbitration/.*

[188] *Arbitration Study: Report to Congress, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a).* Consumer Financial Protection Bureau. (2015, March). Retrieved from *https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.*

[189] Urban Institute. (2020, June). Racial and Ethnic Representation in Postsecondary Education. Tomás Monarrez, Kelia Washington. *https://www.urban.org/research/publication/racial-and-ethnic-representation-postsecondary-education.*

stream of cash flows compared to what the Department would have expected from a particular cohort, risk group, and loan type. The net present value of the difference in those cashflow streams generates the expected cost of the final regulations.

In order to generate an expected level of claims for processing in the SLM, the Department used President's Budget 2023 (PB2023) loan volume estimates to identify the maximum potential exposure to BD claims for each cohort, loan type, and sector. For the final regulations, we updated this baseline to include modifications for the limited PSLF waiver announced in October 2021, adjustments to fix the count of qualifying payments on IDR announced in April 2022, the extension of the payment pause to December 2022, and the announcement of a one-time action to forgive up to $20,000 for Federal student loan borrowers. Including these additional items, particularly the debt cancellation costs, significantly reduces the net budget impact by lowering the scheduled principal and interest payments expected in the baseline. Other changes are described in the description of the budget estimates for each area. The Department expects that many borrowers who already have loans but have not yet filed a BD claim would have all or a significant portion of their loan balances eliminated by the broad-based forgiveness. For instance, the Department has noted that tens of millions of borrowers will be eligible for loan forgiveness, with significant numbers of those borrowers having all or at least half their balances eliminated. However, the broad-based forgiveness will not affect future loan volume because it is only eligible for currently outstanding debts. Other factors that would affect costs are the rate of consolidation from the FFEL program, the percentage of claims that go through a group process, the potential deterrent effect of claims on school practices, investigative activities of State authorities, increased borrower awareness of BD, and borrower eligibility for other discharges, especially closed school discharges.

As costs are estimated against a specific baseline, it is important to note that the President's Budget for 2023 assumed a higher level of BD claims based more on the 2016 assumptions [190] than the 2019 regulation assumptions.[191] The Department assumed a higher level of BD claims because claims processing and other announcements suggested that the number of successful claims would be increasing. Some of the costs that could have been attributed to the final regulations are already in the baseline as a result of this modeling change. To provide some information about this factor, the Department ran the President's Budget Fiscal Year 2023 (PB23) baseline with no allowance for approved BD claims and also with the 2019 regulatory assumptions applied. Running a scenario in the NPRM with no allowance for approved BD claims and no inclusion of later policy announcements like broad-based debt relief had a net budget impact of −$8.6 billion. Using the reduced adjustment associated with the 2019 regulations resulted in a net budget impact of −$8.0 billion in savings compared to the baseline that incorporates the additional policy announcements described above. The loan volumes and assumptions relied on to generate net borrower defense claims are described below and presented in Table 7. The Department only applied assumptions to non-consolidated Direct Loan volume to avoid applying a discharge to both a borrower's non-consolidated and consolidated loan volume. The effect of the regulations on consolidated loans thus reflects assumptions about FFEL volumes that are consolidated in Direct Loans. The FFEL claims generated were applied to the Death, Disability, and Bankruptcy (DDB) rates for Direct Loan consolidations. The PB23 volumes are summarized in Table 7 by loan type and institutional control. A more detailed version of the loan volumes will be available on the Department's Negotiated Rulemaking website.[192]

The model to estimate BD claims under the final regulations relies upon the following factors:

Conduct Percent, which represents the share of loan volume estimated to be affected by institutional behavior resulting in a defense to repayment application. This percentage varies both by risk group (*e.g.,* 2-year proprietary, graduate borrowers, and 4-year nonprofit or public institutions). It also varies by cohort year, which reflects that the Department has observed decreases in enrollment, including from closures, at institutions with significant numbers of BD applications as well as estimated deterrent effects of the rule. The conduct percent thus ranges from a high of 18 percent of loan volume at proprietary colleges in the 2011 to 2016 cohorts to a low of 1 percent at public and private nonprofit institutions in the pre-2000 cohorts. These figures reflect the trends we have seen in the source of filed claims, whereby more than three-quarters of claims are associated with proprietary institutions and only 5 percent are from public institutions. The graduate risk group is the most complicated because it includes graduate borrowers from all sectors and because of how it is constructed it cannot be decomposed into individual types of institutions. The spike in conduct percentages in the 2011–2016 period also reflects that the Department has received significantly more claims from borrowers who attended during this period, which is also when many of the proprietary institutions that generated the largest number of claims were at their enrollment peaks. Several of those institutions, such as ITT Technical Institute and Corinthian Colleges, closed by the end of that period. Many others saw significant enrollment decreases or closed other chains or brands. As a result, we have significantly fewer claims associated with loans issued after 2017.

Group Process percent, which is the share of affected loan volume we expect to be subject to a group claim.

Claim Balance Adjustment Factor, which captures the potential change in borrowers' balances from origination to the time of their discharge and was added because this regulation addresses claims from older cohorts, not just future loan cohorts, so this factor could be more significant.

Borrower Percent, which is the percent of loan volume associated with approved defense to repayment applications; and

Recovery Percent, which estimates the percent of gross claims for which funds are recovered from institutions, with both of these varying by inclusion in a group process or not.

To generate gross claims volume (gc), loan volumes (lv) by risk group were multiplied by the Conduct Percent (cp), Group Process percent (gpp), the Claim Balance Adjustment factor (cbf), and the Borrower Percent for groups and individual claims (bp_g or bp_i). To generate net claims volume (nc) processed in the Student Loan Model, gross claims were then multiplied by the Recovery Percent. That is, gc = gc_g + gc_i when gc_g = (lv * cp * cbf * gc* bp_g) and gc_i= (lv * cp * cbf * (1 − gc)* bp_i) and nc = nc_g + nc_i where nc_g = gc_g − (gc_g * rp_g) and nc_i = gc_i − (gc_i * rp_i). To put this another way, we first calculated separate estimates of gross claims volume for group and individual claims. We calculated the estimate for each of those amounts by taking the amount of loan volume in each risk group and

[190] 81 FR at 76057.

[191] 84 FR at 49894.

[192] *https://www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

multiplying it by the share of loan volume in that group expected to be associated with a BD claim (the conduct percent), adjustments for how balances might have changed from origination to discharge (the claim balance factor), and the estimate approval rate for claims. As a hypothetical example, if a risk group had $1 million in loan volume, no increase in balances between origination and discharge (a claim balance factor of 100%), 10 percent of balances associated with a BD claim and 50 percent of that amount was expected to be approved, the gross claims amount would be $50,000 ($1 million * 100% * 10% * 50%). We then multiplied the gross claims amount by estimates of the share that we would recover (the net recovery rate) to estimate the net claims cost.

Additional discussion of these factors follows their presentation in Table 7, with the comparable values for the 2016 and 2019 BD regulations presented in Table 8. To allow for the 2016 and 2019 assumptions to be compared, we collapsed the 2-year and 4-year distinction because the rates applied by institutional control were the same. The assumed levels of school conduct that would result in a potential BD claim remain fairly consistent across the regulations and anticipate some deterrent effect of the regulations. The assumed approval rate is a key driver in changing the net budget impact of the different borrower defense proposals.

BILLING CODE 4000–01–P

Table 7—Assumptions for Primary BD Scenario [193]

[193] The table above is a summary. The complete table is available at *www.regulations.gov* using the Docket ID number ED–2021–OPE–0077 and at *www2.ed.gov/policy/highered/reg/hearulemaking/2021/index.html.*

Summary of PB2023 Loan Volumes Used for Borrower Defense ($bns)

Cohort	2 Year Public/ Private Nonprofit	4 Year Public / Private Nonprofit	Proprietary	Graduate	Consolidation	Grand Total
1994	$ 1.4	$ 18.8	$ 2.6	$ 10.0	$ -	$ 32.7
1995	$ 2.2	$ 24.8	$ 4.1	$ 13.2	$ 0.7	$ 45.1
1996	$ 2.2	$ 25.7	$ 4.1	$ 14.2	$ 2.1	$ 48.3
1997	$ 2.4	$ 28.2	$ 4.4	$ 15.7	$ 2.9	$ 53.6
1998	$ 2.4	$ 29.1	$ 4.8	$ 16.3	$ 4.9	$ 57.5
1999	$ 2.3	$ 28.9	$ 5.5	$ 17.0	$ 16.1	$ 69.8
2000	$ 2.4	$ 31.6	$ 6.4	$ 18.8	$ 10.9	$ 70.1
2001	$ 2.7	$ 33.3	$ 7.6	$ 20.1	$ 15.7	$ 79.3
2002	$ 3.4	$ 36.7	$ 9.2	$ 23.4	$ 17.9	$ 90.6
2003	$ 4.3	$ 41.8	$ 11.1	$ 27.4	$ 13.4	$ 98.1
2004	$ 5.2	$ 46.9	$ 13.7	$ 31.3	$ 15.5	$ 112.6
2005	$ 5.8	$ 50.6	$ 15.6	$ 34.2	$ 31.7	$ 137.9
2006	$ 6.2	$ 51.4	$ 17.1	$ 39.0	$ 39.2	$ 152.9
2007	$ 7.0	$ 53.7	$ 18.9	$ 45.7	$ 7.1	$ 132.3
2008	$ 8.4	$ 59.3	$ 25.0	$ 50.1	$ 11.8	$ 154.6
2009	$ 11.5	$ 69.1	$ 34.4	$ 56.4	$ 25.3	$ 196.8
2010	$ 9.4	$ 49.6	$ 26.3	$ 38.8	$ 34.8	$ 158.8
2011	$ 8.2	$ 48.2	$ 17.8	$ 36.5	$ 48.4	$ 159.1
2012	$ 8.3	$ 45.7	$ 15.2	$ 35.1	$ 46.2	$ 150.6
2013	$ 7.7	$ 45.0	$ 13.6	$ 34.4	$ 53.8	$ 154.6
2014	$ 6.6	$ 44.5	$ 12.2	$ 35.1	$ 69.5	$ 168.0
2015	$ 5.6	$ 43.3	$ 10.7	$ 34.8	$ 92.7	$ 187.2
2016	$ 5.2	$ 43.8	$ 9.4	$ 35.8	$ 91.2	$ 185.5
2017	$ 4.6	$ 42.8	$ 8.2	$ 36.6	$ 97.5	$ 189.8
2018	$ 4.3	$ 41.4	$ 7.7	$ 37.0	$ 83.3	$ 173.7
2019	$ 4.0	$ 40.7	$ 7.5	$ 37.7	$ 79.8	$ 169.8
2020	$ 3.5	$ 34.8	$ 7.4	$ 38.0	$ 60.8	$ 144.4
2021	$ 3.0	$ 33.9	$ 7.6	$ 38.5	$ 43.3	$ 126.4
2022	$ 3.6	$ 38.7	$ 6.7	$ 31.3	$ 55.1	$ 135.5
2023	$ 3.6	$ 39.1	$ 6.5	$ 31.3	$ 59.2	$ 139.7
2024	$ 3.6	$ 39.5	$ 6.5	$ 31.3	$ 77.3	$ 158.3
2025	$ 3.6	$ 39.9	$ 6.5	$ 31.5	$ 79.7	$ 161.3
2026	$ 3.6	$ 40.5	$ 6.6	$ 31.4	$ 81.1	$ 163.3
2027	$ 3.7	$ 40.9	$ 6.6	$ 31.6	$ 82.0	$ 164.8
2028	$ 3.7	$ 41.3	$ 6.7	$ 31.8	$ 82.7	$ 166.2
2029	$ 3.7	$ 41.7	$ 6.7	$ 31.8	$ 83.2	$ 167.1

2030	$	3.7	$	42.2	$	6.8	$	32.1	$	83.8	$	168.5
2031	$	3.8	$	42.7	$	6.8	$	32.4	$	84.3	$	170.0
2032	$	3.8	$	43.2	$	6.9	$	32.7	$	84.6	$	171.2

Conduct Percent (Percentage of loan volume related to BD claims)

Cohort Range	2-yr proprietary	2-yr NFPT/Public	4-yr Proprietary	4-yr NPFT/Public	GRAD
pre-2000	5.0%	1.0%	5.0%	1.0%	1.6%
2000-2005	8.0%	1.5%	8.0%	1.5%	3.2%
2006-2010	12.0%	1.7%	12.0%	1.7%	4.1%
2011-2016	16.0%	2.0%	16.0%	2.0%	4.1%
2017-2022	14.0%	1.5%	14.0%	1.5%	3.4%
2023-2028	9.0%	1.3%	9.0%	1.3%	2.6%
2028+	7.0%	1.1%	7.0%	1.1%	2.1%

Percentage of BD volume from group claims

Cohort Range	2-yr proprietary	2-yr NFPT/Public	4-yr Proprietary	4-yr NPFT/Public	GRAD
pre-2000	15.0%	5.0%	15.0%	5.0%	7.0%
2000-2005	35.0%	12.0%	35.0%	12.0%	16.6%
2006-2010	68.0%	14.0%	68.0%	14.0%	24.8%
2011-2016	80.0%	18.0%	80.0%	18.0%	30.4%
2017-2022	70.0%	12.0%	70.0%	12.0%	23.6%
2023-2028	55.0%	8.0%	55.0%	8.0%	17.4%
2028+	45.0%	6.0%	45.0%	6.0%	13.8%

Percentage of BD volume from individual claims

Cohort Range	2-yr proprietary	2-yr NFPT/Public	4-yr Proprietary	4-yr NPFT/Public	GRAD
pre-2000	85.0%	95.0%	85.0%	95.0%	93.0%
2000-2005	65.0%	88.0%	65.0%	88.0%	83.4%
2006-2010	32.0%	86.0%	32.0%	86.0%	75.2%
2011-2016	20.0%	82.0%	20.0%	82.0%	69.6%
2017-2022	30.0%	88.0%	30.0%	88.0%	76.4%
2023-2028	45.0%	92.0%	45.0%	92.0%	82.6%
2028+	55.0%	94.0%	55.0%	94.0%	86.2%

Percentage of volume approved in group claims

Cohort Range	2-yr proprietary	2-yr NFPT/Public	4-yr Proprietary	4-yr NPFT/Public	GRAD
pre-2000	21.3%	12.8%	21.3%	12.8%	17.0%
2000-2005	55.3%	42.5%	55.3%	42.5%	51.0%
2006-2010	59.5%	42.5%	59.5%	42.5%	51.0%
2011-2016	63.8%	42.5%	63.8%	42.5%	51.0%
2017-2022	63.8%	42.5%	63.8%	42.5%	51.0%
2023-2028	63.8%	51.0%	63.8%	51.0%	55.3%
2028+	63.8%	51.0%	63.8%	51.0%	55.3%

Percentage of volume approved in individual claims

Cohort Range	2-yr proprietary	2-yr NFPT/Public	4-yr Proprietary	4-yr NPFT/Public	GRAD
pre-2000	4.3%	1.7%	4.3%	1.7%	3.4%
2000-2005	6.8%	1.7%	6.8%	1.7%	5.1%
2006-2010	10.2%	4.3%	10.2%	4.3%	6.8%
2011-2016	10.2%	4.3%	10.2%	4.3%	8.5%
2017-2022	10.2%	6.8%	10.2%	6.8%	8.5%
2023-2028	10.2%	6.8%	10.2%	6.8%	8.5%
2028+	10.2%	6.8%	10.2%	6.8%	8.5%

Recovery percentage on approved claims

Group Claims	2-yr proprietary	2-yr NFPT/Public	4-yr Proprietary	4-yr NPFT/Public	GRAD
pre-2000	0.00%	0.00%	0.00%	0.00%	0.00%
2000-2005	0.3%	0.2%	0.3%	0.2%	0.2%
2006-2010	2.5%	2.0%	2.5%	2.0%	2.0%
2011-2016	2.5%	2.0%	2.5%	2.0%	2.0%
2017-2022	7.0%	5.6%	7.0%	5.6%	5.6%
2023-2028	15.0%	12.0%	15.0%	12.0%	12.0%
2028+	15.0%	12.0%	15.0%	12.0%	12.0%

Table 8—Assumptions for Primary BD Scenarios in 2016 and 2019 Regulations

	2016 Regulation			2019 Regulation		
Cohort	Public	Private	Proprietary	Public	Private	Proprietary
Conduct Percent						
2017	3.0%	3.0%	20.0%	N/A	N/A	N/A
2018	2.4%	2.4%	16.0%	N/A	N/A	N/A
2019	2.0%	2.0%	13.6%	N/A	N/A	N/A
2020	1.7%	1.7%	11.6%	1.6%	1.6%	11.0%
2021	1.5%	1.5%	9.8%	1.4%	1.4%	9.3%
2022	1.4%	1.4%	8.8%	1.3%	1.3%	8.4%
2023	1.3%	1.3%	8.4%	1.2%	1.2%	8.9%
2024	1.2%	1.2%	8.0%	1.1%	1.1%	7.6%
2025	1.2%	1.2%	7.8%	1.1%	1.1%	7.4%
2026	1.2%	1.2%	7.7%	1.1%	1.1%	7.3%
2027	N/A	N/A	N/A	1.1%	1.1%	7.3%
2028	N/A	N/A	N/A	1.1%	1.1%	7.3%
2029	N/A	N/A	N/A	1.1%	1.1%	7.3%
Allowable Applications Percent						
All Cohorts	N/A	N/A	N/A	70.0%	70.0%	70.0%
Borrower Percent						
2017	35.0%	35.0%	45.0%	N/A	N/A	N/A
2018	36.8%	36.8%	47.3%	N/A	N/A	N/A
2019	38.6%	38.6%	49.6%	N/A	N/A	N/A
2020	42.4%	42.4%	54.6%	3.3%	3.3%	4.95%
2021	46.7%	46.7%	60.0%	3.8%	3.8%	5.48%
2022	50.0%	50.0%	63.0%	4.1%	4.1%	5.93%
2023	50.0%	50.0%	65.0%	4.5%	4.5%	6.30%
2024	50.0%	50.0%	65.0%	4.8%	4.8%	6.75%
2025	50.0%	50.0%	65.0%	5.3%	5.3%	6.98%
2026	50.0%	50.0%	65.0%	5.3%	5.3%	7.50%
2027	N/A	N/A	N/A	5.3%	5.3%	7.50%
2028	N/A	N/A	N/A	5.3%	5.3%	7.50%
2029	N/A	N/A	N/A	5.3%	5.3%	7.50%
Recovery Percent						
2017	75.0%	23.8%	23.8%	N/A	N/A	N/A
2018	75.0%	23.8%	23.8%	N/A	N/A	N/A
2019	75.0%	26.2%	26.2%	N/A	N/A	N/A
2020	75.0%	28.8%	28.8%	75.0%	16.0%	16.0%
2021	75.0%	31.7%	31.7%	75.0%	20.0%	20.0%
2022	75.0%	33.3%	33.3%	75.0%	20.0%	20.0%
2023	75.0%	34.9%	34.9%	75.0%	20.0%	20.0%
2024	75.0%	36.7%	36.7%	75.0%	20.0%	20.0%
2025	75.0%	37.4%	37.4%	75.0%	20.0%	20.0%
2026	75.0%	37.4%	37.4%	75.0%	20.0%	20.0%
2027	N/A	N/A	N/A	75.0%	20.0%	20.0%
2028	N/A	N/A	N/A	75.0%	20.0%	20.0%
2029	N/A	N/A	N/A	75.0%	20.0%	20.0%

BILLING CODE 4000–01–C

Conduct Percent:

As with previous estimates, the conduct percent reflects the fact that more than 75 percent of borrower defense claims have come from borrowers who attended proprietary institutions. This factor also captures the potential deterrent effect of the final regulations. As claims are processed and examples of conduct that results in claims become better known, we believe institutions will strive to avoid similar behavior. We also expect that the improvement or closing of some institutions that have significant findings against them, which should reduce the level of potential claims in future loan cohorts. The Department is already observing this phenomenon with existing BD claims. After peaking in 2010 at 2 million, enrollment in proprietary institutions has declined by nearly 50 percent, in part due to new regulation of the sector.[194] The Department has also received significantly fewer BD claims associated with enrollment during this period of decline. Similarly, we received significant numbers of BD claims associated with enrollment that occurred just after the Great Recession in the 2011 to 2016 cohorts. This also reflects the high point of postsecondary undergraduate enrollment nationally, particularly among proprietary institutions. The conduct percent table thus reflects the correlation between enrollment levels and volume associated with BD claims. The volumes start out very low in the pre-2000s period when the number of borrowers was significantly lower, and most borrowers will have already paid off those loans and thus cannot file a BD claim. We then adjust the conduct percent upward with enrollment growth such that there are increases in each five-year period up to 2011–2016, with that period serving as the high point. The Department projected that the increases would be greatest in the 2005–2010 and 2011–2016 periods, which also corresponds with the biggest gains in enrollment, aided in part by fully online programs being eligible for title IV, as well as the peak of various lawsuits and investigations that allege conduct that if verified to be true would have a reasonable likelihood of leading to an approved borrower defense claim. The conduct percent then follows a slightly more gradual slope downward over time before reaching a final level that is elevated above our estimates for pre-2000 but lower than the other periods. We think that ultimate level reflects that the number of borrowers is still expected to remain well above the pre-2000s level for the extended future, and that as the Department continues to review claims there will be a continued deterrence effect to avoid conduct that could lead to an approved claim.

Group Process Percent:

The share of claims suitable for a group process is expected to vary by institutional control and loan cohort. The further back a cohort of loans were originated, the less likely there is to be evidence of conduct that would support a group claims process, so the group process percent for the pre-2000 loan cohort group is lower than for more recent years. Of current pending claims, approximately 90 percent of those expected to be subject to a group claims process have come from cohorts 2006 to 2016 and we would expect that period to generate the highest share of group claims. We expect conduct that will generate a group claim to decrease following the 2016 regulation and subsequent attention to BD, with more of an effect in future years when more claims have been processed through the system.

Claim Balance Factor:

The assumptions generating our BD claims are applied to volume estimates at origination, but BD claims are likely to happen several years into repayment when payments that have been made would be subject to refund or balances will have grown through accrued interest or fees. To account for this, the Department looked at BD claims in 2021 and determined the maximum potential claim between the claim amount, the current outstanding balance, and the balance when the loan entered repayment plus accumulated interest through 2021. This maximum balance was compared to the origination amount to generate an adjustment factor that was averaged across loan type. The factors applied to Stafford, PLUS, and Unsubsidized loans are 1.32, 1.68, and 1.54, respectively. These factors are based on balance comparisons for existing loans and include capitalization events that will be eliminated under this rule as well as potential interest accrual beyond the 180-day window for loan subject to a BD claim established in these regulations. Other changes, such as the revisions to IDR anticipated in a separate regulatory package, could also affect these adjustment factors. We are not reducing the adjustment factors for those potential effects to provide a conservative estimate of BD claims—that is, an estimate that offers a larger net budget impact than if all those other items were included. The interaction with other regulatory or legislative actions could affect future re-estimates of the net budget impact of the BD provisions. For instance, changes to IDR that increase borrower benefits would result in a decrease in the cost of the BD provisions because a loan discharge would result in less foregone revenue than previously anticipated. Similarly, there could be interactions between institutions that may have BD claims sustained against them and those that fail the 90/10 rule, which requires institutions to derive a certain share of their revenue from non-Federal sources.[195] If those institutions fail the 90/10 requirement and lose access to title IV funding, then the cost of the BD provisions could fall since those institutions would not be able to make additional loans that could result in an approved BD claim.

Borrower Percent—Group and Individual:

This assumption captures the share of claims expected to lead to a discharge. Factors such as the Federal standard, reconsideration process, the number of claims against individual institutions, enrollment periods associated with the claims, and type of allegations seen to date affect these figures. For instance, the Department adjusted the borrower percent upward for individual claims compared to the 2019 regulation because this rule removes the requirement that we conclude that the act or omission was made with knowledge of its false, misleading, or deceptive nature, or with reckless disregard for the truth. Removing this requirement will result in more claims being approved. Similarly, the Department increased the borrower percent for group claims relative to the overall figure in the 2016 regulation to reflect both the inclusion of third-party requestors and the addition of more categories that could result in an approved BD claim. Overall, the borrower percent for group claims is significantly higher than the one for individual claims. This reflects that, to date, all but two of the institutions for which the Department has approved BD findings have eventually been converted into group discharges. The individual approval rate also includes the significant number of claims that are associated with an institution for which the Department has only received a couple of claims, suggesting that any approval is more likely to be a result of individual circumstances than a more

[194] US Department of Education, 2021. *Digest of Education Statistics, 2021.* Table 303.10.

[195] *https://www.federalregister.gov/documents/2022/07/28/2022-15890/institutional-eligibility-student-assistance-general-provisions-and-federal-pell-grant-program.*

common set of actions. For that reason, overall chance of approval is thus expected to be lower.

Recovery Percent—Group and Individual:

The recovery percent would vary by cohort and institutional control. To date the Department has only begun one recovery action related to approved BD claims, and it has yet to conclude. Historically, the Department has not had a high success rate in recovering other discharge liabilities, such as closed school discharges. The recovery rates for closed school discharges are particularly low because once an institution has closed, it is difficult to collect funds from it. Some BD claims will result in a similar situation if the institution has closed. In other cases, the likelihood of recovery may be higher because the institution is still in business, but the Department will have to successfully sustain the liability through any applicable appeal proceedings. Another factor that affects potential recoveries is the timing, as the limitations period and application of a standard to all claims pending or submitted after the effective date of the regulations may limit the Department's ability to recover claims related to activities many years ago. We expect claims for future cohorts to happen earlier in the repayment period of the loans and therefore to have a somewhat increased chance of recovery. Moreover, recovery efforts could only occur on claims that would have been approved under the standard in effect at the time the loan was disbursed and thus would not be attributed to this regulation.

The process to generate an estimated level of borrower defense claims under these final regulations remains the same as described in the NPRM, but the surrounding environment against which the potential claims are compared has evolved with recent policy announcements. Since the publication of the NPRM on July 13, 2022, several developments have been announced that further underscore the uncertainty associated with the cost estimate of the borrower defense provisions. Assuming borrowers with potential borrower defense claims qualify for loan forgiveness and the timing works so the forgiveness precedes processing of any borrower defense claim, the balances involved in the borrower defense claim will decrease. The extent to which they decline would vary based upon whether the borrower also has loans that are not associated with the borrower defense claim. However, the Department's estimates of future borrower defense claims and forgiveness are not linked to specific borrowers such that we could predict the extent of this potential reduction in future borrower defense claims at the borrower level. We considered information from evaluating the effect of loan forgiveness that found that approximately 46 percent of borrowers would receive full forgiveness, and, for those who receive partial forgiveness, the median reduction in their balance would be 43 percent. Applying overall income eligibility of 95 percent and a take-up rate of 82 percent, we reduced the borrower defense claims by 80 percent for undergraduate risk groups and 35 percent for the graduate risk group. Within claims processed to date, the average claim size varies by institution. For instance, in July 2021 the Department announced BD approvals of $500 million for approximately 18,000 borrowers who attended ITT Technical Institute, for an average of approximately $28,000 a borrower.[196] Also in 2021, we announced the approval of $53 million in discharges for 1,600 borrowers who attended Westwood College, with an average amount of $33,000.[197] When the Department approved a group discharge for 28,000 borrowers who attended Marinello Schools of Beauty, that resulted in discharging $238 million, or approximately $8,500 per borrower.[198]

If approved, the settlement proposed in the *Sweet* v. *Cardona* case would also have a significant effect on the net budget impact of this rule attributed to past cohorts. The settlement agreement that received preliminary approval in July 2022 would result in the upfront discharge for an estimated 200,000 borrowers who attended certain institutions and a streamlined review of applications for tens of thousands of other applicants. All discharges from those two processes would be considered settlement relief, not an approved BD claim. They would, however, reduce the number of claims to be approved after the effective date of this regulation, which would in turn reduce the cost of this regulation. The settlement would not result in changes in the approval rate for claims associated with borrowers who applied after the settlement agreement was reached on June 22, 2022.

To model this scenario, the Department halved the conduct percentage for cohorts prior to 2022. This represents the rough split of the number of claims covered by the settlement and the number outside the class. This reduction in the conduct percentage results in reduced loan volume associated with BD claims, without changing the approval rate for future claims.

To address uncertainty in our assumptions more generally, we also developed some alternate scenarios to capture a range of net budget impacts from the BD regulations. The low budget impact scenario reduces the group percentage and increases recoveries to the 37 percent maximum assumed in the 2016 regulations. We chose this level for approvals because the 2016 regulation also formally included a group process. We predict fewer discharges due to the inclusion of other categories under which a claim could be approved, the addition of third-party requestors, and procedures that more clearly separate approving group claims from recoupment efforts. We also thought using the higher recovery estimate for that regulation would be appropriate because the 2016 regulation is more similar to this rule than the 2019 rule, which does not allow for group claims.

The high budget impact scenario assumes a smaller deterrent effect and keeps the highest conduct percent for an additional cohort range and shifts the 2017–2022 and 2023–28 percentages to the next cohort range. It also increases the highest group percentage and maintains that level for future cohorts; and eliminates all recoveries. The revised assumptions for these scenarios are detailed in Table 9 with the results presented in Table 10.

[196] *https://www.ed.gov/news/press-releases/department-education-announces-approval-new-categories-borrower-defense-claims-totaling-500-million-loan-relief-18000-borrowers.*

[197] *https://www.ed.gov/news/press-releases/department-education-approves-borrower-defense-claims-related-three-additional-institutions.*

[198] *https://www.ed.gov/news/press-releases/education-department-approves-238-million-group-discharge-28000-marinello-schools-beauty-borrowers-based-borrower-defense-findings.*

Table 9—Revised Assumptions for Alternate Scenarios

Conduct Percent (Percentage of loan volume related to BD claims)						
	Low Scenario			High Scenario		
Cohort Range	Proprietary	NPFT/Public	GRAD	Proprietary	NPFT/Public	GRAD
pre-2000	5.0%	1.0%	1.6%	5.0%	1.0%	1.6%
2000-2005	8.0%	1.5%	3.2%	8.0%	1.5%	3.2%
2006-2010	12.0%	1.7%	4.1%	12.0%	1.7%	4.1%
2011-2016	16.0%	2.0%	4.1%	16.0%	2.0%	4.1%
2017-2022	14.0%	1.5%	3.4%	16.0%	2.0%	4.1%
2023-2028	9.0%	1.3%	2.6%	14.0%	1.5%	3.4%
2028+	7.0%	1.1%	2.1%	9.0%	1.3%	2.6%

Percentage of BD volume from group claims						
	Low Scenario			High Scenario		
Cohort Range	Proprietary	NPFT/Public	GRAD	Proprietary	NPFT/Public	GRAD
pre-2000	5%	3%	4%	15%	5%	8%
2000-2005	30%	6%	8%	35%	12%	15%
2006-2010	50%	7%	11%	70%	14%	24%
2011-2016	60%	7%	14%	80%	18%	30%
2017-2022	50%	5%	10%	80%	18%	30%
2023-2028	40%	3%	7%	80%	18%	30%
2028+	30%	2%	5%	80%	18%	30%

Percentage of BD volume from individual claims						
	Low Scenario			High Scenario		
Cohort Range	Proprietary	NPFT/Public	GRAD	Proprietary	NPFT/Public	GRAD
pre-2000	95%	98%	96%	85%	95%	92%
2000-2005	70%	94%	93%	65%	88%	85%
2006-2010	50%	93%	90%	30%	86%	76%
2011-2016	40%	93%	86%	20%	86%	70%
2017-2022	50%	95%	90%	20%	86%	70%
2023-2028	60%	97%	93%	20%	86%	70%
2028+	70%	98%	95%	20%	86%	70%

Recovery percentage on approved claims						
	Low Scenario			High Scenario		
Cohort Range	Proprietary	NPFT/Public	GRAD	Proprietary	NPFT/Public	GRAD
pre-2000	1.00%	1.00%	1.00%	0%	0%	0%
2000-2005	6.00%	6.00%	6.00%	0%	0%	0%
2006-2010	10.00%	10.00%	10.00%	0%	0%	0%
2011-2016	23.80%	23.80%	23.80%	0%	0%	0%
2017-2022	37.40%	37.40%	37.40%	0%	0%	0%
2023-2028	37.40%	37.40%	37.40%	0%	0%	0%
2028+	37.40%	37.40%	37.40%	0%	0%	0%

Table 10—Budget Estimates for BD Scenarios Runs

$(mns)	Low Budget Impact	Sweet Budget Impact	Primary Budget Impact	High Budget Impact
Modification	$2,426	$2,755	$4,217	$4,794
Outlays for Cohorts 2023-2032	$1,696	$2,995	$2,995	$6,603
Total	$4,112	$5,750	$7,212	$11,397

5.2 Closed School Discharge

These final regulations are expected to increase closed school discharges by creating a uniform 180-day enrollment window, increasing the use of administrative data to provide discharges without an application, limiting the circumstances where a borrower cannot receive an automatic discharge, and some other process changes. To estimate the effect of these changes, the Department generated a data file summarizing borrower loan amounts for different enrollment windows prior to closure as well as any existing discharges associated with those loans. This was used to generate a ratio of potential additional claims compared to current discharges to be applied to the closed school component of the discharge assumption. The adjustment factor varied by loan model risk group from 1.11 to 7.46 and was applied to all cohorts for claims from 2023 on. To capture the effect of loan forgiveness on closed school discharges for past cohorts that have not been processed yet, we applied a reduction in the increase associated with the regulations of 70 percent for undergraduate risk groups, 45 percent for the graduate risk group, and 60 percent for the consolidation risk group. This is based on information that approximately 77 percent of borrowers with a closed school discharge were Pell Grant recipients with potential eligibility for up to $20,000 in forgiveness. We also assume that around 95 percent of closed school borrowers would meet the income eligibility requirements, which is slightly higher than what is assumed for the overall forgiveness eligibility. We also applied an 82 percent overall take-up rate for forgiveness to generate an estimated average forgiveness eligibility of approximately $13,710 ((.77*20,000) + (.22*10,000) *.95 * .82)). We also looked at the distribution of closed school discharges in Budget Service's November 2021 sample of NSLDS data by risk group. This amount is above the overall mean closed school discharge of $11,409 and close to the mean for all sectors except graduate students, whose mean discharge is $35,738. We did not eliminate all the effect of future closed school discharges for past cohorts. Borrowers who would be eligible for a closed school discharge but do not apply may be less likely to apply for loan forgiveness. Alternatively, depending on the timing of any application needed, they may be processed for a closed school discharge in advance of any forgiveness being applied. Therefore, we used the factors described above to reduce the estimated increase in transfers associated with the closed school discharge, but we expect the attribution of discharges and forgiveness to become clearer as more data become available in the next year or two, which future re-estimates of the loan program will take into account.

Together, the changes related to the closed school provisions cost $3.42 billion for past cohorts and $3.04 billion for cohorts 2023–2032.

5.3 Total and Permanent Disability

The main driver of the Department's estimated costs for the total and permanent disability provisions of the final regulation is the inclusion of additional circumstances in which borrowers can qualify for discharge based on a finding of disability by SSA. These changes are expected to result in additional transfers to borrowers. We did not adjust the net budget impact for the change in the final rule to grant a discharge after the initial determination that the borrower qualifies for SSDI benefits or SSI based on disability and the borrower's next continuing disability review has been scheduled at 3 years. We do not expect this to adjust the net budget impact, because almost all of those borrowers are expected to have that disability determination continue and thus they would have been eligible even without this provision. The Department's existing data match with SSA does not provide the data needed to estimate the increased discharge from this change. We estimate from SSA data that the added categories have 300,000 additional borrowers compared to approximately 323,000 borrowers included in the categories already eligible through the match from September 2021.[199] However, this is not necessarily through the physician's certification process, rather than receiving the discharge automatically through a data match. The Department intends to update the data match with SSA and hopes that if successful more borrowers will be captured under that match in the future. Thus, some of these borrowers will not be a new discharge but rather could simply be moving between categories. To estimate this effect, the Department used an adjustment factor in the TPD match with SSA in the Death, Disability, and Bankruptcy DDB assumption from 1.5 to 2.25, resulting in the $4.3 billion modification to past cohorts and $9.3 billion for cohorts 2023–2032. The initial adjustment factor was based on data related borrowers in the SSA match prior to September 2020 when it was an opt-in process that indicated total discharges were around 40 percent of total loan disbursements and around 70 percent of outstanding balances across all risk groups and cohorts. As is the case with the other discharge provision in this regulation, future TPD claims of past borrowers will be affected by the loan forgiveness announced in August. An analysis of discharges in Budget Service's November 2021 sample of NSLDS data indicates that TPD has a

[199] Department of Education analysis based on estimates of United States sample SSA data as of 2019 of those with a status of MINE or MIP and data provided by the Department in August 19, 2021, press release, ''Over 323,000 Federal Student Loan Borrowers to Receive $5.8 Billion in Automatic Total and Permanent Disability Discharges,'' retrieved from *https://www.ed.gov/news/press-releases/over-323000-federal-student-loan-borrowers-receive-58-billion-automatic-total-and-permanent-disability-discharges.*

higher average discharge than closed school ($26,161, compared to $11,409) so the potential forgiveness is a lower percentage of disability claim. We estimated an average eligibility for forgiveness of $11,055 based on the following assumptions: (1) 62 percent Pell recipients; (2) 75 percent take-up; and (3) 91 percent income eligibility [((.62*20,000) + (.38*10,000) * .75 *.91) = $11,057]. This is a little over 40 percent of the average TPD discharge in our sample data, so we reduced the increase applied to our TPD adjustment by 40 percent. While there is still an increase in transfers to borrowers for the TPD provisions, the effect on older cohorts is reduced because of the forgiveness. The other provisions to expand the types of medical professionals who can support an application and otherwise make the process of obtaining a discharge easier could also increase transfers to borrowers through total and permanent disability discharges. The Department does not have information to estimate this increase but assumes most of the future discharges will be through the automatic matches, provided that it can successfully update the data match with SSA, so the effect of these changes will be lower than the recent opt-out match provisions. We did not explicitly assign a certain percentage of the increased adjustment factor to these administrative changes but would not expect it to be more than 0.10 percent of the total effect with the additional eligibility categories being more significant. By itself, that increase in TPD discharges will increase costs by $3.8 billion. We do not estimate a significant cost impact from the elimination of the 3-year monitoring period for reinstatement of payment obligations because our baseline is conservative in assuming that many of those income monitoring issues eventually get resolved. To estimate the effect of this provision, we did run a version of the DDB assumption that excluded any reinstatements from the disability claims from the PB23 baseline for the NPRM published July 13, 2022, but the resulting effect was not significant enough to change the overall discharge rate at the four decimal level used in the student loan model.

5.4 Public Service Loan Forgiveness

These final PSLF regulations have an estimated cost of $4.0 billion as a modification to cohorts through 2022 and $15.6 billion for cohorts 2023–2032. These figures include an update from the NPRM to include the cost of the limited PSLF waiver announced in October 2021, adjustments to the counting of progress toward income-driven repayment announced in April 2022, and the announcement of a one-time action to discharge up to $20,000 of student loan debt in August 2022. Incorporating those items has reduced the cost of the regulation compared to the NPRM. PSLF is estimated as part of our IDR modeling, which is done on at the borrower- and loan-type level so the effects of loan forgiveness can be taken more directly into account. There is no special adjustment for forgiveness in PSLF as there was for borrower defense, closed school, or total and permanent disability. Instead, the reduction in the borrower's balance affects the scheduled payments of principal and interest against which the effect of PSLF is evaluated.

The change to include certain periods of deferment or forbearance to count toward PSLF and to count payments made on underlying loans prior to consolidation will reduce the time period for some existing PSLF recipients to achieve forgiveness. The Department used information linking consolidations to underlying loans to determine the months paid prior to consolidation and used that to reduce the time to PSLF forgiveness for affected borrowers. A similar process was followed for the deferments and forbearances that count toward PSLF. Estimated deferments and forbearances are tracked for PSLF borrowers in the budget model, and for the final change, time associated with qualifying deferments and forbearances were included toward the 10 years of monthly payments required for forgiveness.

One change in these final PSLF regulations concerns the treatment of individuals who work as a contractor for a qualifying employer in a position or providing services that, under applicable State law, cannot be filled or provided by a direct employee of the qualifying employer. The most cited example of borrowers in this situation are doctors at non-profit hospitals in California and Texas. The Department's PSLF estimates have never been State or occupation specific. Therefore, the Department estimated the effect of this provision by instead increasing the percentage of borrowers with graduate loans who would receive PSLF by 3 percentage points. The Association of American Medical Colleges has reported that 73 percent of medical school graduates had educational debt and the median educational debt of indebted graduates was $200,000.[200] Together, these changes with respect to consolidations led to the $19.7 billion estimated increase in transfers for the PSLF changes.

Allowing installments and late payments to count toward PSLF will result in borrowers being more likely to reach 120 qualifying payments at the same time they have 120 months of qualifying employment. This is in contrast to the situation prior to the limited PSLF waiver where the large numbers of payments not being counted meant that borrowers often needed far more than 120 months of qualifying employment to reach the same number of qualifying payments. Reconsideration should also help those who had issues with their initial applications. These factors are not specifically modeled in this estimate, as the Department does not have data at this time regarding these factors. Moreover, the Department believes that the limited PSLF waiver has addressed many of the situations where a borrower would have sought reconsideration related to whether past payments qualify. These factors are not explicitly accounted for in the Department's baseline, which assumes those who we project have qualifying employment would make payments in such a way that they qualify. The effects of the limited PSLF waiver, which fixed many of these issues for borrowers who had previously applied for PSLF, are included. The administrative and definitional factors are captured to some degree by a ramp up to the maximum percentage of borrowers assumed to receive PSLF forgiveness in our modeling, with levels that reflect the low percent of PSLF forgiveness in the initial years of borrowers potentially being eligible. This ramp up can be seen in Table 11 and varies by cohort range and education level. To better reflect the trends in the program of increasing qualifying payments as borrowers learn about the forms, etc., the model specifies the percent achieving 120 months of qualifying for four time groups: group 0 is prior to 2010; group 1 is from 2010 to 2014; group 2 is from 2015 to 2020; and group 3 is after 2020. The percentages are assumptions based upon the trends in approved applications given forgiveness and trends in reasons for denial that pre-dated the PSLF waiver. As always, we will reflect updated information in future budget re-estimates.

To provide a sense of the effect of these changes, the Department considered an alternate scenario that increased the PSLF percent to the

[200] Youngclaus J, Fresne JA. Physician Education Debt and the Cost to Attend Medical School: 2020 Update. Washington, DC: AAMC; 2020. Available at *https://store.aamc.org/downloadable/download/sample/sample_id/368/.*

highest level we consider reasonable given the level of employment in government or nonprofit sectors, based on U.S. Census bureau data on employment sector by educational attainment.[201] As seen in Table 11, this varies by education level with graduate students at 38 percent in the alternate scenario compared to 33 percent in the primary scenario and approximately 32 percent and 20 percent for 4-year and 2-year college groups, respectively. In the alternate scenario, we increased the maximum PSLF percent and shifted the ramp-up so each cohort range took the percentages from the cohort range to the level of the following cohort in the baseline, resulting in the PSLF percentages shown in Table 11 under Alternate Scenario. For example, the percentage for graduate borrowers went from 3.4 percent to 16.2 percent for cohorts before 2011. The PSLF percent is the percentage of borrowers assumed to receive PSLF in our modeling and ramps up across years. An increase in the PSLF percent results in additional forgiveness. We are showing increases in the PSLF percent because nothing in the regulations will lead to reduced PSLF forgiveness compared to our baseline level. The alternate scenario is on top of the other changes in the regulation to award credit toward PSLF for certain deferments and forbearances and allow borrowers to keep progress toward PSLF from payments made on a Federally managed loan prior to consolidation.

Table 11—Alternate Assumptions for Percentage of Borrowers Receiving PSLF by Cohort Range Under Different Scenarios

Percentage of Borrowers Assigned PSLF			
PB23 Baseline Scenario			
Cohort Range	**2-year**	**4-year**	**Graduate**
2010 or earlier	0.20%	0.36%	0.44%
2011-2015	6.28%	10.83%	13.18%
2016-2020	10.46%	18.05%	21.96%
2021 and later	14.65%	28.88%	30.74%
Primary Regulation Scenario			
	2-year	**4-year**	**Graduate**
2010 or earlier	0.20%	0.36%	3.44%
2011-2015	6.28%	10.83%	16.18%
2016-2020	10.46%	18.05%	24.96%
2021 and later	14.65%	28.88%	33.74%
Alternate Scenario			
	2-year	**4-year**	**Graduate**
2010 or earlier	6.28%	10.83%	16.18%
2011-2015	10.46%	18.05%	24.96%
2016-2020	14.65%	28.88%	33.74%
2021 and later	20.00%	32.00%	38.00%

A few commenters requested additional information about the basis for the PSLF estimate. The percentages in Table 11 are the key factors in generating PSLF estimates. PSLF is estimated as part of the Department's IDR modeling that generates annual payments, deferment, and forbearance status, and expected annual principal and interest payments for borrowers assumed to be in IDR plans. Events that are expected to change the expected stream of payments such as defaults, discharges, PSLF, or prepayments are probabilistically assigned according to percentages based on historical trends or, in the case of PSLF, expected qualification by educational level. The rates vary by cohort range and student loan model risk group. In IDR, risk group is based on the borrower's highest academic level and events, such as default or discharge, are assigned probabilistically by borrower. As more borrowers submit employment certifications and start to receive PSLF, the Department will continue to revise and update its PSLF estimates.

The net budget impact of the reduced transfers from borrowers to the government from increased forgiveness in this alternate scenario is shown in Table 12.

[201] Data from the American Community Survey from the U.S. Census Bureau on employment by sector (employer ownership) and educational attainment among workers aged 25 to 64.

Table 12—Net Budget Impacts of PSLF in Primary and Alternate Assumptions

$(mns)	PSLF Primary	PSLF Alternate
Modification	3,989	31,456
Outlays for Cohorts 2023-2032	15,696	26,203
Total	19,685	57,659

The modification cost for early cohorts is significantly affected by the increase in the alternate scenario because the baseline PSLF levels for the 2010 cohort and earlier are lower than the outyear cohorts as seen in Table 12. Recall that the primary estimate reflects the level of forgiveness seen in the program to date. The changes in the baseline to incorporate the PSLF waiver and the broad-based debt relief reduced the net budget impact of the PSLF provisions in these final regulations relative to the NPRM. Table 12 shows the net budget impact of this rule as well as in an alternate scenario.

5.5 Interest Capitalization

These final regulations remove all interest capitalization on Direct Loans that is not required by the HEA and is estimated to have a net budget impact of $24.8 billion from reduced transfers from borrowers, consisting of a modification to cohorts through 2022 of $3.4 billion and increased outlays of $21.4 billion for cohorts 2023–2032. The estimated impact of $24.8 billion is for loans in all types of repayment plans, but the estimation process differs for non-IDR and IDR loans as noted below. The revised score for these final regulations is for the calculation as done in the revised SLM. The baseline for the final estimate also incorporates the scores for the PSLF Waiver, IDR account adjustment, and extension of the COVID–19 payment pause until December 2022, and broad-based debt relief.

Interest capitalization is calculated in the Student Loan Model in accordance with specific conditions, so to estimate this cost for non-IDR loans, we must turn off that capitalization as applicable. We expect the removal of capitalization upon entering repayment to be the primary driver of the net budget impact for these provisions, since it affects all borrowers from the effective date of the regulations. We do not anticipate that removing capitalization on the alternative plan will have noticeable budgetary effect because, so few borrowers use that plan. For the NPRM, we calculated an adjustment factor by loan type, cohort, non-IDR repayment plan, years since loan origination, and SLM risk group to represent the effect of removing capitalization upon entering repayment to generate the net budget impact for non-IDR loans. The adjustment factors varied significantly with later cohorts having increased adjustment since more of the cohort will enter repayment following the effective date of the final regulations. After the publication of the NPRM, we continued to revise the SLM to eliminate capitalization upon entering repayment. The model code was revised to accrue interest but not add it to the principal balance.

For the interest capitalization that affects IDR borrowers, we adjusted the calculations in our IDR sub-model that capitalized interest. One limitation to note is that our current IDR modeling does not estimate borrowers leaving IDR plans so there is no capitalization for that in the baseline and no impact of that provision (leaving PAYE and REPAYE) in this estimate. However, we did create a capitalization event based on the estimated probability that a borrower will leave PAYE or REPAYE in 2023 or later. This estimate does not change the borrowers' plan or subsequent payments and just captures the effect of capitalization at that point. The final regulations will result in reduced repayments from borrowers by removing capitalization for leaving PAYE or REPAYE. When this provision was analyzed for the NPRM we estimated a net budget impact of $108.3 million, consisting of a modification to past cohorts of $29.8 million and $79.5 million for cohorts 2023–2032. While interest capitalization is a fairly straightforward calculation, there are several sources of uncertainty for these estimates. As mentioned, the SLM was revised to account for the elimination of capitalization upon entering repayment. However, not all of the potential effects for the full level or timing of capitalization events that are being eliminated are included for non-IDR borrowers. Additionally, while entering repayment and the timing patterns for that are supported by significant history, other capitalization events affected by the final regulations may be more subject to behavioral changes. Predicting effects of eliminating capitalization related to forbearances or defaults does depend on having the level, timing, repayment plan, and risk group mix of those underlying events estimated accurately. If the pattern of those events changes from historical trends as borrowers return to payment following the Covid payment pause, the costs associated with eliminating capitalization for those events will vary from what we have estimated here.

5.6 Pre-Dispute Arbitration Clauses

The Department does not estimate a significant budget impact on title IV programs from the prohibition on pre-dispute arbitration agreements and the related disclosures. It is possible that borrowers not having to go through arbitration could result in some additional BD claims, but we expect those costs have been captured in the BD score. Disclosure of certain judicial and arbitral records may cause some borrowers to enroll at other institutions than they would have attended, but we expect that borrowers will receive similar amounts of aid overall, so we do not estimate a significant impact on the title IV portfolio from these changes.

5.7 False Certification

The final regulations change the false certification discharge rules to establish common false certification discharge procedures and eligibility requirements, regardless of when a loan was originated, and to clarify that the Department will rely on the borrower's status at the time the loan was originated, rather than when the loan was certified, for determining false certification discharge. The revisions to the identity theft provisions will make it easier for affected borrowers to provide evidence for a discharge.

All of the provisions related to false certification should increase transfers to borrowers through additional false certification discharges. Under existing

regulations, false certification discharges represent a very low share of discharges granted to borrowers. Over the past 5 years, approximately 6,000 borrowers have received a total of $58 million in false certification discharges, compared to approximately 788,000 borrowers and $29.9 billion in disability discharges, 461,000 borrowers and $11.4 billion in death discharges, and 180,000 borrowers and $2.5 billion in closed school discharges. The Department does not expect an increase in false certification claims to result in a significant budget impact. The Department will continue to evaluate the changes to the false certification discharge.

6. Accounting Statement

As required by OMB Circular A–4, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these final regulations. Expenditures are classified as transfers from the Federal Government to affected student loan borrowers.

Table 13—Accounting Statement: Classification of Estimated Expenditures (in millions)

Category	Benefits
Reduced likelihood of default and other adverse outcomes by awarding discharges to borrowers otherwise eligible for relief, particularly under borrower defense, closed school discharges, or total and permanent disability discharges.	not quantified
Time savings for Department staff and borrowers due to streamlined processes, including BD group claims, automated identification of public servants in PSLF, and automatic closed school discharges.	not quantified
Decreased instances of conduct that could lead to an approvable borrower defense claim, resulting in improved information for student decision-making and enrollment gains for institutions that do not engage in conduct subject to BD claims.	not quantified

Improved student outcomes such as gains in earnings or educational attainment for students who switch to higher-performing institutions in response to BD or have access to higher-quality continuation options under closed school discharge.	not quantified
Increased ability to repay loans by not capitalizing outstanding interest.	not quantified

Category	Costs	
	7%	3%
Costs of compliance with paperwork requirements.	$6.27	$6.29

Category		Transfers	
		7%	3%
BD claims from the Federal government to affected borrowers.	Primary	903.1	819.1
Reimbursements of BD claims from affected institutions to the Federal government.	Primary	36.9	37.1
Closed school discharges from the Federal government to affected students		758	693
Total and Permanent Disability discharges from the Federal government to affected students.		1,503	1,422

Increased PSLF amounts to eligible borrowers from administrative changes, better definitions of qualifying employment, allowing lump sum and installment payments, and counting payments prior to consolidation, and counting certain periods of deferment and forbearance.	2,088	2,019
Elimination of non-statutory interest capitalization.	$2,544	$2,508

7. Alternatives Considered

In response to comments received and the Department's further internal consideration of these final regulations, the Department reviewed and considered various changes to the proposed regulations detailed in the NPRM. The changes made in response to comments are described in the Analysis of Comments and Changes section of this preamble. We summarize below the major proposals that we considered but which we ultimately declined to implement in these regulations. The rationales for why these proposals were not accepted are explained in the places in the preamble where they are summarized and discussed. The Department did not receive significant alternative proposals related to interest capitalization, so it is not discussed here.

7.1 Borrower Defense

We considered some proposals to remove elements of the Federal standard related to breach of contract, aggressive and deceptive recruitment, or judgments, which would have resulted in fewer claims being approved by narrowing the acts or omissions that could give rise to an approved claim. We also considered adding requirements that the Department conclude that an institution acted with intent or that the claim had a material effect. These changes would also result in approving fewer claims by creating requirements that would be harder for an individual borrower to meet. We also considered the removal of group claims or requirements for individual showing of harm, which would have further limited the number of approved claims, in particular by not providing a path to discharges for borrowers who did not submit applications. We declined to accept any of these proposals and instead made other changes to the Federal standard to require that the Department conclude an institution's act or omission caused detriment that warrants the relief granted by a borrower defense discharge. This includes specifying that in making such a determination the Secretary will consider the totality of the circumstances, including the nature and degree of the acts or omissions and of the detriment caused to borrowers. We also considered but rejected proposals to add additional steps for institutions to ask for reconsideration of approved claims or conduct recoupment actions under part 668, subpart G but felt that the final rules provide sufficient opportunities for institutional due process and that part 668, subpart H is the more appropriate mechanism for recoupment. It is unclear if these changes would have resulted in different ultimate decisions, but they would have significantly extended the process of reviewing claims. We considered additional examples or processes for calculating the amount of a partial discharge but ultimately concluded only allowing for a full discharge would create a simpler and more effective standard. The range of suggestions for partial discharge could have either resulted in fewer claims being approved for a full discharge or more claims that would have received a partial discharge getting a full approval. We considered requests to allow for the simultaneous assertion of claims under State law, but kept it limited to reconsideration. Commenters asserted that this change would result in faster second reviews of claims that are not approved under the Federal standard. Finally, we considered but did not accept proposals to stop interest accumulation on individual claims immediately because we want to encourage borrowers to submit strong claims. This would have increased the size of transfers to borrowers and represented a greater cost to the Department.

7.2 False Certification

The Department created a new form for a common law forgery loan discharge for borrowers whose signature was forged by someone other than a school employee. This applied only to Department-held Federal student loans, but the Department is encouraging other loan holders to create a process like this one. Until we launched this form, the Department evaluated all forgery claims using the discharge forms that only apply where the school falsified a signature or if there was a judicially proven crime of identity theft. This new form for a common law forgery loan discharge provides borrowers an alternative option. But it would not benefit many borrowers who do not fit into the false certification categories since the number of applications under the FFEL Program is very small and would continue to shrink.

The Department considered relying on the disbursement date as an alternative to relying on the origination date. Doing so would allow an institution to originate loans for students who have not yet met Title IV eligibility requirements and not disburse the funds until the student has met the requirements. This would potentially have decreased the number

of false certification discharges, which would then decrease the size of transfers to borrowers and the cost to the Department. However, under the HEA, if a school is not granted a certain period of time to remedy a false certification and, the loan is certified before, not after, the loan is originated. An institution should not originate a loan for a borrower who is not eligible for the loan. Relying on the origination date will also help ensure that no inadvertent disbursements are made to ineligible students.

The Department considered whether to expand eligibility for false certification discharges to cover circumstances such as barriers to employment. However, we are concerned that de facto barriers to employment (*e.g.,* jobs that likely would not hire someone with a criminal background, despite there being no specific related requirement for State licensure in that field) rather than explicit prohibitions (*e.g.,* jobs that cannot legally be held by someone with a criminal background) would create a substantial burden on institutions to be aware of such barriers and may not reliably identify borrowers eligible for such discharge. This alternative could have increased the transfers to borrowers by approving more false certification discharges, but as noted it would have been challenging for this to occur in practice given the complexity of determining what constitutes a barrier to employment.

7.3 Public Service Loan Forgiveness

The Department considered but ultimately declined to allow any additional deferments and forbearances to receive credit toward PSLF. Such a change would have increased transfers to borrowers by making them eligible for loan forgiveness sooner. We also considered allowing all contractors for a qualifying employer to qualify for PSLF but chose not to do so. This would have resulted in significantly larger transfers to borrowers by dramatically increasing the number of borrowers who would be eligible for PSLF.

7.4 Total and Permanent Disability Discharges

The Department did not accept proposals to keep the 3-year income monitoring period or to not expand the categories of medical professionals that could sign forms during the physician's certification process. Both changes would have decreased transfers to borrowers by either reinstating more loans that had been discharged or resulting in potentially fewer applications through the physician's certification process.[202]

7.5 Closed School Discharges

The Department considered but ultimately did not adopt requests to limit discharges to borrowers who left a school within 120 days of a closure instead of 180 days, granting a 12-month deferment for a borrower after their school closes, restricting eligibility for borrowers who enrolled in a comparable program or attempted to enroll in a teach-out but did not complete the program. These changes would have had differing effects. A shorter lookback window or greater restrictions on eligibility would result in decreased transfers to borrowers because fewer discharges would be granted. A longer deferment, meanwhile, would increase transfers by providing approximately six months of no-interest accumulation for a borrower beyond the grace period after leaving school.

7.6 Pre-Dispute Arbitration

The Department considered but did not accept proposals to delete this provision or not mandate the associated transparency. The Department did not assign a significant estimated budget impact from the changes to pre-dispute arbitration so its elimination would not have a budgetary effect either.

8. Regulatory Flexibility Act

Section 605 of the Regulatory Flexibility Act allows an agency to certify a rule if the rulemaking does not have a significant economic impact on a substantial number of small entities.[203]

The Small Business Administration (SBA) defines ''small institution'' using data on revenue, market dominance, tax filing status, governing body, and population. The majority of entities to which the Office of Postsecondary Education's (OPE) regulations apply are postsecondary institutions, however, which do not report such data to the Department. As a result, for this final rule, the Department will continue defining ''small entities'' by reference to enrollment,[204] to allow meaningful comparison of regulatory impact across all types of higher education institutions.[205]

[202] *https://www.ssa.gov/legislation/FY%202016%20CDR%20Report.pdf.*

[203] 5 U.S.C. 603.

[204] Two-year postsecondary educational institutions with enrollment of less than 500 FTE and four-year postsecondary educational institutions with enrollment of less than 1,000 FTE.

[205] In previous regulations, the Department categorized small businesses based on tax status. Those regulations defined ''non-profit organizations'' as ''small organizations'' if they were independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organization as small and no public institutions as small. Under the previous definition, proprietary institutions were considered small if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. Using FY2017 IPEDs finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition captures a similar share of proprietary institutions, allowing consistent comparison to other types of institutions.

Table 14—Small Institutions Under Enrollment-Based Definition

Level	Type	Small	Total	Percent
2-year	Public	328	1182	27.75
2-year	Private, Nonprofit	182	199	91.46
2-year	Proprietary	1777	1952	91.03
4-year	Public	56	747	7.50
4-year	Private, Nonprofit	789	1602	49.25
4-year	Proprietary	249	331	75.23
Total		3381	6013	56.23

Source: 2018-19 data reported to the Department.

Table 15 summarizes the number of institutions affected by these final regulations.

Table 15—Estimated Count of Small Institutions Affected by the Final Regulations

	Small institutions affected	As percent of small institutions
Borrower Defense	50	1.47
False Certification	0	0
PSLF	0	0
Eliminate Interest Capitalization	0	0
TPD Discharge	0	0
Closed School Discharge	0	0
Pre-dispute Arbitration	1,285	38.0

The Department certifies that Final Rule will not have a significant economic impact on a substantial number of small entities. The final regulations for False Certification, PSLF, TPD Discharge, and Closed School Discharge will not have an impact on small institutions.

These types of discharges are between the borrower and the lender, which often is the Department. The Department anticipates this will impact 310 small lenders that will be required to expand their current reporting and will take approximately 50 hours to update their systems. A few small institutions could be impacted by the final regulations where there is a large group BD claim. Based on recent experience of the Department adjudicating BD cases, small institutions are not expected to be impacted by the final regulations in BD because the Department is unlikely to attempt to recoup from isolated BD cases from small institutions. The changes to eliminate interest capitalization will not have an impact on small institutions as this is also an action between the borrower and lender.

The Department anticipates approximately 38 percent of small institutions will be impacted by these pre-dispute arbitration final regulations. We derived the percentage that will be impacted from a report by the Century

Foundation that sampled schools using arbitration clauses in their enrollment contracts.[206] Of the sampled schools, 62 percent of proprietary institutions and 2.9 percent of private nonprofit institutions used arbitration clauses. The study found public schools did not utilize arbitration clauses. We applied those proportions to the number of small proprietary institutions (both 2 year and 4 year) and private nonprofit (both 2 year and 4 year) and arrived at 1,285 or 38.01 percent of total small business institutions. We do not anticipate there is a significant cost impact to amend future contracts.

Table 16—Estimated Annual Cost Range for Small Institutions and Entities Affected by the Final Regulations

Compliance Area	Small institutions or entities affected	Cost range per institution or entity		Estimated overall cost range	
BD employment rate background check	50	500	750	25,000	37,500
Pre-dispute arbitration update future agreements	1285	125	160	160,625	205,600
Lenders	310	2,231	2,343	691,622	726,330

While these final regulations will have an impact on some small institutions and entities, there will not be a significant cost and compliance impact. For example, we examined potential costs to lenders who are generally identified in the North American Industry Classification System (NAICS) under code 52 (finance and insurance) and specifically Credit Unions (522130) and Savings Institutions and Other Depository Credit Intermediation (522180).[207] We are unable to specifically identify the number of lenders that constitute small entities. However, of the universe of over 12,000 lenders with remaining volume in the FFEL portfolio, more than two-thirds have 10 or fewer borrowers with outstanding balances. As no new FFEL Program loans have been made since 2010, this is not the primary business line for these entities. Therefore, we believe that changes to the loan portfolio would have minimal impact on most lenders, including small entities.

9. Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 668.41, 668.74, 674.33, 674.61, 682.402, 682.414, 685.213, 685.214, 685.215, 685.219, 685.300, 685.304, 685.402, 685.403, and 685.407, of this final rule contain information collection requirements. Under the PRA, the Department has or will at the required time submit a copy of these sections and an Information Collections Request to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Section 668.41—Reporting and disclosure of information.

Requirements: These final regulations remove the requirements in current Section 668.41(h). Burden Calculation: With the removal of the regulatory language in Section 668.41(h), the Department will remove the associated burden of 4,720 hours under OMB Control Number 1845–0004.

[206] *How College Enrollment Contracts Limit Students' Rights.* (2016, April 28). The Century Foundation. *https://tcf.org/content/report/how-college-enrollment-contracts-limit-students-rights/.*

[207] North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying businesses to collect, analyze, and publish statistical data related to the U.S. business economy.

Student Assistance General Provisions—Student Right to Know (SRK)—OMB CONTROL NUMBER: 1845–0004

Affected Entity	Respondent	Responses	Burden Hours	Cost $44.41 per institution from the 2019 Final Rule
For-Profit	-944	-944	-4,720	-$209,615

Section 668.74—Employability of graduates.

Requirements: In the course of adjudicating BD claims, the Department has persistently seen misrepresentations about the employability of graduates. In these regulations, the Department is explicitly including, as a form of job placement rate misrepresentation, placement rates that are inflated through manipulation of data inputs. Section 668.74(g)(2) contains a provision that allows the Department to verify that an institution correctly calculated its job placement rate by requiring an institution to furnish to the Secretary, upon request, documentation and other data that was used to calculate the institution's employment rate calculations.

Burden Calculation: The Department believes that such a request will impose only a modest burden on the part of any institution to provide the existing background data upon which the employment rates that are presented were calculated. We believe that such required reporting will be made by 2 Private Not-for-profit, 2 For-Profit and 2 Public institutions annually. We anticipate that 6 institutions will receive such a request and that it will take 8 hours to copy and prepare for submission to the Department such evidence of their calculated employment rates for a total of 48 burden hours (6 institutions × 1 response × 8 hours = 48 burden hours).

Student Assistance General Provisions—OMB Control Number 1845–0022

Affected Entity	Respondent	Responses per respondent	Burden Hours = 8 hours per response	Cost $46.59 per hour for institutions
Private Not-for-Profit	2	1	16	$745
For-Profit	2	1	16	$745
Public	2	1	16	$745
Total	6		48	$2,235

Sections 674.33(g), 682.402(d), and 685.214—Closed School Discharge.

Requirements: These final regulations amend the Perkins, FFEL, and Direct Loan regulations to simplify the closed school discharge process. Sections 674.33(g)(4), 682.402(d)(3) and 685.214(d)(1) provide that the borrower must submit a completed closed school discharge application to the Secretary and that the factual assertions in the application must be true and made by the borrower under penalty of perjury. Additionally, the number of days that a borrower had withdrawn from a closed school to qualify for a closed school discharge will be extended from 120 days to 180 days.

Burden Calculation: These changes will require an update to the current closed school discharge application form. We do not believe that the language update will significantly change the amount of time currently assessed for the borrower to complete the form from those which has already been approved. The form update will be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes will be assessed to OMB Control Number 1845–0058, Loan Discharge Applications (DL/FFEL/Perkins).

Sections 674.61, 682.402(d), and 685.213—Total and Permanent Disability (TPD) Discharge.

Requirements: Under these final rule changes to Sections 674.61(b)(2)(iv), 682.402(c)(2)(iv), and 685.213(b)(2), a TPD discharge application will be allowed to be certified by a nurse practitioner, a physician's assistant licensed by a State, or a certified psychologist, licensed at the independent practice level by a State in addition to a physician who is a Doctor of Medicine or Osteopathy legally authorized to practice in a State. The type of SSA documentation that may qualify a borrower for a TPD discharge will be expanded to include an SSA Benefit Planning Query or other SSA documentation deemed acceptable by the Secretary. The regulations also amend the Perkins, Direct Loan, and FFEL Program regulations to improve the process for granting TPD discharges by eliminating the income monitoring period. Sections 674.61(b)(6)(i), 682.402(c)(6), and 685.213(b)(7)(i) will eliminate the existing reinstatement requirements, except for the provision which provides that a borrower's loan is reinstated if the borrower receives a new TEACH Grant or a new Direct Loan within 3 years of the date the TPD discharge was granted.

Burden Calculation: These final regulatory changes will require an update to the current total and permanent disability discharge application form. We do not believe that the language update will significantly change the amount of time currently assessed for the borrower to complete the Discharge Application (TPD–APP) application form from those which has already been approved. These final rules will eliminate the Post-Discharge Monitoring form (TPD–PDM) from the collection and will create a decrease in overall burden from the 1845–0065 collection. The forms update will be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes will be assessed to OMB Control Number 1845–0065, Direct Loan, FFEL, Perkins and TEACH Grant Total and Permanent Disability Discharge Application and Related Forms.

682.402(e), 685.215(c) and 685.215(d)—False Certification Discharge.

Requirements: These final regulations streamline the FFEL and Direct Loan false certification regulations to provide one set of regulatory standards that will cover all false certification discharge claims. Sections 682.402(e) and 685.215(c)(5) state that a borrower qualifies for a false certification discharge if the school certified the borrower's eligibility for a FFEL or Direct Loan as a result of the crime of identity theft. Additionally, Section 685.215(c)(10) will provide for a new application to allow a State Attorney General or nonprofit legal services representative to submit a request to the Secretary for a group discharge under section (c).

Burden Calculation: These changes will require an update to the current false certification discharge application forms. We do not believe that the language update will significantly change the amount of time currently assessed for the borrower to complete the forms from those which has already been approved. The forms update will be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. New forms to capture the requirements of the identity theft section and the group discharge request will be created and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes will be assessed to OMB Control Number 1845–0058, Loan Discharge Applications (DL/FFEL/Perkins).

Requirements: Under Section 682.402(e)(6)(i), if a holder of a borrower's FFEL loan determines that a borrower may be eligible for a false certification discharge, the holder provides the borrower with the appropriate application and explanation of the process for obtaining a discharge. The borrower burden to complete the form is captured under the form collection 1845–0058. Under Section 682.402(e)(6)(iii), if a FFEL borrower submits an application for discharge that a FFEL program loan holder determines is incomplete, the loan holder will notify the borrower of that determination and allow the borrower 30 days to amend the application and provide supplemental information.

Burden Calculation: The Department believes that such a request will require burden on the part of any FFEL lender. Of the 310 FFEL lenders, it is anticipated that 31 lenders will make such determinations of borrower discharge eligibility and that it will take 20 minutes to send an estimated 100 borrowers the correct form for completion, for a total of 33 burden hours (100 borrowers applications × 20 minutes per application (.33 hours) = 33 burden hours).

It is anticipated that 15 lenders will make a determination of 25 borrower's incomplete applications and that it will take 15 minutes to send borrowers the notice to amend their application, for a total of 6 burden hours (25 borrowers receiving lender notices × 15 minutes (.25 hours) = 6 burden hours).

It is anticipated that of the 25 borrowers who receive notice of an incomplete application, 20 will resubmit an amended application or provide additional documentation and it will take 30 minutes to make such amendments, for a total of 10 burden hours (20 borrowers amending initial filings × 30 minutes (.50 hours) = 10 hours under OMB Control Number 1845–0020.

Requirements: Section 682.402(e)(6)(vii) will require a guaranty agency to issue a decision that explains the reasons for any adverse determination on a false certification discharge application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The guaranty agency will consider any response or additional information from the borrower and notify the borrower as to whether the determination is changed.

Burden Calculation: The Department believes that such a request will require burden on the part of any guaranty agency. It is anticipated that each of the 18 guaranty agencies will make such adverse determinations on 75 borrower discharge applications and that it will take 30 minutes to send borrowers the decision, for a total of 38 burden hours (75 borrowers receiving adverse determination notifications × 30 minutes (.50 hours) = 38 burden hours) under OMB Control Number 1845–0020.

Requirements: Section 682.402(e)(6)(ix) will provide the borrower with the option to request that the Secretary review the guaranty agency's decision.

Burden Calculation: The Department believes that such a request will require burden on the part of any borrower. Of the 75 borrowers whose applications were denied by the guaranty agency, it is anticipated that 30 borrowers will request Secretarial review of the guaranty agencies decision and that it will take 30 minutes to send such a borrower request, for a total of 15 burden hours (30 borrowers × 30 minutes (.50 hours) = 15 burden hours) under OMB Control Number 1845–0020.

Federal Family Education Loan Program Regulations—OMB Control Number 1845–0020

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 Institutional $22.00 Individual
Individual	50	50	25	$550
Private Not-for-Profit	14	55	23	$1,071.57
For-Profit	24	99	31	$1,444.29
Public	11	46	23	$1,071.57
TOTAL	99	250	102	$4,137.43

Section 682.414 —Reports.

Requirements: In Section 682.414(b)(4), these final regulations require FFEL Program lenders to report detailed information related to a borrower's deferments, forbearances, repayment plans, delinquency, and contact information on any FFEL loan to the Department by an established deadline.

Burden Calculation: The Department believes that such a request will require burden on the part of any FFEL lender. It is anticipated that 310 lenders will be required to expand their current reporting and that it will take 50 hours to update systems and to initially provide the additional data, for a total of 15,500 burden hours (310 institutions × 50 hours = 15,500 burden hours) under OMB Control Number 1845–0020.

Federal Family Education Loan Program Regulations—OMB Control Number 1845–0020

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 Institutional
Private Not-for-Profit	64	64	3,200	$149,088
For-Profit	246	246	12,300	$573,057
Totals	310	310	15,500	$722,145

Section 685.219—Public Service Loan Forgiveness.

Requirements: These final regulations provide new, modified, and restructured definitions in Section 685.219(b) that will expand the use of the form.

Burden Calculation: These changes will require an update to the current PSLF form. We do not believe that the language update will significantly change the amount of time currently assessed for the borrower to complete the form from those which has already been approved. The form will be completed and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations. The burden changes will be assessed to OMB Control Number 1845–0110, Application and Employment Certification for PSLF.

Requirements: These final regulations create a reconsideration process under Section 685.219(g) for borrowers whose applications for PSLF were denied or who disagree with the Department's determination of the number of qualifying payments or months of qualifying employment that have been earned by the borrower, which formalizes the current non-regulatory process.

Burden Calculation: The Department is currently in the clearance process for an electronic Public Service Loan Forgiveness Reconsideration Request, OMB Control Number 1845–0164. Public comment on the web-based format is currently being accepted through the normal information clearance process under docket number ED–2022–SCC–0039.

Section 685.300—Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

Requirements: These final regulations reinstate prior regulations that barred institutions, as a condition of participating in the Direct Loan program, from requiring borrowers to accept pre-dispute arbitration agreements and class action waivers as they relate to BD claims. Specifically, in Section 685.300(e), institutions will be prohibited from relying on a pre-dispute arbitration agreement, or any other pre-dispute agreement with a student who obtained or benefitted from a Direct Loan, in any aspect of a class action related to a BD claim, until the presiding court rules that the case cannot proceed as a class action. In Section 685.300(f), the final regulations require that certain provisions relating to notices and the terms of the pre-dispute arbitration agreements be included in any agreement with a student who receives a Direct Loan to attend the school or for whom a Direct PLUS Loan was obtained.

Burden Calculation: There will be burden on any school that meets the conditions for supplying students with the changes to any agreements. Based on the Academic Year 2020–2021 Direct Loan information available, there were 1,026,437 Unsubsidized Direct Loan recipients at 1,587 for-profit institutions. Assuming 66 percent of these students will continue to be enrolled at the time these regulations become effective, about 677,448 students will be required to receive the agreements or notices required in Sections 685.300(e) or (f). We anticipate that it will take 1,587 for-profit institutions .17 hours (10 minutes) per

student to develop these agreements or notices, research who is required to receive them, and forward the information accordingly for 115,166 burden hours (677,448 students × .17 hours) under OMB Control Number 1845–0021.

Requirements: Under the final rules at Sections 685.300(g) and (h), institutions will be required to submit certain arbitral records and judicial records connected with any BD claim filed against the school to the Secretary by certain deadlines.

Burden Calculation: The Department believes that such a request will require burden on any school that meets the conditions for supplying the records to the Secretary. We continue to estimate that 5 percent of 1,587 for-profit institutions or an estimated 79 for-profit institutions will be required to submit documentation to the Secretary to comply with the final regulations. We anticipate that each of the 79 schools will have an average of four filings thus there will be an average of four submissions for each filing. Because these are copies of documents required to be submitted to other parties, we anticipate 5 burden hours to produce the copies and submit to the Secretary, for an increase in burden of 6,320 hours (79 institutions × 4 filings × 4 submissions/filing × 5 hours) under OMB Control Number 1845–0021.

William D. Ford Federal Direct Loan Program (DL) Regulations—OMB Control Number 1845–0021

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 Institutional
For-Profit	1,587	678,712	121,486	$5,660,033
Total	1,587	678,712	121,486	$5,660,033

Section 685.304—Counseling borrowers.

Requirements: These final regulations remove Sections 685.304(a)(6)(xiii) through (xv). The final regulations at Section 685.300 will state the conditions under which disclosures will be required and provide deadlines for such disclosures.

Burden Calculation: With the removal of the regulatory language in Sections 685.304(a)(6)(xiii) through (xv), the Department will remove the associated burden of 30,225 hours under OMB Control Number 1845–0021.

William D. Ford Federal Direct Loan Program (DL) Regulations– OMB Control Number 1845–0021

Affected Entity	Respondent	Responses	Burden Hours	Cost $44.41 per institution; $16.30 per individual from 2019 Final Rule
Individual	-342,407	-342,407	-27,393	-$446,506
For-Profit	-944	-944	-2,832	-$125,769
Total	-343,351	-343,351	-30,225	-$572,275

Section 685.402—Group process for borrower defense.

Requirements: In § 685.402(c), the Department may initiate a group process upon request from a third-party requestor, on the condition that the third-party requestor submit an application and provide other required information to the Department to adjudicate the claim.

In Section 685.402(c)(4) the Secretary will notify an institution of the third-party requestor's application requesting to form a BD group. The institution will have 90 days to respond to the Secretary regarding the third-party requestor's application. The Department believes that such a request will require burden on any school that wishes to respond to the Secretary.

If, under Section 865.402(c)(6), a third-party requestors' group request is denied, the third-party requestor will have 90 days from the initial decision to request the Secretary reconsider the formation of a group. The Department believes that such a request will require burden on any third-party requestor that wishes to respond to the Secretary.

Burden Calculation: A new form to capture the requirements for the third-party requestors for § 685.402(c) will be created and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations.

Further, the Department believes that with these new regulations there will be new burden on the institutions who are included in a proposed group claim. From 2015–2021 the Department received 11 group claims against institutions from 29 States Attorneys General regarding borrower defense claims. With the new regulations, the Department anticipates an increase group claim filings by third-party requestors. We estimate that 25 such third-party requestor group claims annually. Of that figure, we anticipate that 5 of the group claims will not meet the materially complete requirements.

For the 20 group claims that initially meet the materially complete requirement for which Secretary provides notice to the institutions, we believe that the 20 notified institutions will utilize the 90-day timeframe to respond to the group claim.

We estimate that the 20 institutions will require an average of 378 hours per notice to review and respond to the proposed group claim for a total of 7,560 burden hours (20 institutions × 378 hours/notice = 7,560) under OMB Control Number 1845–0021.

We anticipate that 5 of the estimated 25 third-party requestors filings for consideration of group claims will not

be approved by the Secretary. Of the 5 denials, we anticipate that 4 of the third-party requestors will request reconsideration from the Secretary within the 90-day timeframe of the regulations. We estimate that the 4 third-party requestors will require an average of 378 hours per request for reconsideration for a total of 1,512 burden hours (4 third-party requestor × 378 hours/reconsideration request = 1,512) under OMB Control Number 1845–0021.

William D. Ford Federal Direct Loan Program (DL) Regulations— OMB Control Number 1845–0021

Affected Entity	Respondent	Responses	Burden Hours	Cost $46.59 Institutional
Private Not-For-Profit	4	4	1,512	$70,444.08
For-Profit	18	18	6,804	$316,998.36
Public	2	2	756	$35,222.04
Total	24	24	9,072	$422,664.48

Section 685.405 –Institutional response.

Requirements: In § 685.405, the Department will continue to provide for an institutional response process to BD claims. Under the final regulations in § 685.405(a), the Department official will notify the institution of the BD claim and its basis for any group or individual BD claim. Under the final regulations in § 685.405(b), the institution will have 90 days to respond. Under the final regulations in § 685.405(c), with its response, the institution will be required to execute an affidavit confirming that the information contained in the response is true and correct under penalty of perjury on a form approved by the Secretary.

Burden Calculation: A new form to capture the requirements of § 685.405(c) will be created and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations.

Section 685.407—Reconsideration.

Requirements: § 685.407 sets forth the circumstances under which a borrower or a third-party requestor may seek reconsideration of a Department official's denial of their BD claim. § 685.407(a)(4) identifies the reconsideration process, which includes an application approved by the Secretary.

Burden Calculation: A new form to capture the requirements of § 685.407(a) will be created and made available for comment through a full public clearance package before being made available for use by the effective date of the regulations.

Consistent with the discussions above, the following chart describes the sections of the final regulations involving information collections, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net cost of the increased burden for institutions, lenders, guaranty agencies and students, using wage data developed using Bureau of Labor Statistics (BLS) data. For individuals, we have used the median hourly wage for all occupations, $22.00 per hour according to BLS. *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.* For institutions, lenders, and guaranty agencies we have used the median hourly wage for Education Administrators, Postsecondary, $46.59 per hour according to BLS. *https://www.bls.gov/oes/current/oes119033.htm.*

BILLING CODE 4000–01–P

COLLECTION OF INFORMATION

Regulatory section	Information Collection	OMB Control Number and estimated burden	Estimated cost $46.59 Institutional $22.00 Individual unless otherwise noted.
§ 668.41	The Department removes the requirements in current Section 668.41(h).	1845-0004; -4,720 hrs.	Cost from the 2019 Final Rule ($44.41 per institution) -$209,615.
§ 668.74	Section 668.74(g)(2) contains a provision that allows the Department to verify that an institution correctly calculated its job placement rate by requiring an institution furnish to the Secretary, upon request, documentation and other data that was used to calculate the institution's employment rate calculations.	1845-0022 +48 hrs.	+$2,235
§§ 674.33(g), 682.402(d), 685.214	Sections 674.33(g)(4), 682.402(d)(3) and 685.214(d)(1) will provide that the borrower must submit a completed closed school discharge application to the Secretary and that the factual assertions in the application must be true and made by the borrower under penalty of perjury.	1845-0058 Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form
§§ 674.61, 682.402(d), 685.213	Finalized changes expand the type of medical professional who can certify the TPD application. The	1845-0065 Burden will be cleared at a later date	Costs will be cleared through

	final changes also include an expansion of the acceptable Social Security Administration documentation for filing a TPD application. The final regulations also eliminate the income monitoring period for all TPD applicants except those who receive a new TEACH Grant or new Direct Loan within 3 years of the TPD discharge.	through a separate information collection for the form.	separate information collection for the form
§§ 682.402(e), 685.215(c) and 685.215(d)	These final regulations streamline the FFEL and Direct Loan false certification regulations to provide one set of regulatory standards that will cover all false certification discharge claims. Sections 682.402(e) and 685.215(c)(5) adds qualification for a false certification discharge if the school certified the borrower's eligibility for a FFEL or Direct Loan as a result of the crime of identity theft. Additionally, 685.215(c)(10) provides for a new application to allow a State Attorney General or nonprofit legal services representative to submit a request to the Secretary for a group discharge.	1845-0058 Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form
§ 682.402(e)(6)	Under Section 682.402(e)(6)(i) if a holder of a borrower's FFEL loan determines that a	1845-0020 +102 hrs.	+$4,137.43

	borrower may be eligible for a false certification discharge the holder provides the borrower with the appropriate application and explanation of the process for obtaining a discharge. Under Section 682.402(e)(6)(iii) if a FFEL borrower submits an application for discharge that a FFEL program loan holder determines is incomplete, the loan holder will notify the borrower of that determination and allow the borrower 30 days to amend the application and provide supplemental information. Section 682.402(e)(6)(vii) will require a guaranty agency to issue a decision that explains the reasons for any adverse determination on a false certification discharge application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The guaranty agency will consider any response or additional information from the borrower and notify the borrower as to whether the determination is changed. Section 682.402(e)(6)(ix) will provide the borrower with the option to request		

	that the Secretary review the guaranty agency's decision.		
§ 682.414(b)	In Section 682.414(b)(4), the Department will require FFEL Program lenders to report detailed information related to a borrower's deferments, forbearances, repayment plans, delinquency, and contact information on any FFEL loan to the Department by an established deadline.	1845-0020 +15,500	+$722,145
§ 685.219	These final regulations provide new, modified, and restructured definitions for the PSLF Program in Section 685.219(b) which will expand the use of the form.	1845-0110 Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form
§ 685.219(g)	These final regulations create a reconsideration process for borrowers whose PSLF applications were denied or who disagree with the Department's determination of the number of qualifying payments or months of qualifying employment that have been earned by the borrower which formalizes the current non-regulatory process.	1845-0164 This process is currently in public review under docket number ED-2022-SCC-0039.	Costs will be cleared through separate information collection for the form
§ 685.300	These final regulations reinstate prior regulations that barred institutions, as a condition of participating in the Direct Loan program, from requiring	1845-0021 +121,486	+$5,660,033

	borrowers to accept pre-dispute arbitration agreements and class action waivers. Also, institutions will be required to submit certain arbitral records and judicial records connected with any BD claim filed against the school to the Secretary by certain deadlines.		
§ 685.304	These final regulations remove Section 685.304(a)(6)(xiii) through (xv). The final regulations at Section 685.300 will state the conditions under which disclosures will be required and provide deadlines for such disclosures.	1845-0021 -27,393 individual hrs.; -2,832 institutional hrs. = -30,225 hrs.	Costs from 2019 Final Rule ($44.41 per institution; $16.30 per individual) -$446,506 individual costs; -$125,769 institutional costs = -$572,275
§ 685.402	In Section 685.402(c)(1), the Department may initiate a group process upon request from a third-party requestor, on the condition that the third-party requestor submits an application and other required information to the Department to adjudicate the claim. In Section 685.402(c)(4) the Secretary will notify an institution of the third-party requestor's application requesting to form a BD group. The institution will have 90 days to respond to the Secretary regarding the third-	1845-NEW Burden for 685.402(c)(1) will be cleared at a later date through a separate information collection for the form. Burden for 685.402(c)(4) and 685.402(c)(6) is +9,072.	Costs will be cleared through separate information collection for the form

	party requestor's application. Under Section 865.402(c)(6), if a third-party requestors' group request is denied, the third-party requestor will have 90 days from the initial decision to request the Secretary reconsider the formation of a group.		
§ 685.405	Under the final regulations in § 685.405(a), the Department official will notify the institution of the BD claim and its basis for any group or individual BD claim. Under the final regulations in § 685.405(b) the institution will have 90 days to respond. Under the final regulations in § 685.405(c), with its response, the institution will be required to execute an affidavit confirming that the information contained in the response is true and correct under penalty of perjury on a form approved by the Secretary.	1845-NEW Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form
§ 685.407	The final regulations in § 685.407 sets forth the circumstances under which a borrower or a third-party requestor may seek reconsideration of a Department official's denial of their BD claim. § 685.407(a)(4) identifies the reconsideration	1845-NEW Burden will be cleared at a later date through a separate information collection for the form.	Costs will be cleared through separate information collection for the form

	process, which includes an application approved by the Secretary.		

The total burden hours and change in burden hours associated with each OMB Control number affected by the final regulations follows:

Control No.	Total burden hours	Change in burden hours
1845-0004	24,016	-4,720
1845-0020	8,265,122	+15,602
1845-0021	851,009	+100,333
1845-0022	2,288,248	+48
Total	11,428,395	+111,263

BILLING CODE 4000–01–C

If you want to comment on the final information collection requirements, please send your comments to the Office of Information and Regulatory Affairs in OMB, Attention: Desk Officer for the U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202)395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of the preamble.

We have prepared the Information Collection Request (ICR) for these collections. You may review the ICR which is available at *www.reginfo.gov.* Click on Information Collection Review. These collections are identified as collections 1845–0004, 1845–0020, 1845–0021, 1845–0022.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 601(2), the Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations do not have federalism implications.

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.

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 674

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities,

Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 600, 668, 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.41 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, and (a)(1)(i) to read as follows:

§ 600.41 Termination and emergency action proceedings.

(a) If the Secretary believes that a previously designated eligible institution as a whole, or at one or more of its locations, does not satisfy the statutory or regulatory requirements that define that institution as an eligible institution, the Secretary may—

(1) Terminate the institution's eligibility designation in whole or as to a particular location—

(i) Under the procedural provisions applicable to terminations contained in 34 CFR 668.81, 668.83, 668.86, 668.88, 668.89, 668.90(a)(1) and (4) and (c) through (f), and 668.91; or

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 3. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, 1099c–1, and 1231a, unless otherwise noted.

Section 668.14 also issued under 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, and 1141.

Section 668.41 also issued under 20 U.S.C. 1092, 1094, 1099c.

Section 668.91 also issued under 20 U.S.C. 1082, 1094.

Section 668.171 also issued under 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 94–452, 92 Stat. 1101–1109.

Section 668.172 also issued under 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 94–452, 92 Stat. 1101–1109.

Section 668.175 also issued under 20 U.S.C. 1094 and 1099c.

■ 4. Section 668.41 is amended by revising paragraph (c)(2) introductory text and removing paragraph (h).

The revision reads as follows:

§ 668.41 Reporting and disclosure of information.

* * * * *

(c) * * *

(2) An institution that discloses information to enrolled students as required under paragraph (d), (e), or (g) of this section by posting the information on an internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

* * * * *

■ 5. Subpart F is revised to read as follows:

Subpart F—Misrepresentation

Sec.
668.71 Scope and special definitions.
668.72 Nature of educational program or institution.
668.73 Nature of financial charges or financial assistance.
668.74 Employability of graduates.
668.75 Omission of fact.
668.79 Severability.

Subpart F—Misrepresentation

§ 668.71 Scope and special definitions.

(a) If the Secretary determines that an eligible institution has engaged in substantial misrepresentation, the Secretary may—

(1) Revoke the eligible institution's program participation agreement, if the institution is provisionally certified under § 668.13(c);

(2) Impose limitations on the institution's participation in the title IV, HEA programs, if the institution is provisionally certified under § 668.13(c);

(3) Deny participation applications made on behalf of the institution; or

(4) Initiate a proceeding against the eligible institution under subpart G of this part.

(b) This subpart establishes the types of activities that constitute substantial misrepresentation by an eligible institution. An eligible institution is deemed to have engaged in substantial misrepresentation when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services, makes a substantial misrepresentation about the nature of its educational program, its financial charges, or the employability of its graduates. Substantial misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.

(c) The following definitions apply to this subpart:

Misrepresentation. Any false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to mislead under the circumstances. A misleading statement may be included in the institution's marketing materials, website, or any other communication to students or prospective students. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required such an endorsement or testimonial to participate in a program. Misrepresentation also includes the omission of facts as defined under § 668.75.

Prospective student. Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution.

Substantial misrepresentation. Any misrepresentation, including omission of facts as defined under § 668.75, on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

§ 668.72 Nature of educational program or institution.

Misrepresentation concerning the nature of an eligible institution's educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;

(b)(1) The general or specific transferability of course credits earned at the institution to other institution(s); or

(2) Acceptance of credits earned through prior work or at another institution toward the educational program at the institution.

(c) Whether successful completion of a course of instruction qualifies a student—

(1) For acceptance into a labor union or similar organization; or

(2) To receive, to apply to take, or to take the examination required to receive a local, State, or Federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the States in which the educational program is offered, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

(d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;

(e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by:

(1) Vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or

(2) Governmental officials for governmental employment;

(f) Its size, location, facilities, equipment, or institutionally-provided equipment, software technology, books, or supplies;

(g) The availability, frequency, and appropriateness of its courses and programs in relation to the employment objectives that it states its programs are designed to meet;

(h) The number, availability, and qualifications, including the training and experience, of its faculty, instructors, and other personnel;

(i) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide to its students before, during or after the completion of a course;

(j) The nature or extent of any prerequisites established for enrollment in a course;

(k) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;

(l) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate State educational agency;

(m) Institutional or program admissions selectivity if the institution or program actually employs an open enrollment policy;

(n) The classification of the institution (nonprofit, public or proprietary) for purposes of its participation in the title IV, HEA programs, if that is different from the classification determined by the Secretary;

(o) Specialized, programmatic, or institutional certifications, accreditation, or approvals that were not actually obtained, or that the institution fails to remove from marketing materials, websites, or other communications to students within a reasonable period of time after such certifications or approvals are revoked or withdrawn;

(p) Assistance that will be provided in securing required externships or the existence of contracts with specific externship sites;

(q) Assistance that will be provided to obtain a high school diploma or General Educational Development Certificate (GED);

(r) The pace of completing the program or the time it would take to complete the program contrary to the stated length of the educational program; or

(s) Any matters required to be disclosed to prospective students under §§ 668.42, 668.43, and 668.45.

§ 668.73 Nature of financial charges or financial assistance.

Misrepresentation concerning the nature of an eligible institution's financial charges, or the financial assistance provided includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge;

(b) Whether a particular charge is the customary charge at the institution for a course;

(c) The cost of the program and the institution's refund policy if the student does not complete the program;

(d) The availability, amount, or nature of any financial assistance available to students from the institution or any other entity, including any government agency, to pay the costs of attendance at the institution, including part-time employment, housing, and transportation assistance;

(e) A student's responsibility to repay any loans provided, regardless of whether the student is successful in completing the program and obtaining employment;

(f) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution; or

(g) The amount, method, or timing of payment of tuition and fees that the student would be charged for the program.

§ 668.74 Employability of graduates.

Misrepresentation regarding the employability of an eligible institution's graduates includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;

(b) The institution's intentions to maintain a placement service for graduates or to otherwise assist its graduates to obtain employment, including any requirements to receive such assistance;

(c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;

(d) Whether employment is being offered by the institution exclusively for graduates of the institution, or that a talent hunt or contest is being conducted, including, but not limited to, through the use of phrases such as ''Men/women wanted to train for . . . , '' ''Help Wanted,'' ''Employment,'' or ''Business Opportunities'';

(e) Government job market statistics in relation to the potential placement of its graduates;

(f) Actual licensure passage rates, if they are materially lower than those included in the institution's marketing materials, website, or other communications made to the student or prospective student; or

(g)(1) Actual employment rates, if they are materially lower than those included in the institution's marketing materials, website, or other communications made to the student or prospective student, including but not limited to:

(i) Rates that are calculated in a manner that is inconsistent with the

standards or methodology set forth by the institution's accreditor or a State agency that regulates the institution, or in its institutional policy.

(ii) Rates that the institution discloses to students are inflated by means such as:

(A) Counting individuals as employed who are not bona fide employees, such as individuals placed on a 1-day job fair, an internship, externship, or in employment subsidized by the institution;

(B) Counting individuals as employed who were employed in the field prior to graduation; or

(C) Excluding students from an employment rate calculation due to assessments of employability or difficulty with placement.

(2) Upon request, the institution must furnish to the Secretary documentation and other information used to calculate the institution's employment rate calculations.

§ 668.75 Omission of fact.

An omission of fact is a misrepresentation under § 668.71 if a reasonable person would have considered the omitted information in making a decision to enroll or continue attendance at the institution. An omission of fact includes, but is not limited to, the concealment, suppression, or absence of material information or statement concerning—

(a) The entity that is actually providing the educational instruction, or implementing the institution's recruitment, admissions, or enrollment process;

(b) The availability of enrollment openings in the student's desired program;

(c) The factors that would prevent an applicant from meeting the legal or other requirements to be employed in the field for which the training is provided, for reasons such as prior criminal record or preexisting medical conditions;

(d) The factors that would prevent an applicant from meeting the legal or other requirements to be employed, licensed, or certified in the field for which the training is provided because the academic, professional, or occupational degree or credential that the institution will confer upon completion of the course of study has not been authorized by the appropriate State educational or licensure agency, or requires specialized accreditation that the institution does not have; or,

(e) The nature of the institution's educational programs, the institution's financial charges, or the employability of the institution's graduates as defined in § 668.72–74.

§ 668.79 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

■ 6. Section 668.81 is amended by revising paragraph (a)(5)(i) to read as follows:

§ 668.81 Scope and special definitions.

(a) * * *

(5) * * *

(i) Borrower defense to repayment claims that are brought by the Department against an institution under § 685.206, § 685.222 or part 685, subpart D, of this chapter; and

* * * * *

§ 668.87 [Removed and Reserved]

■ 7. Section 668.87 is removed and reserved.

■ 8. Section 668.89 is amended by revising paragraph (b)(3)(iii) to read as follows:

§ 668.89 Hearing.

* * * * *

(b) * * *

(3) * * *

(iii) For borrower defenses under §§ 685.206(c) and (e) and 685.222 of this chapter, the designated department official has the burden of persuasion in a borrower defense and recovery action; however, for a borrower defense claim based on a substantial misrepresentation under § 682.222(d) of this chapter, the designated department official has the burden of persuasion regarding the substantial misrepresentation, and the institution has the burden of persuasion in establishing any offsetting value of the education under § 685.222(i)(2)(i).

* * * * *

§ 668.91 [Amended]

■ 9. Section 668.91 is amended by:

■ a. Removing paragraph (a)(2)(ii);

■ b. Redesignating paragraph (a)(2)(i) as (a)(2); and

■ c. Removing paragraph (c)(2)(x).

■ 10. Section 668.100 is added to subpart G to read as follows:

§ 668.100 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

■ 11. Section 668.125 is added to read as follows:

§ 668.125 Proceedings to recover liabilities owed relating to approved borrower defense claims.

(a) If the Department determines that the institution is liable for any amounts discharged or reimbursed to borrowers under the discharge process described in § 685.408, it will provide the institution with written notice of the determination and the amount and basis of the liability.

(b) An institution may request review of the determination that it is liable for the amounts discharged or reimbursed by filing a written request for review with the designated department official no later than 45 days from the date that the institution receives the written notice.

(c) Upon receipt of an institution's request for review, the designated official arranges for a hearing before a hearing official.

(d) Except as provided in this section, the proceedings will be conducted in accordance with §§ 668.115 to 668.124 of this subpart. For purposes of this section references in §§ 668.115 to 668.124 to a final audit determination or a final program review determination will be read to refer to the written notice provided under paragraph (a) of this section.

(e) In place of the provisions in § 668.116(d), the following requirements shall apply:

(1) The Department has the burden of production to demonstrate that loans made to students to attend the institution were discharged on the basis of a borrower defense to repayment claim.

(2) The institution has the burden of proof to demonstrate that the decision to discharge the loans was incorrect or inconsistent with law and that the institution is not liable for the loan amounts discharged or reimbursed.

(3) A party may submit as evidence to the hearing official only materials within one or more of the following categories:

(i) Materials submitted to the Department during the process of adjudicating claims by borrowers relating to alleged acts or omissions of the institution, including materials submitted by the borrowers, the institution or any third parties;

(ii) Any material on which the Department relied in adjudicating claims by borrowers relating to alleged acts or omissions of the institution and provided by the Department to the institution; and

(iii) The institution may submit any other relevant documentary evidence that relates to the bases cited by the Department in approving the borrower

defense claims and pursuing recoupment from the institution.

■ 12. Subpart R is added to read as follows:

Subpart R—Aggressive and Deceptive Recruitment Tactics or Conduct

Sec.
668.500 Scope and purpose.
668.501 Aggressive and deceptive recruitment tactics or conduct.
668.509 Severability.

Subpart R—Aggressive and Deceptive Recruitment Tactics or Conduct

§ 668.500 Scope and purpose.

(a) This subpart identifies the types of activities that constitute aggressive and deceptive recruitment tactics or conduct by an eligible institution. An eligible institution has engaged in aggressive and deceptive recruitment tactics or conduct when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, lead generation, recruiting or admissions services, engages in one or more of the prohibited practices in § 668.501. Aggressive and deceptive recruitment tactics or conduct are prohibited in all forms, including in the institution's advertising or promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.

(b) If the Secretary determines that an eligible institution has engaged in aggressive and deceptive recruitment tactics or conduct, the Secretary may:

(1) Revoke the eligible institution's program participation agreement, if the institution is provisionally certified under § 668.13(c);

(2) Impose limitations on the institution's participation in the title IV, HEA programs, if the institution is provisionally certified under § 668.13(c);

(3) Deny participation applications made on behalf of the institution; or

(4) Initiate a proceeding against the eligible institution under subpart G of this part.

(c) The following definitions apply to this subpart:

Prospective student: Has the same meaning in 34 CFR 668.71.

§ 668.501 Aggressive and deceptive recruitment tactics or conduct.

(a) Aggressive and deceptive recruitment tactics or conduct include but are not limited to actions by the institution, any of its representatives, or any institution, organization, or person with whom the institution has an agreement to provide educational programs, marketing, recruitment, or lead generation that:

(1) Demand or pressure the student or prospective student to make enrollment or loan-related decisions immediately, including falsely claiming that the student or prospective student would lose their opportunity to attend;

(2) Take unreasonable advantage of a student's or prospective student's lack of knowledge about, or experience with, postsecondary institutions, postsecondary programs, or financial aid to pressure the student into enrollment or borrowing funds to attend the institution;

(3) Discourage the student or prospective student from consulting an adviser, a family member, or other resource or individual prior to making enrollment or loan-related decisions;

(4) Obtain the student's or prospective student's contact information through websites or other means that:

(i) Falsely offer assistance to individuals seeking Federal, state or local benefits;

(ii) Falsely advertise employment opportunities; or,

(iii) Present false rankings of the institution or its programs;

(5) Use threatening or abusive language or behavior toward the student or prospective student; or,

(6) Repeatedly engage in unsolicited contact for the purpose of enrolling or reenrolling after the student or prospective student has requested not to be contacted further.

(b) [Reserved]

§ 668.509 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 13. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa—1087hh; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

■ 14. Section 674.30 is added to read as follows:

§ 674.30 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

■ 15. Section 674.33 is amended by:

■ a. Revising paragraph (g)(1);

■ b. In paragraph (g)(2)(iv) removing the words ''credit bureaus'' and adding in their place the words ''consumer reporting agencies'';

■ c. Revising paragraphs (g)(3) and (4);

■ d. In paragraph (g)(6)(i) introductory text, removing the words ''In order to'' and adding in their place the word ''To'';

■ e. In paragraph (g)(8)(i), removing the number ''120'' and adding in its place the number ''180'';

■ f. Revising paragraphs (g)(8)(v) and (vii); and

■ g. Adding paragraph (g)(9).

The revisions and addition read as follows:

§ 674.33 Repayment.

* * * * *

(g) * * *

(1) *General.* (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section—

(A) If a school has closed, the school's closure date is the earlier of: the date, determined by the Secretary, that the school ceased to provide educational instruction in programs in which most students at the school were enrolled, or a determined by the Secretary that reflects when the school ceased to provide educational instruction for all of its students;

(B) ''School'' means a school's main campus or any location or branch of the main campus regardless of whether the school or its location or branch is considered title IV eligible;

(C) The ''holder'' means the Secretary or the school that holds the loan; and

(D) ''Program'' means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower's program as multiple levels or Classification of Instructional Program codes if—

(*1*) The enrollment occurred at the same school in closely proximate periods;

(*2*) The school granted a credential in a program while the student was enrolled in a different program; or

(*3*) The programs must be taken in a set order or were presented as necessary for students to complete in order to succeed in the relevant field of employment.

* * * * *

(3) *Discharge without an application.* (i) The Secretary will discharge the

borrower's obligation to repay an NDSL or Federal Perkins Loan without an application from the borrower if the—

(A) Borrower qualified for and received a discharge on a loan pursuant to § 682.402(d) (Federal Family Education Loan Program) or § 685.214 (Federal Direct Loan Program) of this chapter, and was unable to receive a discharge on an NDSL or Federal Perkins Loan because the Secretary lacked the statutory authority to discharge the loan; or

(B) Secretary determines that the borrower qualifies for a discharge based on information in the Secretary's possession. The Secretary discharges the loan without an application from the borrower 1 year after the institution's closure date if the borrower did not complete the program at another branch or location of the school or through a teach-out agreement with another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(ii) If the borrower accepts but does not complete a continuation of their program at a branch or another location of the institution or a teach-out agreement at another school approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, then the Secretary discharges the loan 1 year after the borrower's last date of attendance at the institution or in the teach-out program.

(4) *Borrower qualification for discharge.* Except as provided in paragraph (g)(3) of this section, to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a completed closed school discharge application on a form approved by the Secretary, and the factual assertions in the application must be true and must be made by the borrower under penalty of perjury. The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to—

(i) State that the borrower—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986, to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 180 days before the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances such as those described in paragraph (g)(9) of this section justify an extension; and

(C) On or after July 1, 2023, did not complete the program at another branch or location of the institution or through a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(ii) State whether the borrower has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(iii) State that the borrower—

(A) Agrees to provide to the holder of the loan upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

* * * * *

(v) If the borrower fails to submit the completed application described in paragraph (g)(4) of this section within 90 days of the holder of the loan's mailing the discharge application, the holder of the loan resumes collection and grants forbearance of principal and interest for the period during which collection activity was suspended.

* * * * *

(vii) If the holder of the loan determines that a borrower who requests a discharge meets the qualifications for a discharge, the holder of the loan notifies the borrower in writing of that determination and the reasons for the determination.

* * * * *

(9) *Exceptional circumstances.* For purposes of this section, exceptional circumstances include, but are not limited to—

(i) The revocation or withdrawal by an accrediting agency of the school's institutional accreditation;

(ii) The school is or was placed on probation or issued a show-cause order, or placed on an equivalent accreditation status, by its accrediting agency for failing to meet one or more of the agency's standards;

(iii) The revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State;

(iv) The termination by the Department of the school's participation in a title IV, HEA program;

(v) A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students;

(vi) A State or Federal court judgment that a School violated State or Federal law related to education or services to students;

(vii) The teach-out of the student's educational program exceeds the 180-day look back period for a closed school discharge;

(viii) The school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study;

(ix) The school discontinued a significant share of its academic programs;

(x) The school permanently closed all or most of its in-person locations while maintaining online programs;

(xi) The Department placed the school on the heightened cash monitoring payment method as defined in § 668.162(d)(2).

■ 16. Section 674.61 is amended by:

■ a. Revising paragraphs (b)(2) through (6);

■ b. Removing paragraph (b)(7);

■ c. Redesignating paragraph (b)(8) as paragraph (b)(7);

■ d. Revising newly redesignated paragraph (b)(7); and

■ e. Revising paragraphs (d) and (e).

The revisions read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(b) * * *

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) If the borrower notifies the institution that the borrower claims to be totally and permanently disabled as defined in § 674.51(aa)(1), the institution must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify the Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (b)(2)(ii)(C) of this section will end after 120 days and the collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans.

(iv) The borrower must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary. The application must contain—

(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1);

(B) A certification by a nurse practitioner or physician assistant licensed by a State or a certified psychologist licensed at the independent practice level by a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1); or

(C) A Social Security Administration (SSA) Benefit Planning Query (BPQY) or an SSA notice of award or other documentation deemed acceptable by the Secretary indicating that—

(*1*) The borrower qualifies for Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) based on disability and the borrower's next continuing disability review has been scheduled between 5 and 7 years;

(*2*) The borrower qualifies for SSDI benefits or SSI based on disability and the borrower's next continuing disability review has been scheduled at 3 years;

(3) The borrower has an established onset date for SSDI or SSI of at least 5 years prior to the application for a disability discharge or has been receiving SSDI benefits or SSI based on disability for at least 5 years prior to the application for a disability discharge;

(*4*) The borrower qualifies for SSDI benefits or SSI based on a compassionate allowance; or

(*5*) For borrowers currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met the requirements in paragraph (b)(2)(iv)(C) of this section.

(v) The borrower must submit the application described in paragraph (b)(2)(iv) of this section to the Secretary within 90 days of the date the physician, nurse practitioner, physician assistant, or psychologist certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (b)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower, the borrower's representative, or the physician, nurse practitioner, physician assistant, or psychologist who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (b)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives a disability discharge application, the Secretary sends a notice to the borrower that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the data described in paragraph (b)(2) of this section supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the borrower is considered totally and permanently disabled as of the date—

(A) The physician, nurse practitioner, physician assistant, or psychologist certified the borrower's application; or

(B) The Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section.

(ii) If the Secretary determines that the borrower's application does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary may require the borrower to submit additional medical evidence. As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician or other medical professional identified by the Secretary at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's loan discharge application or the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section and directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary.

(iv) The institution must assign the loan to the Secretary within 45 days of the date of the notice described in paragraph (b)(3)(iii) of this section.

(v) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the institution that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(6) of this section. Any payments received after the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's loan discharge application or the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section are returned to the person who made the payments on the loan in accordance with paragraph (b)(7) of this section.

(vi) If the Secretary determines that the physician, nurse practitioner, physician assistant, or psychologist certification or the SSA data described in paragraph (b)(2)(iv)(C) of this section provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the institution that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the institution will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to reevaluate the borrower's eligibility for a total and permanent disability discharge.

(vii) If the borrower requests reevaluation in accordance with paragraph (b)(3)(vi)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(3)(vi)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the certification or the date the Secretary received the SSA data until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's discharge application or before the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section and a disbursement of that loan or grant is made during the period from the date of the physician, nurse practitioner, physician assistant, or psychologist certification or the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge application will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the certification or after the date the Secretary received the SSA data.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's discharge application or on or after the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(v) of this section if, within 3 years after the date the Secretary granted the discharge, the borrower receives a new TEACH Grant or a new loan under the Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed had the total and permanent disability discharge application not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 90 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Payments received after the certification of total and permanent disability.* (i) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the Secretary's determination of eligibility for a total and permanent disability discharge, the institution must return the payments to the sender.

(ii) At the same time that the institution returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability unless the loan is reinstated in accordance with § 674.61(b)(6), or the Secretary directs the borrower otherwise.

(iii) When the Secretary discharges the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

* * * * *

(d) *Discharge without an application.* (1) The Secretary will discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary—

(i) Obtains data from the Department of Veterans Affairs (VA) showing that the borrower is unemployable due to a service-connected disability; or

(ii) Obtains data from the Social Security Administration (SSA) described in paragraph (b)(2)(iv)(C) of this section.

(e) *Notifications and return of payments.* (1) After determining that a borrower qualifies for a total and permanent disability discharge under paragraph (d) of this section, the Secretary sends a notification to the borrower informing the borrower that the Secretary will discharge the borrower's title IV loans unless the borrower notifies the Secretary, by a date specified in the Secretary's notification, that the borrower does not wish to receive the loan discharge.

(2) Unless the borrower notifies the Secretary that the borrower does not wish to receive the discharge, the Secretary notifies the borrower's lenders that the borrower has been approved for a disability discharge.

(3) In the case of a discharge based on a disability determination by VA—

(i) The notification—

(A) Provides the effective date of the disability determination by VA; and

(B) Directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to discharge the loan; and

(ii) The institution returns to the person who made the payments any payments received on or after the effective date of the determination by VA that the borrower is unemployable due to a service-connected disability.

(4) In the case of a discharge based on a disability determination by the SSA—

(i) The notification—

(A) Provides the date the Secretary received the SSA data described in paragraph (b)(2)(iv)(C) of this section; and

(B) Directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary within 45 days of the notice described in paragraph (e)(2) of this section; and

(ii) After the loan is assigned, the Secretary discharges the loan in accordance with paragraph (b)(3)(v) of this section.

(5) If the borrower notifies the Secretary that they do not wish to receive the discharge, the borrower will remain responsible for repayment of the borrower's loans in accordance with the terms and conditions of the promissory notes that the borrower signed.

* * * * *

■ 17. Section 674.65 is added to read as follows:

§ 674.65 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 18. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071–1087–4, unless otherwise noted.

■ 19. Section 682.402 is amended by:

■ a. Revising paragraphs (c)(2)(iv) through (vii) and (c)(3) through (6);

■ b. Removing paragraph (c)(7);

■ c. Redesignating paragraphs (c)(8) through (11) as paragraphs (c)(7) through (10), respectively;

■ d. Revising newly redesignated paragraphs (c)(7), (9), and (10);

■ e. Revising paragraphs (d)(1) through (3);

■ f. In paragraph (d)(6)(ii)(B) introductory text, removing the number ''120'' and adding in its place the number ''180'';

■ g. In paragraph (d)(6)(ii)(B)(*2*), removing the number ''120'' and adding in its place the number ''180'';

■ h. In paragraph (d)(6)(ii)(H), removing the number ''60'' and adding in its place the number ''90'';

■ i. In paragraph (d)(7)(ii), removing the number ''60'' and adding in its place the number ''90'';

■ j. Revising paragraph (d)(8);

■ k. Adding paragraph (d)(9);

■ l. Revising paragraph (e)(1);

■ m. In paragraph (e)(2)(v) removing the citation ''(e)(1)(ii)'' and adding in its place the citation ''(e)(1)(iii)'';

■ n. Revising paragraph (e)(3);

■ o. Removing paragraph (e)(13);

■ p. Redesignating paragraphs (e)(6) through (12) as (e)(7) through (13), respectively;

■ q. Adding a new paragraph (e)(6);

■ r. Revising redesignated paragraphs (e)(7) through (13) and paragraphs (e)(14) and (15); and

■ s. Adding paragraph (e)(16).

The revisions and additions read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(c) * * *

(2) * * *

(iv) The borrower must submit to the Secretary an application for a total and permanent disability discharge on a form approved by the Secretary. The application must contain—

(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b);

(B) A certification by a nurse practitioner or physician assistant licensed by a State, or a licensed or certified psychologist at the independent practice level, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b); or

(C) An SSA Benefit Planning Query (BPQY) or an SSA notice of award or other documentation deemed acceptable by the Secretary, indicating that—

(*1*) The borrower qualifies for Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) based on disability and the borrower's next continuing disability has been scheduled between 5 and 7 years;

(*2*) The borrower qualifies for SSDI benefits or SSI based on disability and the borrower's next continuing disability review has been scheduled at 3 years;

(*3*) The borrower has an established onset date for SSDI or SSI of at least 5 years prior or has been receiving SSDI benefits or SSI based on disability for at least 5 years prior to the application for a disability discharge;

(*4*) The borrower qualifies for SSDI benefits or SSI based on a compassionate allowance; or

(*5*) For a borrower who is currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met any of the requirements in paragraph (c)(2)(iv)(C) of this section.

(v) The borrower must submit the application described in paragraph (c)(2)(iv) of this section to the Secretary within 90 days of the date the physician, nurse practitioner, physician assistant, or psychologist certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (c)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower. The holders of the loans must notify the applicable guaranty agency that the total and permanent disability discharge application has been received.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower or the physician, nurse practitioner, physician assistant, or psychologist who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

* * * * *

(3) *Secretary's review of total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the data described in paragraph (c)(2)(iv) of this section supports the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 682.200(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's application; or

(B) As of the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section.

(ii) If the Secretary determines that the borrower's application does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b) the Secretary may require the borrower to submit additional medical evidence. As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional

review of the borrower's condition by an independent physician or other medical professional identified by the Secretary at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's loan discharge application or the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section and directs each lender to submit a disability claim to the guaranty agency so the loan can be assigned to the Secretary. The Secretary returns any payment received by the Secretary after the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's loan discharge application or received the SSA data described in paragraph (c)(2)(iv)(C) of this section to the person who made the payment.

(iv) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the lender that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (c)(6)(i) of this section.

(v) If the Secretary determines that the physician, nurse practitioner, physician assistant, or psychologist certification or SSA data described in paragraph (c)(2)(iv)(C) of this section does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 682.200(b), the Secretary notifies the borrower and the lender that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the lender under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the lender will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vi) If the borrower requests re-evaluation in accordance with paragraph (c)(3)(v)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (c)(3)(v)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the physician, nurse practitioner, physician assistant, or psychologist certification or the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's discharge application or before the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section and a disbursement of that loan or grant is made during the period from the date of the physician, nurse practitioner, physician assistant, or psychologist certification or the Secretary's receipt of the SSA data described in paragraph (c)(2)(iv)(C) of this section until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the date of the physician, nurse practitioner, physician assistant, or psychologist certification or after the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's discharge application or the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with (c)(3)(iii) of this section if, within 3 years after the date the Secretary granted the discharge, the borrower receives a new TEACH Grant or a new loan under the Direct Loan Program, except for a Direct Consolidation Loan that includes loans that were not discharged.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (c)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 90 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Lender and guaranty agency actions.* (i) If the Secretary approves the borrower's total and permanent disability discharge application—

(A) The lender must submit a disability claim to the guaranty agency, in accordance with paragraph (g)(1) of this section;

(B) If the claim satisfies the requirements of paragraph (g)(1) of this section and § 682.406, the guaranty agency must pay the claim submitted by the lender;

(C) After receiving a claim payment from the guaranty agency, the lender must return to the sender any payments received by the lender after the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's loan discharge application or after the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section as well as any payments received after claim payment from or on behalf of the borrower;

(D) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender; and

(E) The guaranty agency must assign the loan to the Secretary within 45 days of the date the guaranty agency pays the disability claim and receives the reimbursement payment, or within 45 days of the date the guaranty agency receives the notice described in paragraph (c)(3)(iii) of this section if a guaranty agency is the lender.

(ii) If the Secretary does not approve the borrower's total and permanent disability discharge request, the lender must resume collection of the loan and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period, except if the lender is a guaranty agency it may not capitalize accrued interest.

* * * * *

(9) *Discharge without an application.* The Secretary will discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary—

(i) Obtains data from the Department of Veterans Affairs (VA) showing that the borrower is unemployable due to a service-connected disability; or

(ii) Obtains data from the Social Security Administration (SSA) described in paragraph (c)(2)(iv)(C) of this section.

(10) *Notifications and return of payments.* (i) After determining that a borrower qualifies for a total and permanent disability discharge under paragraph (c)(9) of this section, the Secretary sends a notification to the borrower informing the borrower that the Secretary will discharge the borrower's title IV loans unless the borrower notifies the Secretary, by a date specified in the Secretary's notification, that the borrower does not wish to receive the loan discharge.

(ii) Unless the borrower notifies the Secretary that the borrower does not wish to receive the discharge, the Secretary notifies the borrower's loan holders that the borrower has been approved for a disability discharge. With this notification the Secretary provides the effective date of the determination by VA or the date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section and directs the holder of each FFEL Program loan made to the borrower to submit a disability claim to the guaranty agency in accordance with paragraph (g)(1) of this section.

(iii) If the claim meets the requirements of paragraph (g)(1) of this section and § 682.406, the guaranty agency pays the claim and must—

(A) Discharge the loan, in the case of a discharge based on data from VA; or

(B) Assign the loan to the Secretary, in the case of a discharge based on data from the SSA.

(iv) The Secretary reimburses the guaranty agency for a disability claim after the agency pays the claim to the lender.

(v) Upon receipt of the claim payment from the guaranty agency, the loan holder returns to the person who made the payments any payments received on or after—

(A) The effective date of the determination by VA that the borrower is unemployable due to a service-connected disability; or

(B) The date the Secretary received the SSA data described in paragraph (c)(2)(iv)(C) of this section.

(vi) For a loan that is assigned to the Secretary for discharge based on data from the SSA, the Secretary discharges the loan in accordance with paragraph (c)(3)(iv) of this section.

(vii) If the borrower notifies the Secretary that they do not wish to receive the discharge, the borrower will remain responsible for repayment of the borrower's loans in accordance with the terms and conditions of the promissory notes that the borrower signed.

* * * * *

(d) * * *

(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (d) of this section, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled closed, or the borrower (or student) withdrew from the school not more than 180 days prior to the date the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances, as described in paragraph (d)(9) of this section, justify an extension.

(ii) For purposes of the closed school discharge authorized by this section—

(A) If a school has closed, the school's closure date is the earlier of: the date, determined by the Secretary, that the school ceased to provide educational instruction in programs in which most students at the school were enrolled, or a date determined by the Secretary that reflects when the school ceased to provide educational instruction for all of its students;

(B) The term ''borrower'' includes all endorsers on a loan;

(C) A ''school'' means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered title IV eligible, and

(D) ''Program'' means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower's program as multiple levels or Classification of Instructional Program codes if—

(*1*) The enrollment occurred at the same school in closely proximate periods;

(*2*) The school granted a credential in a program while the student was enrolled in a different program; or

(*3*) The programs must be taken in a set order or were presented as necessary for borrowers to complete in order to succeed in the relevant field of employment

(2) *Relief available pursuant to discharge.* (i) Discharge under this paragraph (d) relieves the borrower of any existing or past obligation to repay the loan and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is or was otherwise obligated to pay.

(ii) A discharge of a loan under this paragraph (d) qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under this paragraph (d).

(iii) A borrower who has defaulted on a loan discharged under this paragraph (d) is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the title IV, HEA programs.

(iv) A discharge of a loan under this paragraph (d) must be reported by the loan holder to all consumer reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(3) *Borrower qualification for discharge.* Except as provided in paragraph (d)(8) of this section, to qualify for a discharge of a loan under this paragraph (d), a borrower must submit a completed closed school discharge application on a form approved by the Secretary and the factual assertions in the application must be true and must be made under penalty of perjury. The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to state that the borrower (or the student on whose behalf a parent borrowed)—

(i) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986, to attend a school;

(ii) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 180 calendar days before the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances, as described in paragraph (d)(9) of this section, justify an extension;

(iii) On or after July 1, 2023, state that the borrower did not complete the program at another branch or location of the school or through a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency; and

(iv) State that the borrower (or student)—

(A) Agrees to provide to the Secretary or the Secretary's designee upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (d)(4) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (d)(5) of this section.

* * * * *

(8) *Discharge without an application.* (i) A borrower's obligation to repay a FFEL Program loan will be discharged without an application from the borrower if the—

(A) Borrower received a discharge on a loan pursuant to § 674.33(g) of this chapter under the Federal Perkins Loan Program, or § 685.214 of this chapter under the William D. Ford Federal Direct Loan Program; or

(B) The Secretary or the guaranty agency, with the Secretary's permission, determines that the borrower qualifies for a discharge under sections (d)(3)(i), (ii) and (iii) based on information in the Secretary or guaranty agency's possession. The Secretary or guaranty agency discharges the loan without an application or any statement from the borrower 1 year after the institution's closure date if the borrower did not complete the program at another branch or location of the school or through a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(ii) If the borrower accepts but does not complete a continuation of the program at another branch of location of the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, then the Secretary or guaranty agency discharges the loan 1 year after the borrower's last date of attendance in the teach-out program.

(9) *Exceptional circumstances.* For purposes of this section, exceptional circumstances include, but are not limited to—

(i) The revocation or withdrawal by an accrediting agency of the school's institutional accreditation;

(ii) The school is or was placed on probation or issued a show-cause order, or placed on an accreditation status that poses an equivalent or greater risk to its accreditation, by its accrediting agency for failing to meet one or more of the agency's standards;

(iii) The revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State;

(iv) The termination by the Department of the school's participation in a title IV, HEA program;

(v) A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students;

(vi) A State or Federal court judgment that a School violated State or Federal law related to education or services to students;

(vii) The teach-out of the student's educational program exceeds the 180-day look back period for a closed school discharge;

(viii) The school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study;

(ix) The school discontinued a significant share of its academic programs.

(x) The school permanently closed all or most of its ground-based or in-person locations while maintaining online programs.

(xi) The school was placed on the heightened cash monitoring payment method as defined in § 668.162(d)(2).

(e) * * *

(1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges a current or former borrower's obligation with respect to the loan in accordance with the provisions of this paragraph (e), if the borrower's (or the student for whom a parent received a PLUS loan) eligibility to receive the loan was falsely certified by an eligible school. On or after July 1, 2006, the Secretary reimburses the holder of a loan, and discharges a borrower's obligation with respect to the loan in accordance with the provisions of this paragraph (e), if the borrower's eligibility to receive the loan was falsely certified as a result of a crime of identity theft. For purposes of a false certification discharge, the term ''borrower'' includes all endorsers on a loan.

(ii) A student's or other individual's eligibility to borrow will be considered to have been falsely certified by the school if the school—

(A) Certified the eligibility for a FFEL Program loan of a student who—

(*1*) Reported not having a high school diploma or its equivalent; and

(*2*) Did not satisfy the alternative to graduation from high school requirements in 34 CFR 668.32(e) and section 484(d) of the Act that were in effect at the time the loan was certified, as applicable;

(B) Certified the eligibility of a student who is not a high school graduate based on—

(*1*) A high school graduation status falsified by the school; or

(*2*) A high school diploma falsified by the school or a third party to which the school referred the borrower;

(C) Certified the eligibility of the student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet State requirements for employment (in the student's State of residence when the loan was certified) in the occupation for

which the training program supported by the loan was intended;

(D) Signed the borrower's name without authorization by the borrower on the loan application or promissory note; or

(E) Certified the eligibility of an individual for a FFEL Program loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (e)(14) of this section.

(iii) The Secretary discharges the obligation of a borrower with respect to a loan disbursement for which the school, without the borrower's authorization, endorsed the borrower's loan check or authorization for electronic funds transfer, unless the student for whom the loan was made received the proceeds of the loan either by actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student. However, the Secretary does not reimburse the lender with respect to any amount disbursed by means of a check bearing an unauthorized endorsement unless the school also executed the application or promissory note for that loan for the named borrower without that individual's consent.

(iv) If a loan was made as a result of the crime of identity theft that was committed by an employee or agent of the lender, or if at the time the loan was made, an employee or agent of the lender knew of the identity theft of the individual named as the borrower—

(A) The Secretary does not pay reinsurance, and does not reimburse the holder, for any amount disbursed on the loan; and

(B) Any amounts received by a holder as interest benefits and special allowance payments with respect to the loan must be refunded to the Secretary, as provided in paragraphs (e)(8)(ii)(B)(*4*) and (e)(10)(ii)(D) of this section.

* * * * *

(3) *Borrower qualification for discharge.* Except as provided in paragraph (e)(15) of this section, to qualify for a discharge of a loan under this paragraph (e), the borrower must submit to the holder of the loan an application for discharge on a form approved by the Secretary. The application need not be notarized, but must be made by the borrower under penalty of perjury, and, in the application, the borrower must—

(i) State whether the student has made a claim with respect to the school's false certification with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) In the case of a borrower requesting a discharge based on not having had a high school diploma and not having met the alternative to graduation from high school eligibility requirements in 34 CFR 668.32(e) and under section 484(d) of the Act applicable when the loan was certified, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that the borrower (or the student for whom a parent received a PLUS loan)—

(A) Received, on or after January 1, 1986, the proceeds of any disbursement of a loan disbursed, in whole or in part, on or after January 1, 1986, to attend a school;

(B) Reported not having a valid high school diploma or its equivalent when the loan was certified; and

(C) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable when the loan was certified.

(iii) In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan) did not meet State requirements for employment in the student's State of residence in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary.

(iv) In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization state that he or she did not sign the document in question or authorize the school to do so.

(v) In the case of a borrower requesting a discharge because the school, without authorization of the borrower, endorsed the borrower's name on the loan check or signed the authorization for electronic funds transfer or master check, the borrower must—

(A) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or master check, or authorize the school to do so; and

(B) State that the proceeds of the contested disbursement were not received either through actual delivery of the loan funds or by a credit in the amount of the contested disbursement applied to charges owed to the school for that portion of the educational program completed by the student.

(vi) In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge—

(A) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(B) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual; and

(C) Provide a statement of facts and supporting evidence that demonstrate, to the satisfaction of the Secretary, that the individual's eligibility for the loan in question was falsely certified as a result of identity theft committed against that individual. Supporting evidence may include—

(*1*) A judicial determination of identity theft relating to the individual;

(*2*) A Federal Trade Commission identity theft affidavit;

(*3*) A police report alleging identity theft relating to the individual;

(*4*) Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies; and

(*5*) Other evidence acceptable to the Secretary.

(vii) That the borrower agrees to provide upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower, that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in this paragraph (e); and

(viii) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (e)(5) of this section.

* * * * *

(6) *Discharge procedures—general.* (i) If the holder of the borrower's loan determines that a borrower's FFEL

Program loan may be eligible for a discharge under this section, the holder provides the borrower the application described in paragraph (e)(3) of this section and an explanation of the qualifications and procedures for obtaining a discharge. The holder also promptly suspends any efforts to collect from the borrower on any affected loan. The holder may continue to receive borrower payments.

(ii) If the borrower fails to submit the application for discharge and supporting information described in paragraph (e)(3) of this section within 60 days of the holder providing the application, the holder resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended.

(iii) If the borrower submits an application for discharge that the holder determines is incomplete, the holder notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the holder the borrower's application is closed as incomplete and the holder resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(iv) If the borrower submits a complete application described in paragraph (e)(3) of this section, the holder files a claim with the guaranty agency no later than 60 days after the holder receives the borrower's complete application.

(v) The guaranty agency determines whether the available evidence supports the claim for discharge. Available evidence includes evidence provided by the borrower and any other relevant information from the guaranty agency's records or gathered by the guaranty agency from other sources, including the Secretary, other guaranty agencies, Federal agencies, State authorities, test publishers, independent test administrators, school records, and cognizant accrediting associations.

(vi) The guaranty agency issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The guaranty agency considers any response from the borrower and any additional information from the borrower and notifies the borrower whether the determination is changed.

(vii) If the guaranty agency determines that the borrower meets the applicable requirements for a discharge under this paragraph (e), the guaranty agency notifies the borrower in writing of that determination.

(viii) If the guaranty agency determines that the borrower does not qualify for a discharge, the guaranty agency notifies the borrower in writing of that determination and the reasons for the determination.

(ix) If the guaranty agency determines that the borrower does not qualify for a discharge, the borrower may request that the Secretary review the guaranty agency's decision.

(x) A borrower is not precluded from re-applying for a discharge under this paragraph (e) if the discharge request is closed as incomplete, or if the guaranty agency or Secretary determines that the borrower does not qualify for a discharge if the borrower provides additional supporting evidence.

(7) *Guaranty agency responsibilities—general.* (i) A guaranty agency will notify the Secretary immediately whenever it becomes aware of reliable information indicating that a school may have falsely certified a student's eligibility or caused an unauthorized disbursement of loan proceeds, as described in paragraph (e)(3) of this section. The designated guaranty agency in the State in which the school is located will promptly investigate whether the school has falsely certified a student's eligibility and, within 30 days after receiving information indicating that the school may have done so, report the results of its preliminary investigation to the Secretary.

(ii) If the guaranty agency receives information it believes to be reliable indicating that a borrower whose loan is held by the agency may be eligible for a discharge under this paragraph (e), the agency will immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments) and inform the borrower of the procedures for requesting a discharge.

(iii) If the borrower fails to submit the Secretary's approved application described in paragraph (e)(3) of this section within 60 days of being notified of that option, the guaranty agency will resume collection and will be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity.

(iv) If the borrower submits an application for discharge that the guaranty agency determines is incomplete, the guaranty agency notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the guaranty agency the borrower's application is closed as incomplete and the guaranty agency resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(v) Upon receipt of a discharge claim filed by a lender or a complete application submitted by a borrower with respect to a loan held by the guaranty agency, the agency will have up to 90 days to determine whether the discharge should be granted. The agency will review the borrower's application in light of information available from the records of the agency and from other sources, including other guaranty agencies, State authorities, and cognizant accrediting associations.

(vi) A borrower's application for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, the Secretary or the guaranty agency.

(8) *Guaranty agency responsibilities with respect to a claim filed by a lender.* (i) The agency will evaluate the borrower's application and consider relevant information it possesses and information available from other sources, and follow the procedures described in this paragraph (e)(8).

(ii) If the agency determines that the borrower satisfies the requirements for discharge under this paragraph (e), it will, not later than 30 days after the agency makes that determination, pay the claim in accordance with paragraph (h) of this section and—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(8)(ii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the amount of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to

the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it will, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(8)(iii)(B) of this section, the loan will either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge and state the reasons for that conclusion. The agency will advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(*1*) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(*2*) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's written statement described in paragraph (e)(8)(iii)(B)(*1*) of this section, the agency will return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(v) Within 30 days after receiving the borrower's request for review by the Secretary, the agency will forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(12) of this section.

(vi) The agency will pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(8)(iii)(B) of this section.

(9) *Guaranty agency responsibilities with respect to a claim filed by a lender based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan funds via electronic funds transfer or master check.* (i) The agency will evaluate the borrower's request and consider relevant information it possesses and information available from other sources, and follow the procedures described in this paragraph (e)(9).

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(v) of this section, it will, within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(9)(ii)(B) of this section;

(B) Notify the lender that the borrower's liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay;

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(*3*) Refund to the borrower, within 30 days, all amounts paid by the borrower with respect to the loan disbursement that was discharged, including any charges imposed or costs incurred by the lender related to the discharged loan amount; and

(*4*) Refund to the Secretary, within 30 days, all interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(C) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to a loan disbursement that was discharged because the borrower did not sign the loan check.

(iii) If the agency determines that a borrower who asserts that he or she did not sign the electronic funds transfer or master check authorization satisfies the requirements for discharge under paragraph (e)(3)(v) of this section, it will, within 30 days after making that determination, pay the claim in accordance with paragraph (h) of this section and—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged, and that the lender has been informed of the actions required under paragraph (e)(9)(iii)(C) of this section;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Notify the lender that the borrower's liability with respect to the contested disbursement of the loan has been discharged, and that the lender must—

(*1*) Immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the lender related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay; and

(*2*) Within 30 days, report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) If the agency determines that the borrower does not qualify for a discharge, it will, within 30 days after making that determination—

(A) Notify the lender that the borrower's liability on the loan is not discharged and that, depending on the borrower's decision under paragraph (e)(9)(iv)(B) of this section, the loan will either be returned to the lender or paid as a default claim; and

(B) Notify the borrower that the borrower does not qualify for discharge and state the reasons for that conclusion. The agency will advise the borrower that he or she remains obligated to repay the loan and warn the borrower of the consequences of default, and explain that the borrower will be considered to be in default on the loan unless the borrower submits a written statement to the agency within 30 days stating that the borrower—

(*1*) Acknowledges the debt and, if payments are due, will begin or resume making those payments to the lender; or

(*2*) Requests the Secretary to review the agency's decision.

(v) Within 30 days after receiving the borrower's written statement described in paragraph (e)(9)(iv)(B)(*1*) of this section, the agency will return the claim file to the lender and notify the lender to resume collection efforts if payments are due.

(vi) Within 30 days after receiving the borrower's request for review by the Secretary, the agency will forward the claim file to the Secretary for his review and take the actions required under paragraph (e)(12) of this section.

(vii) The agency will pay a default claim to the lender within 30 days after the borrower fails to return either of the written statements described in paragraph (e)(9)(iv)(B) of this section.

(10) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower.* (i) The agency will evaluate the borrower's application and consider relevant information it possesses and information available from other sources, and follow the procedures described in this paragraph (e)(10).

(ii) If the agency determines that the borrower satisfies the requirements for discharge under paragraph (e)(3) of this section, it will immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was otherwise obligated to pay and, not later than 30 days after the agency makes the determination that the borrower satisfies the requirements for discharge—

(A) Notify the borrower that his or her liability with respect to the amount of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(D) Within 30 days, demand payment in full from the perpetrator of the identity theft committed against the individual, and if payment is not received, pursue collection action thereafter against the perpetrator.

(iii) If the agency determines that the borrower does not qualify for a discharge, it will, within 30 days after making that determination, notify the borrower that the borrower's liability with respect to the amount of the loan is not discharged, state the reasons for that conclusion, and if the borrower is not then making payments in accordance with a repayment arrangement with the agency on the loan, advise the borrower of the consequences of continued failure to reach such an arrangement, and that collection action will resume on the loan unless within 30 days the borrower—

(A) Acknowledges the debt and, if payments are due, reaches a satisfactory arrangement to repay the loan or resumes making payments under such an arrangement to the agency; or

(B) Requests the Secretary to review the agency's decision.

(iv) Within 30 days after receiving the borrower's request for review by the Secretary, the agency will forward the borrower's discharge request and all relevant documentation to the Secretary for his review and take the actions required under paragraph (e)(12) of this section.

(v) The agency will resume collection action if within 30 days of giving notice of its determination the borrower fails to seek review by the Secretary or agree to repay the loan.

(11) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan proceeds via electronic funds transfer or master check.* (i) The agency will evaluate the borrower's application and consider relevant information it possesses and information available from other sources, and follow the procedures described in this paragraph (e)(11).

(ii) If the agency determines that a borrower who asserts that he or she did not endorse the loan check satisfies the requirements for discharge under paragraph (e)(3)(v) of this section, it will refund to the Secretary the amount of reinsurance payment received with respect to the amount discharged on that loan less any repayments made by the lender under paragraph (e)(11)(ii)(D)(*2*) of this section, and within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Report to all credit reporting agencies to which the agency previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan;

(C) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount;

(D) Notify the lender to whom a claim payment was made that the lender must refund to the Secretary, within 30 days—

(*1*) All interest benefits and special allowance payments received from the Secretary with respect to the loan disbursement that was discharged; and

(*2*) The amount of the borrower's payments that were refunded to the borrower by the guaranty agency under paragraph (e)(11)(ii)(C) of this section that represent borrower payments previously paid to the lender with respect to the loan disbursement that was discharged;

(E) Notify the lender to whom a claim payment was made that the lender must, within 30 days, reimburse the agency for the amount of the loan that was discharged, minus the amount of borrower payments made to the lender that were refunded to the borrower by the guaranty agency under paragraph (e)(11)(ii)(C) of this section; and

(F) Transfer to the lender the borrower's written assignment of any rights the borrower may have against third parties with respect to the loan disbursement that was discharged.

(iii) In the case of a borrower who requests a discharge because he or she did not sign the electronic funds transfer or master check authorization, if the agency determines that the borrower meets the conditions for discharge, it will immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay, and within 30 days after making that determination—

(A) Notify the borrower that his or her liability with respect to the amount of the contested disbursement of the loan has been discharged;

(B) Refund to the borrower all amounts paid by the borrower to the lender or the agency with respect to the discharged loan amount, including any late fees or collection charges imposed by the lender or agency related to the discharged loan amount; and

(C) Report to all credit reporting agencies to which the lender previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(iv) The agency will take the actions required under paragraphs (e)(10)(iii) through (v) of this section if the agency determines that the borrower does not qualify for a discharge.

(12) *Guaranty agency responsibilities if a borrower requests a review by the Secretary.* (i) Within 30 days after receiving the borrower's request for review under paragraph (e)(8)(iii)(B)(*2*), (e)(9)(iv)(B)(*2*), (e)(10)(iii)(B), or (e)(11)(iv) of this section, the agency will forward the borrower's discharge application and all relevant

documentation to the Secretary for review.

(ii) The Secretary notifies the agency and the borrower of a determination on review. If the Secretary determines that the borrower is not eligible for a discharge under this paragraph (e), within 30 days after being so informed, the agency will take the actions described in paragraphs (e)(9)(iv) through (vii) or (e)(10)(iii) through (v) of this section, as applicable.

(iii) If the Secretary determines that the borrower meets the requirements for a discharge under paragraph (e) of this section, the agency will, within 30 days after being so informed, take the actions required under paragraph (e)(8)(ii), (e)(9)(ii) or (iii), (e)(10)(ii), or (e)(11)(ii) or (iii) of this section, as applicable.

(13) *Lender responsibilities.* (i) If the lender is notified by a guaranty agency or the Secretary, or receives information it believes to be reliable from another source indicating that a current or former borrower may be eligible for a discharge under this paragraph (e), the lender will immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments) and, within 30 days of receiving the information or notification, inform the borrower of the procedures for requesting a discharge.

(ii) If the borrower fails to submit the Secretary's approved application within 60 days of being notified of that option, the lender will resume collection and will be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity on the loan. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iii) If the borrower submits an application for discharge that the lender determines is incomplete, the lender notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the lender the borrower's application is closed as incomplete and the lender resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(iv) The lender will file a claim with the guaranty agency in accordance with paragraph (g) of this section no later than 60 days after the lender receives the borrower's complete application described in paragraph (e)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender will forward the payment to the guaranty agency within 30 days of its receipt. The lender will assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(v) The lender will comply with all instructions received from the Secretary or a guaranty agency with respect to loan discharges under this paragraph (e).

(vi) The lender will review a claim that the borrower did not endorse and did not receive the proceeds of a loan check. The lender will take the actions required under paragraphs (e)(9)(ii)(A) and (B) of this section if it determines that the borrower did not endorse the loan check, unless the lender secures persuasive evidence that the proceeds of the loan were received by the borrower or the student for whom the loan was made, as provided in paragraph (e)(1)(iii) of this section. If the lender determines that the loan check was properly endorsed or the proceeds were received by the borrower or student, the lender may consider the borrower's objection to repayment as a statement of intention not to repay the loan and may file a claim with the guaranty agency for reimbursement on that ground but will not report the loan to consumer reporting agencies as in default until the guaranty agency, or, as applicable, the Secretary, reviews the claim for relief. By filing such a claim, the lender will be deemed to have agreed to the following—

(A) If the guarantor or the Secretary determines that the borrower endorsed the loan check or the proceeds of the loan were received by the borrower or the student, any failure to satisfy due diligence requirements by the lender prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default will be waived by the Secretary; and

(B) If the guarantor or the Secretary determines that the borrower did not endorse the loan check and that the proceeds of the loan were not received by the borrower or the student, the lender will comply with the requirements specified in paragraph (e)(9)(ii)(B) of this section.

(vii) Within 30 days after being notified by the guaranty agency that the borrower's request for a discharge has been denied, the lender will notify the borrower of the reasons for the denial and, if payments are due, resume collection against the borrower. The lender will be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(14) *Definition of identity theft.* (i) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(ii) Identifying information includes, but is not limited to—

(A) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(B) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(C) Unique electronic identification number, address, or routing code; or

(D) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

(15) *Discharge without an application.* A borrower's obligation to repay all or a portion of an FFEL Program loan may be discharged without an application from the borrower if the Secretary, or the guaranty agency with the Secretary's permission, determines based on information in the Secretary's or the guaranty agency's possession that the borrower qualifies for a discharge. Such information includes, but is not limited to, evidence that the school has falsified the Satisfactory Academic Progress of its students, as described in § 668.34 of this chapter.

(16) *Application for a group discharge from a State Attorney General or nonprofit legal services representative.* A State Attorney General or nonprofit legal services representative may submit to the Secretary an application for a group discharge under this section.

* * * * *

■ 20. Section 682.414 is amended by revising paragraph (b)(4) to read as follows:

§ 682.414 Reports.

* * * * *

(b) * * *

(4) A report to the Secretary of the borrower's enrollment and loan status information, details related to the loans or borrower's deferments, forbearances,

repayment plans, delinquency and contact information, or any title IV loan-related data required by the Secretary, by the deadline date established by the Secretary.

* * * * *

■ 21. Section 682.424 is added to subpart D to read as follows:

§ 682.424 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 22. The authority citation for part 685 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1087a, *et seq.,* unless otherwise noted.

■ 23. Section 685.103 is amended by revising paragraph (d) to read as follows:

§ 685.103 Applicability of subparts.

* * * * *

(d) Subpart D of this part contains provisions regarding borrower defense to repayment in the Direct Loan Program.

■ 24. Section 685.109 is added to subpart A to read as follows:

§ 685.109 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

■ 25. Section 685.202 is amended by:

■ a. Removing paragraphs (b)(2), (4), and (5);

■ b. Redesignating paragraph (b)(3) as paragraph (b)(2) and revising it.

The revision reads as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

* * * * *

(b) * * *

(2) For a Direct Loan not eligible for interest subsidies during periods of deferment, the Secretary capitalizes the unpaid interest that has accrued on the loan upon the expiration of the deferment.

* * * * *

■ 26. Section 685.205 is amended by revising paragraph (b)(6) to read as follows:

§ 685.205 Forbearance.

* * *

* * * * *

(b) * * *

(6) Periods necessary for the Secretary to determine the borrower's eligibility for discharge—

(i) Under § 685.206(c) through (e);

(ii) Under § 685.214;

(iii) Under § 685.215;

(iv) Under § 685.216;

(v) Under § 685.217;

(vi) Under § 685.222;

(vii) Under subpart D of this part; or

(viii) Due to the borrower's or endorser's (if applicable) bankruptcy;

* * * * *

■ 27. Section 685.206 is amended by revising paragraph (e) to read as follows:

§ 685.206 Borrower Responsibilities and Defenses.

* * * * *

(e) *Borrower defense to repayment for loans first disbursed on or after July 1, 2020, and before July 1, 2023.* This paragraph (e) applies to borrower defense to repayment for loans first disbursed on or after July 1, 2020, and before July 1, 2023.

(1) *Definitions.* For the purposes of this paragraph (e), the following definitions apply:

(i) A ''Direct Loan'' under this paragraph (e) means a Direct Subsidized Loan, a Direct Unsubsidized Loan, or a Direct PLUS Loan.

(ii) ''Borrower'' means:

(A) The borrower; and

(B) In the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

(iii) A ''borrower defense to repayment'' under this paragraph (e) includes—

(A) A defense to repayment of amounts owed to the Secretary on a Direct Loan, or a Direct Consolidation Loan that was used to repay a Direct Loan, FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act; and

(B) Any accompanying request for reimbursement of payments previously made to the Secretary on the Direct Loan or on a loan repaid by the Direct Consolidation Loan.

(iv) The term ''provision of educational services'' under this paragraph (e) refers to the educational resources provided by the institution that are required by an accreditation agency or a State licensing or authorizing agency for the completion of the student's educational program.

(v) The terms ''school'' and ''institution'' under this paragraph (e) may be used interchangeably and include an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting, or admissions services.

(2) *Federal standard for loans first disbursed on or after July 1, 2020, and before July 1, 2023.* For a Direct Loan or Direct Consolidation Loan first disbursed on or after July 1, 2020, and before July 1, 2023, a borrower may assert a defense to repayment under this paragraph (e), if the borrower establishes by a preponderance of the evidence that—

(i) The institution at which the borrower enrolled made a misrepresentation, as defined in § 685.206(e)(3), of material fact upon which the borrower reasonably relied in deciding to obtain a Direct Loan, or a loan repaid by a Direct Consolidation Loan, and that directly and clearly relates to:

(A) Enrollment or continuing enrollment at the institution or

(B) The provision of educational services for which the loan was made; and

(ii) The borrower was financially harmed by the misrepresentation.

(3) *Misrepresentation.* A ''misrepresentation,'' for purposes of this paragraph (e), is a statement, act, or omission by an eligible school to a borrower that is false, misleading, or deceptive; that was made with knowledge of its false, misleading, or deceptive nature or with a reckless disregard for the truth; and that directly and clearly relates to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made. Evidence that a misrepresentation defined in this paragraph (e) may have occurred includes, but is not limited to:

(i) Actual licensure passage rates materially different from those included in the institution's marketing materials, website, or other communications made to the student;

(ii) Actual employment rates materially different from those included in the institution's marketing materials, website, or other communications made to the student;

(iii) Actual institutional selectivity rates or rankings, student admission profiles, or institutional rankings that are materially different from those included in the institution's marketing materials, website, or other communications made to the student or

provided by the institution to national ranking organizations;

(iv) The inclusion in the institution's marketing materials, website, or other communication made to the student of specialized, programmatic, or institutional certifications, accreditation, or approvals not actually obtained, or the failure to remove within a reasonable period of time such certifications or approvals from marketing materials, website, or other communication when revoked or withdrawn;

(v) The inclusion in the institution's marketing materials, website, or other communication made to the student of representations regarding the widespread or general transferability of credits that are only transferrable to limited types of programs or institutions or the transferability of credits to a specific program or institution when no reciprocal agreement exists with another institution, or such agreement is materially different than what was represented;

(vi) A representation regarding the employability or specific earnings of graduates without an agreement between the institution and another entity for such employment data, or sufficient evidence of past employment or earnings to justify such a representation, or without citing appropriate national, State, or regional data for earnings in the same field as provided by an appropriate Federal agency that provides such data. (In the event that national data are used, institutions should include a written, plain language disclaimer that national averages may not accurately reflect the earnings of workers in particular parts of the country and may include earners at all stages of their career and not just entry level wages for recent graduates.);

(vii) A representation regarding the availability, amount, or nature of any financial assistance available to students from the institution or any other entity to pay the costs of attendance at the institution that is materially different in availability, amount, or nature from the actual financial assistance available to the borrower from the institution or any other entity to pay the costs of attendance at the institution after enrollment;

(viii) A representation regarding the amount, method, or timing of payment of tuition and fees that the student would be charged for the program that is materially different in amount, method, or timing of payment from the actual tuition and fees charged to the student;

(ix) A representation that the institution, its courses, or programs are endorsed by vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, governmental officials, Federal or State agencies, the United States Armed Forces, or other individuals or entities when the institution has no permission or is not otherwise authorized to make or use such an endorsement;

(x) A representation regarding the educational resources provided by the institution that are required for the completion of the student's educational program that are materially different from the institution's actual circumstances at the time the representation is made, such as representations regarding the institution's size; location; facilities; training equipment; or the number, availability, or qualifications of its personnel; and

(xi) A representation regarding the nature or extent of prerequisites for enrollment in a course or program offered by the institution that are materially different from the institution's actual circumstances at the time the representation is made, or that the institution knows will be materially different during the student's anticipated enrollment at the institution.

(4) *Financial harm.* Under this paragraph (e), financial harm is the amount of monetary loss that a borrower incurs as a consequence of a misrepresentation, as defined in paragraph (e)(3) of this section. Financial harm does not include damages for nonmonetary loss, such as personal injury, inconvenience, aggravation, emotional distress, pain and suffering, punitive damages, or opportunity costs. The Department does not consider the act of taking out a Direct Loan or a loan repaid by a Direct Consolidation Loan, alone, as evidence of financial harm to the borrower. Financial harm is such monetary loss that is not predominantly due to intervening local, regional, or national economic or labor market conditions as demonstrated by evidence before the Secretary or provided to the Secretary by the borrower or the school. Financial harm cannot arise from the borrower's voluntary decision to pursue less than full-time work or not to work or result from a voluntary change in occupation. Evidence of financial harm may include, but is not limited to, the following circumstances:

(i) Periods of unemployment upon graduating from the school's programs that are unrelated to national or local economic recessions;

(ii) A significant difference between the amount or nature of the tuition and fees that the institution represented to the borrower that the institution would charge or was charging, and the actual amount or nature of the tuition and fees charged by the institution for which the Direct Loan was disbursed or for which a loan repaid by the Direct Consolidation Loan was disbursed;

(iii) The borrower's inability to secure employment in the field of study for which the institution expressly guaranteed employment; and

(iv) The borrower's inability to complete the program because the institution no longer offers a requirement necessary for completion of the program in which the borrower enrolled and the institution did not provide for an acceptable alternative requirement to enable completion of the program.

(5) *Exclusions.* The Secretary will not accept the following as a basis for a borrower defense to repayment under this paragraph (e)—

(i) A violation by the institution of a requirement of the Act or the Department's regulations for a borrower defense to repayment under paragraph (c) or (d) of this section or under § 685.222, unless the violation would otherwise constitute the basis for a successful borrower defense to repayment under this paragraph (e); or

(ii) A claim that does not directly and clearly relate to enrollment or continuing enrollment at the institution or the provision of educational services for which the loan was made, including, but not limited to—

(A) Personal injury;

(B) Sexual harassment;

(C) A violation of civil rights;

(D) Slander or defamation;

(E) Property damage;

(F) The general quality of the student's education or the reasonableness of an educator's conduct in providing educational services;

(G) Informal communication from other students;

(H) Academic disputes and disciplinary matters; and

(I) Breach of contract unless the school's act or omission would otherwise constitute the basis for a successful defense to repayment under this paragraph (e).

(6) *Limitations period.* A borrower must assert a defense to repayment under this paragraph (e) within 3 years from the date the student is no longer enrolled at the institution. A borrower may only assert a defense to repayment under this paragraph (e) within the timeframes set forth in this paragraph

(e)(6) and paragraph (e)(7) of this section.

(7) *Extension of limitation periods and reopening of applications.* For loans first disbursed on or after July 1, 2020, and before July 1, 2023, the Secretary may extend the time period when a borrower may assert a defense to repayment under § 685.206(e)(6) or may reopen a borrower's defense to repayment application to consider evidence that was not previously considered only if there is:

(i) A final, non-default judgment on the merits by a State or Federal Court that has not been appealed or that is not subject to further appeal and that establishes the institution made a misrepresentation, as defined in paragraph (e)(3) of this section; or

(ii) A final decision by a duly appointed arbitrator or arbitration panel that establishes that the institution made a misrepresentation, as defined in paragraph (e)(3) of this section.

(8) *Application and forbearance.* To assert a defense to repayment under this paragraph (e), a borrower must submit an application under penalty of perjury on a form approved by the Secretary and sign a waiver permitting the institution to provide the Department with items from the borrower's education record relevant to the defense to repayment claim. The form will note that pursuant to § 685.205(b)(6)(i), if the borrower is not in default on the loan for which a borrower defense has been asserted, the Secretary will grant forbearance and notify the borrower of the option to decline forbearance. The application requires the borrower to—

(i) Certify that the borrower received the proceeds of a loan, in whole or in part, to attend the named institution;

(ii) Provide evidence that supports the borrower defense to repayment application;

(iii) State whether the borrower has made a claim with any other third party, such as the holder of a performance bond, a public fund, or a tuition recovery program, based on the same act or omission of the institution on which the borrower defense to repayment is based;

(iv) State the amount of any payment received by the borrower or credited to the borrower's loan obligation through the third party, in connection with a borrower defense to repayment described in paragraph (e)(2) of this section;

(v) State the financial harm, as defined in paragraph (e)(4) of this section, that the borrower alleges to have been caused and provide any information relevant to assessing whether the borrower incurred financial harm, including providing documentation that the borrower actively pursued employment in the field for which the borrower's education prepared the borrower if the borrower is a recent graduate (failure to provide such information results in a presumption that the borrower failed to actively pursue employment in the field); whether the borrower was terminated or removed for performance reasons from a position in the field for which the borrower's education prepared the borrower, or in a related field; and whether the borrower failed to meet other requirements of or qualifications for employment in such field for reasons unrelated to the school's misrepresentation underlying the borrower defense to repayment, such as the borrower's ability to pass a drug test, satisfy driving record requirements, and meet any health qualifications; and

(vi) State that the borrower understands that in the event that the borrower receives a 100 percent discharge of the balance of the loan for which the defense to repayment application has been submitted, the institution may, if allowed or not prohibited by other applicable law, refuse to verify or to provide an official transcript that verifies the borrower's completion of credits or a credential associated with the discharged loan.

(9) *Consideration of order of objections and of evidence in possession of the Secretary under this paragraph (e).* (i) If the borrower asserts both a borrower defense to repayment and any other objection to an action of the Secretary with regard to a Direct Loan or a loan repaid by a Direct Consolidation Loan under this paragraph (e), the order in which the Secretary will consider objections, including a borrower defense to repayment under this paragraph (e), will be determined as appropriate under the circumstances.

(ii) With respect to the borrower defense to repayment application submitted under this paragraph (e), the Secretary may consider evidence otherwise in the possession of the Secretary, including from the Department's internal records or other relevant evidence obtained by the Secretary, as practicable, provided that the Secretary permits the institution and the borrower to review and respond to this evidence and to submit additional evidence.

(10) *School response and borrower reply under this paragraph (e).* (i) Upon receipt of a borrower defense to repayment application under this paragraph (e), the Department will notify the school of the pending application and provide a copy of the borrower's request and any supporting documents, a copy of any evidence otherwise in the possession of the Secretary, and a waiver signed by the student permitting the institution to provide the Department with items from the student's education record relevant to the defense to repayment claim to the school, and invite the school to respond and to submit evidence, within the specified timeframe included in the notice, which will be no less than 60 days.

(ii) Upon receipt of the school's response, the Department will provide the borrower a copy of the school's submission as well as any evidence otherwise in possession of the Secretary, which was provided to the school, and will give the borrower an opportunity to submit a reply within a specified timeframe, which will be no less than 60 days. The borrower's reply must be limited to issues and evidence raised in the school's submission and any evidence otherwise in the possession of the Secretary.

(iii) The Department will provide the school a copy of the borrower's reply.

(iv) There will be no other submissions by the borrower or the school to the Secretary unless the Secretary requests further clarifying information.

(11) *Written decision under this paragraph (e).* (i) After considering the borrower's application and all applicable evidence under this paragraph (e), the Secretary issues a written decision—

(A) Notifying the borrower and the school of the decision on the borrower defense to repayment under this paragraph (e);

(B) Providing the reasons for the decision; and

(C) Informing the borrower and the school of the relief, if any, that the borrower will receive, consistent with paragraph (e)(12) of this section and specifying the relief determination.

(ii) If the Department receives a borrower defense to repayment application that is incomplete and is within the limitations period in paragraph (e)(6) or (7) of this section, the Department will not issue a written decision on the application and instead will notify the borrower in writing that the application is incomplete and will return the application to the borrower.

(12) *Borrower defense to repayment relief under this paragraph (e).* (i) If the Secretary grants the borrower's request for relief based on a borrower defense to repayment under this paragraph (e), the Secretary notifies the borrower and the

school that the borrower is relieved of the obligation to repay all or part of the loan and associated costs and fees that the borrower would otherwise be obligated to pay or will be reimbursed for amounts paid toward the loan voluntarily or through enforced collection. The amount of relief that a borrower receives under this paragraph (e) may exceed the amount of financial harm, as defined in paragraph (e)(4) of this section, that the borrower alleges in the application pursuant to paragraph (e)(8)(v) of this section. The Secretary determines the amount of relief and awards relief limited to the monetary loss that a borrower incurred as a consequence of a misrepresentation, as defined in paragraph (e)(3) of this section. The amount of relief cannot exceed the amount of the loan and any associated costs and fees and will be reduced by the amount of refund, reimbursement, indemnification, restitution, compensatory damages, settlement, debt forgiveness, discharge, cancellation, compromise, or any other financial benefit received by, or on behalf of, the borrower that was related to the borrower defense to repayment under this paragraph (e). In awarding relief under this paragraph (e), the Secretary considers the borrower's application, as described in paragraph (e)(8) of this section, which includes information about any payments received by the borrower and the financial harm alleged by the borrower. In awarding relief under this paragraph (e), the Secretary also considers the school's response, the borrower's reply, and any evidence otherwise in the possession of the Secretary, which was previously provided to the borrower and the school, as described in paragraph (e)(10) of this section. The Secretary also updates reports to consumer reporting agencies to which the Secretary previously made adverse credit reports with regard to the borrower's Direct Loan or loans repaid by the borrower's Direct Consolidation Loan under this paragraph (e).

(ii) The Secretary affords the borrower such further relief as the Secretary determines is appropriate under the circumstances. Further relief may include determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act.

(13) *Finality of borrower defense to repayment decisions under this paragraph (e).* The determination of a borrower's defense to repayment by the Department included in the written decision referenced in paragraph (e)(11) of this section is the final decision of the Department and is not subject to appeal within the Department.

(14) *Cooperation by the borrower under this paragraph (e).* The Secretary may revoke any relief granted to a borrower under this section who refuses to cooperate with the Secretary in any proceeding under this paragraph (e) or under part 668, subpart G. Such cooperation includes, but is not limited to—

(i) Providing testimony regarding any representation made by the borrower to support a successful borrower defense to repayment under this paragraph (e); and

(ii) Producing, within timeframes established by the Secretary, any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(15) *Transfer to the Secretary of the borrower's right of recovery against third parties under this paragraph (e).* (i) Upon the grant of any relief under this paragraph (e), the borrower is deemed to have assigned to, and relinquished in favor of, the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the provision of educational services for which the loan was received, against the school, its principals, its affiliates and their successors, or its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party. If the borrower asserts a claim to, and recovers from, a public fund, the Secretary may reinstate the borrower's obligation to repay on the loan an amount based on the amount recovered from the public fund, if the Secretary determines that the borrower's recovery from the public fund was based on the same borrower defense to repayment and for the same loan for which the discharge was granted under this section.

(ii) The provisions of this paragraph (e)(15) apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this paragraph (e)(15) limits or forecloses the borrower's right to pursue legal and equitable relief arising under applicable law against a party described in this paragraph (e)(15) for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

(16) *Recovery from the school under this paragraph (e).* (i) The Secretary may initiate an appropriate proceeding to require the school whose misrepresentation resulted in the borrower's successful borrower defense to repayment under this paragraph (e) to pay to the Secretary the amount of the loan to which the defense applies in accordance with part 668, subpart G. This paragraph (e)(16) would also be applicable for provisionally certified institutions.

(ii) Under this paragraph (e), the Secretary will not initiate such a proceeding more than 5 years after the date of the final determination included in the written decision referenced in paragraph (e)(11) of this section. The Department will notify the school of the borrower defense to repayment application within 60 days of the date of the Department's receipt of the borrower's application.

■ 28. Section 685.208 is amended by removing paragraph (l)(5).

■ 29. Section 685.209 is amended by:

■ a. Removing paragraph (a)(2)(iv);

■ b. Redesignating paragraphs (a)(2)(v) and (vi) as paragraphs (a)(2)(iv) and (v), respectively.

■ c. In paragraph (b)(1)(vii), removing the parenthetical phrase ''(including amount capitalized)'';

■ d. Removing and reserving paragraph (b)(3)(iv);

■ e. Removing paragraph (c)(2)(iv);

■ f. Redesignating paragraphs (c)(2)(v) and (vi) as paragraphs (c)(2)(iv) and (v), respectively.

■ g. In paragraph (c)(4)(iii)(B), removing the words ''paragraphs (c)(2)(iv) and'', and adding in their place ''paragraph''.

* * * * *

■ 30. Section 685.212 is amended by adding paragraph (k)(4) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(k) * * *

(4) If a borrower's application for a discharge of a loan based on a borrower defense is approved under 34 CFR part 685, subpart D, the Secretary discharges the obligation of the borrower, in accordance with the procedures described in subpart D of this part.

■ 31. Section 685.213 is amended by:

■ a. Revising paragraphs (b)(2) through (7);

■ b. Removing paragraph (b)(8); and

■ c. Revising paragraphs (d) and (e).

The revisions read as follows:

§ 685.213 Total and permanent disability discharge.

* * * * *

(b) * * *

(2) *Disability certification or Social Security Administration (SSA) disability determination.* The application must contain—

(i) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b);

(ii) A certification by a nurse practitioner or physician assistant licensed by a State, or a certified psychologist at the independent practice level who are licensed to practice in the United States, that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b); or

(iii) An SSA Benefit Planning Query (BPQY) or an SSA notice of award, or other documentation deemed acceptable by the Secretary, indicating that—

(A) The borrower qualifies for Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) based on disability, and the borrower's next continuing disability review has been scheduled between 5 and 7 years;

(B) The borrower qualifies for SSDI benefits or SSI based on disability and the borrower's next continuing disability review has been scheduled at 3 years;

(C) The borrower has an established onset date for SSDI benefits or SSI of at least 5 years prior to the application for a disability discharge or has been receiving SSDI benefits or SSI based on disability for at least 5 years prior to the application for a TPD discharge;

(D) The borrower qualifies for SSDI or SSI based on a compassionate allowance; or

(E) For borrowers currently receiving SSA retirement benefits, documentation that, prior to the borrower qualifying for SSA retirement benefits, the borrower met the requirements in paragraphs (b)(2)(iii)(A) through (D) of this section.

(3) *Deadline for application submission.* The borrower must submit the application described in paragraph (b)(1) of this section to the Secretary within 90 days of the date the physician, nurse practitioner, physician assistant, or psychologist certifies the application, if applicable. Upon receipt of the borrower's application, the Secretary—

(i) Identifies all title IV loans owed by the borrower, notifies the lenders that the Secretary has received a total and permanent disability discharge application from the borrower and directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans;

(ii) If the application is incomplete, notifies the borrower of the missing information and requests the missing information from the borrower or the physician, nurse practitioner, physician assistant, or psychologist who certified the application, as appropriate, and does not make a determination of eligibility for discharge until the application is complete;

(iii) Notifies the borrower that no payments are due on the loan while the Secretary determines the borrower's eligibility for discharge; and

(iv) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(4) *Determination of eligibility.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the data described in paragraph (b)(2) of this section supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as described in paragraph (1) of the definition of that term in § 685.102(b), the borrower is considered totally and permanently disabled—

(A) As of the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's application; or

(B) As of the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section.

(ii) If the Secretary determines that the borrower's application does not support the conclusion that the borrower is totally and permanently disabled as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary may require the borrower to submit additional medical evidence. As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician or other medical professional identified by the Secretary at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary discharges the borrower's obligation to make any further payments on the loan, notifies the borrower that the loan has been discharged, and returns to the person who made the payments on the loan any payments received after the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's loan discharge application or the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(7)(i) of this section.

(iv) If the Secretary determines that the physician, nurse practitioner, physician assistant, or psychologist certification or the SSA data described in paragraph (b)(2)(iii) of this section provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled, as described in paragraph (1) of the definition of that term in § 685.102(b), the Secretary notifies the borrower that the application for a disability discharge has been denied. The notification to the borrower includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the Secretary under the terms of the promissory note and that the loan will return to the status that would have existed if the total and permanent disability discharge application had not been received;

(C) The date that the borrower must resume making payments;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the borrower's application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(v) If the borrower requests re-evaluation in accordance with paragraph (b)(4)(iv)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(4)(iv)(E) of this section, the request must include new information regarding the borrower's disabling condition that was

not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for total and permanent disability discharge.

(5) *Treatment of disbursements made during the period from the date of the certification or the date the Secretary received the SSA data until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's discharge application or before the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section and a disbursement of that loan or grant is made during the period from the date of the physician, nurse practitioner, physician assistant, or psychologist certification or the receipt of the SSA data described in paragraph (b)(2)(iii) of this section until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge request will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(6) *Receipt of new title IV loans or TEACH Grants certification, or after the date the Secretary received the SSA data.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician, nurse practitioner, physician assistant, or psychologist certified the borrower's discharge application or on or after the date the Secretary received the SSA data described in paragraph (b)(2)(iii) of this section and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and resumes collection on the borrower's loan.

(7) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates a borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(4)(iii) of this section if, within 3 years after the date the Secretary granted the discharge, the borrower receives a new TEACH Grant or a new loan under the Direct Loan Program, except for a Direct Consolidation Loan that includes loans that were not discharged.

(ii) If the borrower's obligation to repay the loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed if the total and permanent disability discharge application had not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(7)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 90 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

* * * * *

(d) *Discharge without an application.* (1) The Secretary will discharge a loan under this section without an application or any additional documentation from the borrower if the Secretary:

(i) Obtains data from the Department of Veterans Affairs showing that the borrower is unemployable due to a service-connected disability; or

(ii) Obtains data from the Social Security Administration (SSA) described in paragraph (b)(2)(iii) of this section

(2) [Reserved]

(e) *Notification to the borrower.* (1) After determining that a borrower qualifies for a total and permanent disability discharge under paragraph (d) of this section, the Secretary sends a notification to the borrower informing the borrower that the Secretary will discharge the borrower's title IV loans unless the borrower notifies the Secretary, by a date specified in the Secretary's notification, that the borrower does not wish to receive the loan discharge.

(2) Unless the borrower notifies the Secretary that the borrower does not wish to receive the discharge the Secretary discharges the loan:

(i) In accordance with paragraph (b)(4)(iii) of this section for a discharge based on data from the SSA; or

(ii) In accordance with paragraph (c)(2)(i) of this section for a discharge based on data from VA.

(3) If the borrower notifies the Secretary that they do not wish to receive the discharge, the borrower will remain responsible for repayment of the borrower's loans in accordance with the terms and conditions of the promissory notes that the borrower signed.

■ 32. Section 685.214 is amended by:
■ a. In paragraph (a)(1), removing the citation ''paragraph (c)'' and adding, in its place, the citation ''paragraph (d)''.
■ b. Revising paragraph (a)(2);
■ c. Removing paragraph (g);
■ d. Redesignating paragraphs (c) through (f) as paragraphs (d) through (g), respectively;
■ e. Adding a new paragraph (c);
■ f. Revising redesignated paragraphs (d) through (g); and
■ f. Adding a new paragraph (h).

The revisions and additions read as follows:

§ 685.214 Closed school discharge.

(a) * * *

(2) For purposes of this section—

(i) If a school has closed, the school's closure date is the earlier of: the date, determined by the Secretary, that the school ceased to provide educational instruction in programs in which most students at the school were enrolled, or a date determined by the Secretary that reflects when the school ceased to provide educational instruction for all of its students;

(ii) ''School'' means a school's main campus or any location or branch of the main campus, regardless of whether the school or its location or branch is considered title IV eligible;

(iii) ''Program'' means the credential defined by the level and Classification of Instructional Program code in which a student is enrolled, except that the Secretary may define a borrower's program as multiple levels or Classification of Instructional Program codes if:

(A) The enrollment occurred at the same institution in closely proximate periods;

(B) The school granted a credential in a program while the student was enrolled in a different program; or

(C) The programs must be taken in a set order or were presented as necessary for borrowers to complete in order to succeed in the relevant field of employment;

* * * * *

(c) *Discharge without an application.* (1) If the Secretary determines based on information in the Secretary's possession that the borrower qualifies for the discharge of a loan under this section, the Secretary discharges the loan without an application or any statement from the borrower 1 year after the institution's closure date if the borrower did not complete the program

at another branch or location of the school or through a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(2) If a borrower accepts but does not complete a continuation of the program at another branch or location of the school or a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency, then the Secretary discharges the loan 1 year after the borrower's last date of attendance at the other branch or location or in the teach-out program.

(d) *Borrower qualification for discharge.* (1) Except as provided in paragraphs (c) and (h) of this section, to qualify for discharge of a loan under this section, a borrower must submit to the Secretary a completed application and the factual assertions in the application must be true and must be made by the borrower under penalty of perjury. The application explains the procedures and eligibility criteria for obtaining a discharge and requires the borrower to—

(i) State that the borrower (or the student on whose behalf a parent borrowed)—

(A) Received the proceeds of a loan, in whole or in part, on or after January 1, 1986, to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 180 calendar days before the school closed. The Secretary may extend the 180-day period if the Secretary determines that exceptional circumstances, as described in paragraph (i) of this section, justify an extension; and

(C) On or after July 1, 2023, state that the borrower did not complete the program at another branch or location of the school or through a teach-out agreement at another school, approved by the school's accrediting agency and, if applicable, the school's State authorizing agency.

(ii) State whether the borrower (or student) has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation; and

(iii) State that the borrower (or student)—

(A) Agrees to provide to the Secretary upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (d) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (e) of this section.

(2) [Reserved]

(e) *Cooperation by borrower in enforcement actions.* (1) To obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(i) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(ii) Produce any documents reasonably available to the borrower with respect to those representations; and

(iii) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(2) The Secretary denies the request for a discharge or revokes the discharge of a borrower who—

(i) Fails to provide the testimony, documents, or a sworn statement required under paragraph (d)(1) of this section; or

(ii) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(f) *Transfer to the Secretary of borrower's right of recovery against third parties.* (1) Upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(2) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(3) Nothing in this section limits or forecloses the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged Direct Loan.

(g) *Discharge procedures.* (1) After confirming the date of a school's closure, the Secretary identifies any Direct Loan borrower (or student on whose behalf a parent borrowed) who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 180 days prior to the closure date.

(2) If the borrower's current address is known, the Secretary mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(3) If the borrower's current address is unknown, the Secretary attempts to locate the borrower and determines the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school, the school's licensing agency, the school's accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (g)(2) of this section.

(4) If a borrower fails to submit the application described in paragraph (d) of this section within 90 days of the Secretary's providing the discharge application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended.

(5) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

(6) If the Secretary determines that a borrower who requests a discharge meets the qualifications for a discharge, the Secretary notifies the borrower in writing of that determination.

(7) If the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower in writing of that

determination and the reasons for the determination.

(h) *Exceptional circumstances.* For purposes of this section, exceptional circumstances include, but are not limited to—

(1) The revocation or withdrawal by an accrediting agency of the school's institutional accreditation;

(2) The school is or was placed on probation or issued a show-cause order, or was placed on an equivalent accreditation status, by its accrediting agency for failing to meet one or more of the agency's standards;

(3) The revocation or withdrawal by the State authorization or licensing authority to operate or to award academic credentials in the State;

(4) The termination by the Department of the school's participation in a title IV, HEA program;

(5) A finding by a State or Federal government agency that the school violated State or Federal law related to education or services to students;

(6) A State or Federal court judgment that a School violated State or Federal law related to education or services to students;

(7) The teach-out of the student's educational program exceeds the 180-day look-back period for a closed school discharge;

(8) The school responsible for the teach-out of the student's educational program fails to perform the material terms of the teach-out plan or agreement, such that the student does not have a reasonable opportunity to complete his or her program of study;

(9) The school discontinued a significant share of its academic programs;

(10) The school permanently closed all or most of its in-person locations while maintaining online programs; and

(11) The school was placed on the heightened cash monitoring payment method as defined in § 668.162(d)(2) of this chapter.

■ 33. Section 685.215 is amended by:

■ a. Revising paragraph (a)(1);

■ b. Adding paragraph (a)(3);

■ c. Revising paragraphs (c) introductory text and (c)(1) through (5);

■ d. Redesignating paragraphs (c)(6) through (8) as paragraphs (c)(7) through (9), respectively;

■ e. Adding a new paragraph (c)(6);

■ f. Adding paragraph (c)(10);

■ g. Revising paragraph (d); and

■ h. Removing paragraphs (e) and (f).

The revisions and additions read as follows:

§ 685.215 Discharge for false certification of student eligibility or unauthorized payment.

(a) *Basis for discharge*—(1) *False certification.* The Secretary discharges a borrower's (and any endorser's) obligation to repay a Direct Loan in accordance with the provisions of this section if a school falsely certifies the eligibility of the borrower (or the student on whose behalf a parent borrowed) to receive the proceeds of a Direct Loan. The Secretary considers a student's eligibility to borrow to have been falsely certified by the school if the school—

(i) Certified the eligibility of a student who—

(A) Reported not having a high school diploma or its equivalent; and

(B) Did not satisfy the alternative to graduation from high school requirements under section 484(d) of the Act and 34 CFR 668.32(e) of this chapter that were in effect when the loan was originated;

(ii) Certified the eligibility of a student who is not a high school graduate based on—

(A) A high school graduation status falsified by the school; or

(B) A high school diploma falsified by the school or a third party to which the school referred the borrower;

(iii) Signed the borrower's name on the loan application or promissory note without the borrower's authorization;

(iv) Certified the eligibility of the student who, because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary, would not meet State requirements for employment (in the student's State of residence when the loan was originated) in the occupation for which the training program supported by the loan was intended; or

(v) Certified the eligibility of a student for a Direct Loan as a result of the crime of identity theft committed against the individual, as that crime is defined in paragraph (c)(6) of this section.

* * * * *

(3) *Loan origination.* For purposes of this section, a loan is originated when the school submits the loan record to the Department's Common Origination and Disbursement (COD) System. Before originating a Direct Loan, a school must determine the student's or parent's eligibility for the loan. For each Direct Loan that a school disburses to a student or parent, the school must first submit a loan award record to the COD system and receive an accepted response.

* * * * *

(c) *Borrower qualification for discharge.* To qualify for discharge under this paragraph, the borrower must submit to the Secretary an application for discharge on a form approved by the Secretary. The application need not be notarized but must be made by the borrower under penalty of perjury; and in the application, the borrower's responses must demonstrate to the satisfaction of the Secretary that the requirements in paragraphs (c)(1) through (7) of this section have been met. If the Secretary determines the application does not meet the requirements, the Secretary notifies the applicant and explains why the application does not meet the requirements.

(1) *High school diploma or equivalent.* In the case of a borrower requesting a discharge based on not having a high school diploma and not having met the alternative to graduation from high school eligibility requirements under section 484(d) of the Act and 34 CFR 668.32(e) of this chapter as applicable when the loan was originated, and the school or a third party to which the school referred the borrower falsified the student's high school diploma, the borrower must state in the application that the borrower (or the student on whose behalf a parent received a PLUS loan)—

(i) Reported not having a valid high school diploma or its equivalent when the loan was originated; and

(ii) Did not satisfy the alternative to graduation from high school statutory or regulatory eligibility requirements identified on the application form and applicable when the loan was originated.

(2) *Disqualifying condition.* In the case of a borrower requesting a discharge based on a condition that would disqualify the borrower from employment in the occupation that the training program for which the borrower received the loan was intended, the borrower must state in the application that the borrower (or student for whom a parent received a PLUS loan) did not meet State requirements for employment in the student's State of residence in the occupation that the training program for which the borrower received the loan was intended because of a physical or mental condition, age, criminal record, or other reason accepted by the Secretary.

(3) *Unauthorized loan.* In the case of a borrower requesting a discharge because the school signed the borrower's name on the loan application or promissory note without the borrower's authorization, the borrower must state that he or she did not sign the document in question or authorize the school to do so.

(4) *Unauthorized payment.* In the case of a borrower requesting a discharge because the school, without the borrower's authorization, endorsed the borrower's loan check or signed the borrower's authorization for electronic funds transfer, the borrower must—

(i) State that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or authorize the school to do so; and

(ii) State that the proceeds of the contested disbursement were not delivered to the student or applied to charges owed by the student to the school.

(5) *Identity theft.* In the case of an individual whose eligibility to borrow was falsely certified because he or she was a victim of the crime of identity theft and is requesting a discharge, the individual must—

(i) Certify that the individual did not sign the promissory note, or that any other means of identification used to obtain the loan was used without the authorization of the individual claiming relief;

(ii) Certify that the individual did not receive or benefit from the proceeds of the loan with knowledge that the loan had been made without the authorization of the individual; and

(iii) Provide a statement of facts and supporting evidence that demonstrate, to the satisfaction of the Secretary, that eligibility for the loan in question was falsely certified as a result of identity theft committed against that individual. Supporting evidence may include—

(A) A judicial determination of identity theft relating to the individual;

(B) A Federal Trade Commission identity theft affidavit;

(C) A police report alleging identity theft relating to the individual;

(D) Documentation of a dispute of the validity of the loan due to identity theft filed with at least three major consumer reporting agencies; and

(E) Other evidence acceptable to the Secretary.

(6) *Definition of identity theft.* (i) For purposes of this section, identity theft is defined as the unauthorized use of the identifying information of another individual that is punishable under 18 U.S.C. 1028, 1028A, 1029, or 1030, or substantially comparable State or local law.

(ii) Identifying information includes, but is not limited to—

(A) Name, Social Security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number;

(B) Unique biometric data, such as fingerprints, voiceprint, retina or iris image, or unique physical representation;

(C) Unique electronic identification number, address, or routing code; or

(D) Telecommunication identifying information or access device (as defined in *18 U.S.C. 1029(e)*).

* * * * *

(10) *Application for group discharge.* A State Attorney General or nonprofit legal services representative may submit to the Secretary an application for a group discharge under this section.

(d) *Discharge procedures.* (1) If the Secretary determines that a borrower's Direct Loan may be eligible for a discharge under this section, the Secretary provides the borrower an application and an explanation of the qualifications and procedures for obtaining a discharge. The Secretary also promptly suspends any efforts to collect from the borrower on any affected loan. The Secretary may continue to receive borrower payments.

(2) If the borrower fails to submit the application for discharge and supporting information described in paragraph (c) of this section within 60 days of the Secretary's providing the application, the Secretary resumes collection and grants forbearance of principal and interest for the period in which collection activity was suspended.

(3) If the borrower submits an application for discharge that the Secretary determines is incomplete, the Secretary notifies the borrower of that determination and allows the borrower an additional 30-days to amend their application and provide supplemental information. If the borrower does not amend their application within 30 days of receiving the notification from the Secretary, the borrower's application is closed as incomplete and the Secretary resumes collection of the loan and grants forbearance of principal and interest for the period in which collection activity was suspended.

(4) If the borrower submits a completed application described in paragraph (c) of this section, the Secretary determines whether the available evidence supports the claim for discharge. Available evidence includes evidence provided by the borrower and any other relevant information from the Secretary's records and gathered by the Secretary from other sources, including guaranty agencies, other Federal agencies, State authorities, test publishers, independent test administrators, school records, and cognizant accrediting associations. The Secretary issues a decision that explains the reasons for any adverse determination on the application, describes the evidence on which the decision was made, and provides the borrower, upon request, copies of the evidence. The Secretary considers any response from the borrower and any additional information from the borrower and notifies the borrower whether the determination is changed.

(5) If the Secretary determines that the borrower meets the applicable requirements for a discharge under paragraph (c) of this section, the Secretary notifies the borrower in writing of that determination.

(6) If the Secretary determines that the borrower does not qualify for a discharge, the Secretary notifies the borrower in writing of that determination and the reasons for the determination.

(7) A borrower is not precluded from re-applying for a discharge under paragraph (c) of this section if the discharge request is closed as incomplete, or if the Secretary determines that the borrower does not qualify for a discharge if the borrower provides additional supporting evidence.

■ 34. Section 685.219 is revised to read as follows:

§ 685.219 Public Service Loan Forgiveness Program (PSLF).

(a) *Purpose.* The Public Service Loan Forgiveness Program is intended to encourage individuals to enter and continue in full-time public service employment by forgiving the remaining balance of their Direct loans after they satisfy the public service and loan payment requirements of this section.

(b) *Definitions.* The following definitions apply to this section:

AmeriCorps service means service in a position approved by the Corporation for National and Community Service under section 123 of the National and Community Service Act of 1990 (42 U.S.C. 12573).

Civilian service to the military means providing services to or on behalf of members, veterans, or the families or survivors of deceased members of the U.S. Armed Forces or the National Guard that is provided to a person because of the person's status in one of those groups.

Early childhood education program means an early childhood education program as defined in section 103(8) of the Act (20 U.S.C. 1003).

Eligible Direct Loan means a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct PLUS Loan, or a Direct Consolidation Loan.

Emergency management services means services that help remediate, lessen, or eliminate the effects or potential effects of emergencies that threaten human life or health, or real property.

Employee or employed means an individual—

(i) To whom an organization issues an IRS Form W–2;

(ii) Who receives an IRS Form W–2 from an organization that has contracted with a qualifying employer to provide payroll or similar services for the qualifying employer, and which provides the Form W–2 under that contract;

(iii) who works as a contracted employee for a qualifying employer in a position or providing services which, under applicable state law, cannot be filled or provided by a direct employee of the qualifying employer.

Full-time means:

(i) Working in qualifying employment in one or more jobs—

(A) A minimum average of 30 hours per week during the period being certified,

(B) A minimum of 30 hours per week throughout a contractual or employment period of at least 8 months in a 12-month period, such as elementary and secondary school teachers and professors and instructors, in higher education, in which case the borrower is deemed to have worked full time; or

(C) The equivalent of 30 hours per week as determined by multiplying each credit or contact hour taught per week by at least 3.35 in non-tenure track employment at an institution of higher education.

(ii) Routine paid vacation or paid leave time provided by the employer, and leave taken under the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)) will be considered when determining if the borrower is working full-time.

Law enforcement means service that is publicly funded and whose principal activities pertain to crime prevention, control or reduction of crime, or the enforcement of criminal law.

Military service means ''active duty'' service or ''full-time National Guard duty'' as defined in section 101(d)(1) and (d)(5) of title 10 in the United States Code and does not include active duty for training or attendance at a service school.

Non-governmental public service means services provided by employees of a non-governmental qualified employer where the employer has devoted a majority of its full-time equivalent employees to working in at least one of the following areas (as defined in this section): emergency management, civilian service to military personnel military service, public safety, law enforcement, public interest law services, early childhood education, public service for individuals with disabilities or the elderly, public health, public education, public library services, school library, or other school-based services. Service as a member of the U.S. Congress is not qualifying public service employment for purposes of this section.

Non-tenure track employment means work performed by adjunct, contingent or part time faculty, teachers, or lecturers who are paid based on the credit hours they teach at institutions of higher education.

Other school-based service means the provision of services to schools or students in a school or a school-like setting that are not public education services, such as school health services and school nurse services, social work services in schools, and parent counseling and training.

Peace Corps position means a full-time assignment under the Peace Corps Act as provided for under 22 U.S.C. 2504.

Public education service means the provision of educational enrichment or support to students in a public school or a public school-like setting, including teaching.

Public health means those engaged in the following occupations (as those terms are defined by the Bureau of Labor Statistics): physicians, nurse practitioners, nurses in a clinical setting, health care practitioners, health care support, counselors, social workers, and other community and social service specialists.

Public interest law is legal services that are funded in whole or in part by a local, State, Federal, or Tribal government.

Public library service means the operation of public libraries or services that support their operation.

Public safety service means services that seek to prevent the need for emergency management services.

Public service for individuals with disabilities means services performed for or to assist individuals with disabilities (as defined in the Americans with Disabilities Act (42 U.S.C. 12102)) that is provided to a person because of the person's status as an individual with a disability.

Public service for the elderly means services that are provided to individuals who are aged 62 years or older and that are provided to a person because of the person's status as an individual of that age.

Qualifying employer means:

(i) A United States-based Federal, State, local, or Tribal government organization, agency, or entity, including the U.S. Armed Forces or the National Guard;

(ii) A public child or family service agency;

(iii) An organization under section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code;

(iv) A Tribal college or university; or

(v) A nonprofit organization that—

(A) Provides a non-governmental public service as defined in this section, attested to by the employer on a form approved by the Secretary; and

(B) Is not a business organized for profit, a labor union, or a partisan political organization.

Qualifying repayment plan means:

(i) An income-contingent repayment plan under § 685.209 or an income-based repayment plan under § 685.221;

(ii) The 10-year standard repayment plan under § 685.208(b) or the consolidation loan standard repayment plan with a 10-year repayment term under § 685.208(c); or

(iii) Except for the alternative repayment plan, any other repayment plan if the monthly payment amount is not less than what would have been paid under the 10-year standard repayment plan under § 685.208(b).

School library services means the operations of school libraries or services that support their operation.

(c) *Borrower eligibility.* (1) A borrower may obtain loan forgiveness under this program if the borrower—

(i) Is not in default on the loan at the time forgiveness is requested;

(ii) Is employed full-time by a qualifying employer or serving in a full-time AmeriCorps or Peace Corps position—

(A) When the borrower satisfied the 120 monthly payments described under paragraph (c)(1)(iii) of this section; and

(B) At the time the borrower applies for forgiveness under paragraph (e) of this section; and

(iii) Satisfies the equivalent of 120 monthly payments after October 1, 2007, as described in paragraph (c)(2) of this section, on eligible Direct loans.

(2) A borrower will be considered to have made monthly payments under paragraph (c)(1)(iii) of this section by—

(i) Paying at least the full scheduled amount due for a monthly payment under the qualifying repayment plan;

(ii) Paying in multiple installments that equal the full scheduled amount due for a monthly payment under the qualifying repayment plan;

(iii) For a borrower on an income-contingent repayment plan under § 685.209 or an income-based repayment plan under § 685.221, paying a lump sum or monthly payment amount that is equal to or greater than the full scheduled amount in advance of the borrower's scheduled payment due date for a period of months not to exceed the period from the Secretary's receipt of the payment until the borrower's next annual repayment plan recertification date under the qualifying repayment plan in which the borrower is enrolled;

(iv) For a borrower on the 10-year standard repayment plan under § 685.208(b) or the consolidation loan standard repayment plan with a 10-year repayment term under § 685.208(c), paying a lump sum or monthly payment amount that is equal to or greater than the full scheduled amount in advance of the borrower's scheduled payment due date for a period of months not to exceed the period from the Secretary's receipt of the payment until the lesser of 12 months from that date or the date upon which the Secretary receives the borrower's next submission under subsection (e).

(v) Receiving one of the following deferments or forbearances for the month:

(A) Cancer treatment deferment under section 455(f)(3) of the Act;

(B) Economic hardship deferment under § 685.204(g);

(C) Military service deferment under § 685.204(h);

(D) Post-active-duty student deferment under § 685.204(i);

(E) AmeriCorps forbearance under § 685.205(a)(4);

(F) National Guard Duty forbearance under § 685.205(a)(7);

(G) U.S. Department of Defense Student Loan Repayment Program forbearance under § 685.205(a)(9);

(H) Administrative forbearance or mandatory administrative forbearance under § 685.205(b)(8) or (9); and

(vi) Being employed full-time with a qualifying employer, as defined in this section, at any point during the month for which the payment is credited.

(3) If a borrower consolidates one or more Direct Loans into a Direct Consolidation Loan, including a Direct PLUS Loan made to a parent borrower, the weighted average of the payments the borrower made on the Direct Loans prior to consolidating and that met the criteria in paragraphs (c)(2)(i) through (vi) of this section will count as qualifying payments on the Direct Consolidation Loan.

(d) *Forgiveness amount.* The Secretary forgives the principal and accrued interest that remains on all loans for which the borrower meets the requirements of paragraph (c) of this section as of the date the borrower satisfied the last required monthly payment obligation.

(e) *Application process.* (1) Notwithstanding paragraph (f) of this section, after making the 120 monthly qualifying payments on the eligible loans for which loan forgiveness is requested while working the 120 months of qualifying service, a borrower may request loan forgiveness by filing an application approved by the Secretary.

(2) If the Secretary has sufficient information to determine the borrower's qualifying employer and length of employment, the Secretary informs the borrower if the borrower is eligible for forgiveness.

(3) If the Secretary does not have sufficient information to make a determination of the borrower's eligibility for forgiveness, the borrower must provide additional information about the borrower's employment and employer on a form approved by the Secretary.

(4) If the borrower is unable to secure a certification of employment from a qualifying employer, the Secretary may determine the borrower's qualifying employment or payments based on other documentation provided by the borrower at the Secretary's request.

(5) The Secretary may request reasonable additional documentation pertaining to the borrower's employer or employment before providing a determination.

(6) The Secretary may substantiate an employer's attestation of information provided on the form in paragraph (e)(3) of this section based on a review of information about the employer.

(7) If the Secretary determines that the borrower meets the eligibility requirements for loan forgiveness under this section, the Secretary—

(i) Notifies the borrower of this determination; and

(ii) Forgives the outstanding balance of the eligible loans.

(8) If the Secretary determines that the borrower does not meet the eligibility requirements for loan forgiveness under this section, grants forbearance of payment on both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection of the loan. The Secretary does not capitalize any interest accrued and not paid during this period.

(f) *Application not required.* The Secretary forgives a loan under this section without an application from the borrower if the Secretary has sufficient information in the Secretary's possession to determine the borrower has satisfied the requirements for forgiveness under this section.

(g) *Reconsideration process.* (1) Within 90 days of the date the Secretary sent the notice of denial of forgiveness under paragraph (e)(8) of this section to the borrower, the borrower may request that the Secretary reconsider whether the borrower's employer or any payment meets the requirements for credit toward forgiveness by requesting reconsideration on a form approved by the Secretary. Borrowers who were denied loan forgiveness under this section after October 1, 2017, and prior to [EFFECTIVE DATE OF FINAL RULE], have 180 days from the effective date of this Final Rule to request reconsideration.

(2) To evaluate a reconsideration request, the Secretary considers—

(i) Any relevant evidence that is obtained by the Secretary; and

(ii) Additional supporting documentation not previously provided by the borrower or employer.

(3) The Secretary notifies the borrower of the reconsideration decision and the reason for the Secretary's determination.

(4) If the Secretary determines that the borrower qualifies for forgiveness, the Secretary adjusts the borrower's number of qualifying payments or forgives the loan, as appropriate.

(5) After the Secretary makes a decision on the borrower's reconsideration request, the Secretary's decision is final, and the borrower will not receive additional reconsideration unless the borrower presents additional evidence.

(6) For any months in which a borrower postponed monthly payments under a deferment or forbearance and was employed full-time at a qualifying employer as defined in this section but was in a deferment or forbearance status besides those listed in paragraph (c)(2)(v) of this section, the borrower may obtain credit toward forgiveness for those months, as defined in paragraph (d) of this section, for any months in which the borrower—

(i) Makes an additional payment equal to or greater than the amount they would have paid at that time on a qualifying repayment plan or

(ii) Otherwise qualified for a $0 payment on an income-driven repayment plan under § 685.209 and income-based repayment plan under § 685.221.

■ 33. Section 685.300 is amended by:
■ a. Revising paragraphs (b)(7) and (10);
■ b. Redesignating paragraphs (b)(11) and (12) as paragraphs (b)(12) and (13), respectively;
■ c. Adding new paragraph (b)(11);
■ d. Revising newly redesignated paragraph (b)(13); and
■ e. Adding paragraphs (d) through (i).

The revisions and additions read as follows:

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

* * * * *

(b) * * *

(7) Provide assurances that the school will comply with loan information requirements established by the Secretary with respect to loans made under the Direct Loan Program;

* * * * *

(10) Provide that the school will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or for the provision of information necessary for a student or parent to receive a loan under part D of the Act or for any benefits associated with such a loan;

(11) Comply with the provisions of paragraphs (d) through (i) of this section regarding student claims and disputes;

* * * * *

(13) Accept responsibility and financial liability stemming from losses incurred by the Secretary for repayment of amounts discharged by the Secretary pursuant to §§ 685.206, 685.214, 685.215, 685.216, 685.222, and subpart D of this part.

* * * * *

(d) *Borrower defense claims in an internal dispute process.* The school will not compel any student to pursue a complaint based on allegations that would provide a basis for a borrower defense claim through an internal dispute process before the student presents the complaint to an accrediting agency or government agency authorized to hear the complaint.

(e) *Class action bans.* (1) The school will not seek to rely in any way on a pre-dispute arbitration agreement or on any other pre-dispute agreement with a student who has obtained or benefited from a Direct Loan, with respect to any aspect of a class action that is related to a borrower defense claim, unless and until the presiding court has ruled that the case may not proceed as a class action and, if that ruling may be subject to appellate review on an interlocutory basis, the time to seek such review has elapsed or the review has been resolved.

(2) Reliance on a pre-dispute arbitration agreement, or on any other pre-dispute agreement, with a student, with respect to any aspect of a class action includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a class action;

(ii) Seeking to exclude a person or persons from a class in a class action;

(iii) Objecting to or seeking a protective order intended to avoid responding to discovery in a class action;

(iv) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action;

(v) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action after the trial court has denied a motion to certify the class but before an appellate court has ruled on an interlocutory appeal of that motion, if the time to seek such an appeal has not elapsed or the appeal has not been resolved; and

(vi) Filing a claim in arbitration against a student who has filed a claim on the same issue in a class action, after the trial court in that class action has granted a motion to dismiss the claim and noted that the consumer has leave to refile the claim on a class basis, if the time to refile the claim has not elapsed.

(3) Required provisions and notices: (i) After the effective date of this regulation, the school must include the following provision in any agreements with a student recipient of a Direct Loan for attendance at the school, or a student for whom the PLUS loan was obtained, that include pre-dispute arbitration or any other pre-dispute agreement addressing class actions: ''We agree that this agreement cannot be used to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court, or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Direct Loan or our provision of educational services for which the Direct Loan was obtained. We agree that the court has exclusive jurisdiction to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(ii) When a pre-dispute arbitration agreement or any other pre-dispute agreement addressing class actions has been entered into before the effective date of this regulation and does not contain the provision described in paragraph (e)(3)(i) of this section, the school must either ensure the agreement is amended to contain that provision or provide the student to whom the agreement applies with written notice of that provision.

(iii) The school must ensure the agreement described in paragraph (e)(3)(ii) of this section is amended to contain the provision set forth in paragraph (e)(3)(i) or must provide the notice to students specified in that paragraph no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment, whichever is earlier.

(A) *Agreement provision.* ''We agree that neither we, nor anyone else who later becomes a party to this agreement, will use it to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court, or you may be a member of a class action lawsuit in court even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. We agree that the court has exclusive jurisdiction to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(B) *Notice provision.* ''We agree not to use any pre-dispute agreement to stop you from being part of a class action lawsuit in court. You may file a class action lawsuit in court, or you may be a member of a class action lawsuit even if you do not file it. This provision applies only to class action claims concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. We agree that the court has exclusive jurisdiction to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(f) *Pre-dispute arbitration agreements.* (1)(i) The school will not enter into a pre-dispute agreement to arbitrate a borrower defense claim or rely in any way on a pre-dispute arbitration agreement with respect to any aspect of a borrower defense claim.

(ii) A student may enter into a voluntary post-dispute arbitration

agreement with a school to arbitrate a borrower defense claim.

(2) Reliance on a pre-dispute arbitration agreement with a student with respect to any aspect of a borrower defense claim includes, but is not limited to, any of the following:

(i) Seeking dismissal, deferral, or stay of any aspect of a judicial action filed by the student, including joinder with others in an action;

(ii) Objecting to or seeking a protective order intended to avoid responding to discovery in a judicial action filed by the student; and

(iii) Filing a claim in arbitration against a student who has filed a suit on the same claim.

(3) Required provisions and notices: (i) The school must include the following provision in any pre-dispute arbitration agreements with a student recipient of a Direct Loan for attendance at the school, or, with respect to a Parent PLUS Loan, a student for whom the PLUS loan was obtained, that include any agreement regarding arbitration and that are entered into after the effective date of this regulation: ''We agree that neither we nor anyone else will use this agreement to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit for such a claim, or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to lawsuits concerning other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(ii) When a pre-dispute arbitration agreement has been entered into before the effective date of this regulation, that did not contain the provision specified in paragraph (f)(3)(i) of this section, the school must either ensure the agreement is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or provide the student to whom the agreement applies with the written notice specified in paragraph (f)(3)(iii)(B) of this section.

(iii) The school must ensure the agreement described in paragraph (f)(3)(ii) of this section is amended to contain the provision specified in paragraph (f)(3)(iii)(A) of this section or must provide the notice specified in paragraph (f)(3)(iii)(B) of this section to students no later than the exit counseling required under § 685.304(b), or the date on which the school files its initial response to a demand for arbitration or service of a complaint from a student who has not already been sent a notice or amendment, whichever is earlier.

(A) *Agreement provision.* ''We agree that neither we, nor anyone else who later becomes a party to this pre-dispute arbitration agreement, will use it to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit for such a claim, or you may be a member of a class action lawsuit for such a claim even if you do not file it. This provision does not apply to other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Federal Direct Loan or the provision of educational services for which the loan was obtained.''

(B) *Notice provision.* ''We agree not to use any pre-dispute arbitration agreement to stop you from bringing a lawsuit concerning our acts or omissions regarding the making of the Federal Direct Loan or the provision by us of educational services for which the Federal Direct Loan was obtained. You may file a lawsuit regarding such a claim, or you may be a member of a class action lawsuit regarding such a claim even if you do not file it. This provision does not apply to any other claims. We agree that only the court is to decide whether a claim asserted in the lawsuit is a claim regarding the making of the Direct Loan or the provision of educational services for which the loan was obtained.''

(g) *Submission of arbitral records.* (1) A school must submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any borrower defense claim filed in arbitration by or against the school:

(i) The initial claim and any counterclaim;

(ii) The arbitration agreement filed with the arbitrator or arbitration administrator;

(iii) The judgment or award, if any, issued by the arbitrator or arbitration administrator;

(iv) If an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the school's failure to pay required filing or administrative fees, any communication the school receives from the arbitrator or arbitration administrator related to such a refusal; and

(v) Any communication the school receives from an arbitrator or an arbitration administrator related to a determination that a pre-dispute arbitration agreement regarding educational services provided by the school does not comply with the administrator's fairness principles, rules, or similar requirements, if such a determination occurs;

(2) A school must submit any record required pursuant to paragraph (g)(1) of this section within 60 days of filing by the school of any such record with the arbitrator or arbitration administrator and within 60 days of receipt by the school of any such record filed or sent by someone other than the school, such as the arbitrator, the arbitration administrator, or the student.

(3) The Secretary will publish the records submitted by schools in paragraph (g)(1) of this section in a centralized database accessible to the public.

(h) *Submission of judicial records.* (1) A school must submit a copy of the following records to the Secretary, in the form and manner specified by the Secretary, in connection with any borrower defense claim filed in a lawsuit by the school against the student or by any party, including a government agency, against the school:

(i) The complaint and any counterclaim;

(ii) Any dispositive motion filed by a party to the suit; and

(iii) The ruling on any dispositive motion and the judgment issued by the court;

(2) A school must submit any record required pursuant to paragraph (h)(1) of this section within 30 days of filing or receipt, as applicable, of the complaint, answer, or dispositive motion, and within 30 days of receipt of any ruling on a dispositive motion or a final judgment;

(3) The Secretary will publish the records submitted by schools in paragraph (h)(1) in a centralized database accessible to the public.

(i) *Definitions.* For the purposes of paragraphs (d) through (h) of this section, the term—

(1) *Borrower defense claim* means a claim based on an act or omission that is or could be asserted as a borrower defense as defined in:

(i) § 685.206(c)(1);

(ii) § 685.222(a)(5);

(iii) § 685.206(e)(1)(iii); or

(iv) § 685.401(a);

(2) *Class action* means a lawsuit in which one or more parties seek class treatment pursuant to Federal Rule of Civil Procedure 23 or any State process

analogous to Federal Rule of Civil Procedure 23;

(3) *Dispositive motion* means a motion asking for a court order that entirely disposes of one or more claims in favor of the party who files the motion without need for further court proceedings;

(4) *Pre-dispute arbitration agreement* means any agreement, regardless of its form or structure, between a school or a party acting on behalf of a school and a student that provides for arbitration of any future dispute between the parties.

§ 685.304 [Amended]

■ 35. Section 685.304 is amended:

■ a. In paragraph (a)(6)(xi), by adding ''and'' after ''records;'';

■ b. In paragraph (a)(6)(xii), by removing the semicolon after ''loan'' and adding a period in its place; and

■ c. Removing paragraphs (a)(6)(xiii) through (xv).

■ 36. Section 685.308 is amended by revising paragraph (a)(3) to read as follows:

§ 685.308 Remedial actions.

(a) * * *

(3) The school's actions that gave rise to a successful claim for which the Secretary discharged a loan, in whole or in part, pursuant to §§ 685.206, 685.214, 685.216, 685.222, or subpart D of this part.

* * * * *

■ 37. Subpart D is added to read as follows:

Subpart D—Borrower Defense to Repayment

Sec.
685.400 Scope and purpose.
685.401 Borrower defense-general.
685.402 Group process for borrower defense.
685.403 Individual process for borrower defense.
685.404 Group process based on prior Secretarial final actions.
685.405 Institutional response.
685.406 Adjudication of borrower defense applications.
685.407 Reconsideration.
685.408 Discharge.
685.409 Recovery from institutions.
685.410 Cooperation by the borrower.
685.411 Transfer to the Secretary of the borrower's right of recovery against third parties.
685.499 Severability.

Subpart D—Borrower Defense to Repayment

§ 685.400 Scope and purpose.

This subpart sets forth the provisions under which a borrower defense to repayment may be asserted and applies to borrower defense applications pending with the Secretary on July 1, 2023, or received by the Secretary on or after July 1, 2023.

§ 685.401 Borrower defense-general.

(a) *Definitions.* For the purposes of this subpart, the following definitions apply:

Borrower means

(i) The borrower; and

(ii) In the case of a Direct PLUS Loan, any endorsers, and for a Direct PLUS Loan made to a parent, the student on whose behalf the parent borrowed.

Borrower defense to repayment means an act or omission of the school attended by the student that relates to the making of a Direct Loan for enrollment at the school or the provision of educational services for which the loan was provided and that caused the borrower detriment warranting relief in the form of:

(i) A defense to repayment of all amounts owed to the Secretary on a Direct Loan including a Direct Consolidation Loan that was used to repay a Direct Loan, a FFEL Program Loan, Federal Perkins Loan, Health Professions Student Loan, Loan for Disadvantaged Students under subpart II of part A of title VII of the Public Health Service Act, Health Education Assistance Loan, or Nursing Loan made under part E of the Public Health Service Act;

(ii) Reimbursement of all payments previously made to the Secretary on the Direct Loan or on a loan repaid by the Direct Consolidation Loan;

(iii) For borrowers in default, determining that the borrower is not in default on the loan and is eligible to receive assistance under title IV of the Act; and

(iv) Updating or deleting adverse reports the Secretary previously made to consumer reporting agencies regarding the borrower's Direct Loan.

Covered loan means a Direct Loan or other Federal student loan that is or could be consolidated into a Federal Direct Consolidation Loan.

Department official means an employee of the Department who administers the group process described in § 685.402, the individual process as described in § 685.403, and the institutional response process in § 685.405.

Direct Loan means a Direct Subsidized Loan, a Direct Unsubsidized Loan, a Direct PLUS Loan, or a Direct Consolidation Loan.

Legal assistance organization means a legal assistance organization that:

(i) employs attorneys who:

(A) Are full-time employees;

(B) Provide civil legal assistance on a full-time basis; and

(C) Are continually licensed to practice law; and,

(ii) Is a nonprofit organization that provides legal assistance with respect to civil matters to low-income individuals without a fee.

Legal representation authority means a written agreement entered into between a borrower and a legal assistance organization that authorizes the legal assistance organization to represent the borrower in connection with a claim for borrower defense or a court order appointing the legal assistance organization class counsel for a certified class that includes the borrower in an action asserting claims with elements substantially similar to the elements of a claim for borrower defense.

School and *institution* may be used interchangeably and include an eligible institution as defined in 34 CFR 600.2, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or to provide marketing, advertising, recruiting, or admissions services.

State requestor means a State as defined in 34 CFR 600.2, a State attorney general, a State oversight entity, a State agency responsible for approving educational institutions in the State, or a regulatory agency with the authority from that State.

Third-party requestor means a *State requestor* or *legal assistance organization* as defined in § 685.401(a).

(b) *Federal standard for borrower defense applications received on or after July 1, 2023, and for applications pending with the Secretary on July 1, 2023.* A borrower with a balance due on a covered loan will be determined to have a defense to repayment of a Direct Loan under this subpart, if at any time the Department concludes by a preponderance of the evidence that the institution committed an actionable act or omission and, as a result, the borrower suffered detriment of a nature and degree warranting the relief provided by a borrower defense to repayment as defined in this section. An actionable act or omission means—

(1) The institution made a substantial misrepresentation as defined in 34 CFR part 668, subpart F, that misled the borrower in connection with the borrower's decision to attend, or to continue attending, the institution or the borrower's decision to take out a covered loan;

(2) The institution made a substantial omission of fact, as defined in 34 CFR part 668, subpart F, in connection with the borrower's decision to attend, or to

continue attending, the institution or the borrower's decision to take out a covered loan;

(3) The institution failed to perform its obligations under the terms of a contract with the student and such obligation was undertaken as consideration or in exchange for the borrower's decision to attend, or to continue attending, the institution, for the borrower's decision to take out a covered loan, or for funds disbursed in connection with a covered loan;

(4) The institution engaged in aggressive and deceptive recruitment conduct or tactics as defined in 34 CFR part 668, subpart R, in connection with the borrower's decision to attend, or to continue attending, the institution or the borrower's decision to take out a covered loan; or,

(5)(i) The borrower, whether as an individual or as a member of a class, or a governmental agency has obtained against the institution a favorable judgment based on State or Federal law in a court or administrative tribunal of competent jurisdiction based on the institution's act or omission relating to the making of covered loan, or the provision of educational services for which the loan was provided; or,

(ii) The Secretary sanctioned or otherwise took adverse action against the institution at which the borrower enrolled under 34 CFR part 668, subpart G, by denying the institution's application for recertification, or revoking the institution's provisional program participation agreement under 34 CFR 668.13, based on the institution's acts or omissions that could give rise to a borrower defense claim under paragraphs (b)(1) through (4) of this section.

(c) *Violation of State law.* For loans first disbursed prior to July 1, 2017, a borrower has a borrower defense to repayment under this subpart if the Secretary concludes by a preponderance of the evidence that the school attended by the student committed any act or omission that relates to the making of the loan for enrollment at the school or the provision of educational services for which the loan was provided that would give rise to a cause of action against the school under applicable State law without regard to any State statute of limitations, but only upon reconsideration described under § 685.407(a)(1)(ii) or (a)(2)(i).

(d) *Exclusions.* An institution's violation of an eligibility or compliance requirement in the Act or its implementing regulations is not a basis for a borrower defense under this subpart unless the violation would otherwise constitute a basis for a borrower defense under this subpart.

(e) *Circumstances warranting relief.* In determining whether a detriment caused by an institution's act or omission warrants relief under this section, the Secretary will consider the totality of the circumstances, including the nature and degree of the acts or omissions and of the detriment caused to borrowers. For borrowers who attended a closed school shown to have committed actionable acts or omissions that caused the borrower detriment, there will be a rebuttable presumption that the detriment suffered warrants relief under this section.

§ 685.402 Group process for borrower defense.

(a) *Group process, generally.* Upon consideration of factors including, but not limited to, the existence of common facts and claims by borrowers, the likelihood of actionable acts or omissions that were pervasive or widely disseminated, and the promotion of compliance by an institution or other title IV, HEA program participant, the Secretary may determine whether a group of borrowers from one institution or commonly owned institutions identified by the Secretary has a borrower defense under this subpart.

(b) *Group process initiated by the Secretary.* The Secretary may identify and form a group based upon information from sources that include but are not limited to—

(1) Actions by the Federal Government, State attorneys general, other State agencies or officials, or other law enforcement activity;

(2) Lawsuits related to educational programs filed against the institutions that are the subject of the claims or judgments rendered against the institutions; or,

(3) Individual borrower defense claims pursuant to § 685.403.

(c) *Group process initiated in response to a third-party requestor application.* The Secretary will consider a request to form a group from a third-party requestor that complies with the requirements of this section. To comply with the requirements of this section, the requestor—

(1) Submits an application to the Secretary, under penalty of perjury, and on a form approved by the Secretary that—

(i) Identifies the requested group, including at minimum:

(A) The name of the institution or commonly owned institutions;

(B) The campuses or programs which are the subject of the claim, if applicable;

(C) A description of the conduct that forms the basis for the group borrower defense claim under the Federal standard in § 685.401(b);

(D) An analysis of why the conduct should result in an approved group borrower defense claim under the Federal standard in § 685.401(b); and,

(E) The period during which the activity in (c)(1)(i)(C) of this section occurred;

(ii) Provides evidence beyond sworn borrower statements that supports each element of the claim made in this paragraph (c)(1), including but not limited to evidence demonstrating the actionable acts or omissions asserted were pervasive or widely disseminated;

(iii) Provides the names and other identifying information of borrowers in the group to the extent available; and

(iv) For requests submitted by a legal assistance organization, includes a certification that the requestor has entered into a legal representation authority with each borrower identified as a member of the group; and,

(2) Provides any other information or supporting documentation reasonably requested by the Secretary within 90 days of the Secretary's request.

(3) The Secretary may consolidate multiple group applications related to the same institution or commonly owned institutions.

(4) Once the Secretary determines that the third-party requestor's application is materially complete, the Secretary will provide notice to the institution of the third-party requestor's application. The institution will have 90 days to respond to the Secretary regarding the third-party requestor's application request to form a group under this paragraph (c).

(5) The Secretary will provide a response to any materially complete third-party requestor group request under this paragraph (c) within two years of receipt. That response will be sent to the third-party requestor and the institution and includes:

(i) Whether the Secretary will choose to form a group and a definition of the group formed; and

(ii) Any additional information needed from the third-party requestor to continue the third-party requestor requested group process.

(6)(i) If the Secretary denies in whole or in part a third-party requestor's request to form a group under the process described in this paragraph (c), for reasons other than that the Secretary already has formed a group that includes the members of the proposed group or has findings that cover the members of the proposed group, the third-party requestor submitting the group claim may request that the

Secretary reconsider the decision upon the identification of new evidence that was not previously available to the Secretary in forming the group.

(ii) The third-party requestor submitting the group claim under this paragraph (c) must request reconsideration of the group formation no later than 90 days from the date of the Secretary's initial decision regarding formation of the group.

(iii) The Secretary will provide a response to the third-party requestor that requested reconsideration of the group's formation and the institution after reaching a decision on the reconsideration request.

(d) *Process after group formation.* Upon formation of a group of borrowers under this section, the Secretary—

(1) Designates a Department official to present the group's claim in the institutional response process described in § 685.405;

(2) For borrowers who have an application pending with the Secretary prior to the formation of the group, notifies those borrowers that they are an identified member of the group formed under this section and follows § 685.403(d) or (e) as appropriate;

(3) For borrowers whose names were submitted by the third-party requestor and that can be identified by the Secretary, or that can otherwise be identified by the Secretary, if the borrower is not in default and does not have a separate application pending with the Secretary, follows the procedures under § 685.403(d) except that interest on the loan will stop accumulating immediately;

(4) For borrowers whose names were submitted by the third-party requestor and that can be identified by the Secretary, or that can otherwise be identified by the Secretary, if the borrower is in default and does not have a separate application pending with the Secretary, follows the procedures under § 685.403(e) except that the interest on the loan will stop accumulating immediately;

(5) For possible group members that the Secretary cannot identify, takes reasonable steps to identify and notify potential members of the group, and if the Secretary ultimately is able to identify any additional members, follows the process under paragraphs (d)(3) and (4) of this section to allow those additional members to opt-in the group formed; and,

(6) If the Secretary later identifies a borrower that should have received the benefits as described under paragraph (d)(3) or (4) of this section, either prior to the adjudication of the group or after an adjudication that results in the approval of a group borrower defense, retrospectively applies the benefits available to the borrower under those subparagraphs and no other consequences will apply.

§ 685.403 Individual process for borrower defense.

(a) *Individual process, generally.* (1) If § 685.402 does not apply to an individual borrower who has submitted a borrower defense application, the Secretary will initiate a process to determine whether the individual borrower has a borrower defense under this subpart.

(2) If § 685.402 applies to an individual borrower who is covered under a group borrower defense application being considered by the Secretary, that group borrower defense application will toll the timelines under § 685.406 on adjudicating the individual borrower application.

(3) Paragraph (a)(1) of this section will not apply to claims covered by a group claim under § 685.402, including claims submitted prior to the formation of such a group, until after the Secretary makes a decision on that group claim.

(b) *Individual process.* (1) The Secretary will consider a borrower defense claim from an individual borrower to be materially complete when the borrower—

(i) Submits an application to the Secretary, under penalty of perjury and on a form approved by the Secretary with the following information:

(A) A description of one or more acts or omissions by the institution;

(B) The school or school representative attributed with the act or omission;

(C) Approximately when the act or omission occurred;

(D) How the act or omission impacted their decision to attend, to continue attending, or to take out the loan for which they are asserting a defense to repayment; and,

(E) A description of the detriment they suffered as a result of the institution's act or omission;

(ii) Provides additional supporting evidence for the claims made under subparagraph (b)(1)(i) of this section, if any;

(2) The individual must provide any other information or supporting documentation reasonably requested by the Secretary.

(c) *Individual borrower status.* Upon receipt of a materially complete application under this section, the Secretary—

(1) Designates a Department official to present the individual's claim in the institutional response process described in § 685.405;

(2) Notifies the borrower that the Department will adjudicate the claim under § 685.406(c); and

(3) Places all the borrower's loans in forbearance in accordance with paragraph (d) of this section or stopped enforcement collections in accordance with paragraph (e) of this section, as applicable.

(d) *Forbearance.* The Secretary grants forbearance on all of the borrower's title IV loans that are not in default in accordance with § 685.205 and—

(1) Notifies the borrower of the option to decline forbearance and to continue making payments on the borrower's loans, and the availability of income-contingent repayment plans under § 685.209 and the income-based repayment plan under § 685.221; and,

(2) Does not charge interest on the borrower's loans beginning 180 days from the date the borrower was initially granted forbearance under this paragraph (d) if the Secretary has failed to make a determination on the borrower's claim by that date and continuing until the Department notifies the borrower of the decision.

(e) *Loan collection activities during adjudication of borrower defense claim.* The Secretary—

(1) Suspends collection activity on all defaulted title IV loans until the Secretary issues a decision on the borrower defense claim;

(2) Does not charge interest on the borrower's loans beginning 180 days from the date the Secretary initially suspended collection activity under subparagraph (e)(1) of this section if the Secretary has not made a determination on the borrower's claim by that date and continuing until the Department notifies the borrower of the decision;

(3) Notifies the borrower of the suspension of collection activity and explains that collection activity will resume no earlier than 90 days following final adjudication of the borrower defense claim if the Secretary determines that the borrower does not qualify for a full discharge; and

(4) Notifies the borrower of the option to begin or continue making payments under a rehabilitation agreement or other repayment agreement on the defaulted loan.

§ 685.404 Group process based on prior Secretarial final actions.

(a) For purposes of forming a Secretary-initiated group process in accordance with § 685.402(b), the Department official may consider final actions as described in § 685.401(b)(5)(ii).

(b) For groups based on prior Secretarial final actions in accordance

with this section, § 685.405 will not apply to the affected institutions.

§ 685.405 Institutional response.

(a) For purposes of adjudicating a borrower defense claim other than those based on prior Secretarial final actions in accordance with § 685.404, the Department official notifies the institution of the group claim under § 685.402 or individual claim under § 685.403 and requests a response from the school. Such notification also may include, but is not limited to, requests for documentation to substantiate the school's response.

(b)(1) The notification in paragraph (a) of this section tolls any limitation period by which the Secretary may recover from the institution under § 685.409.

(2) The Department official requests a response from the institution, which will have 90 days to respond from the date of the Department official's notification.

(c) With its response, the institution must submit an affidavit, on a form approved by the Secretary, certifying under penalty of perjury that the information submitted to the Department official is true and correct.

(d) If the institution does not respond to the Department official's information request within 90 days, the Department official will presume that the institution does not contest the borrower defense to repayment claim.

§ 685.406 Adjudication of borrower defense applications.

(a) *Adjudication.* The Department official adjudicates a borrower defense claim in accordance with this section.

(b) *Group process, adjudication.* (1) For a group formed under § 685.402, the Department official makes a recommendation to the Secretary regarding adjudication after considering any evidence related to the claim, including materials submitted as part of the group application, individual claims that are part of the group, evidence in the Secretary's possession, evidence provided by the institution during the institutional response process described in § 685.405, and any other relevant information.

(2) For a group of borrowers under § 685.402 for which the Department official determines that there may be a borrower defense under § 685.401(b), there is a rebuttable presumption that the act or omission giving rise to the borrower defense affected each member of the group in deciding to attend, or continue attending, the institution, and that such reliance was reasonable.

(c) *Individual process, adjudication.* For an individual process under § 685.403, the Department official adjudicates the borrower defense using the information available to the official and makes a recommendation to the Secretary regarding adjudication. The Department official considers any evidence related to the claim, including materials submitted as part of the individual application, evidence in the Secretary's possession, evidence provided by the institution during the institutional response process described in § 685.405, and any other relevant information.

(d) *Additional information needed from the school or individual.* If the Department official requests additional information from the school, the school must respond to the Department official's information request within 90 days. If the Department official requests additional information from the individual, the individual must respond to the Department official's information request within 90 days.

(e) *Secretary decision.* The Secretary makes a final decision after taking into account the Department official's recommendation and the record compiled under §§ 685.402, 685.403, 685.404, 685.405, and 685.407, as applicable.

(f) *Written decision.* The Secretary issues a written decision as follows:

(1) *Approval of a Borrower Defense Claim.* If the Secretary approves the borrower defense claim—

(i) The written decision states the Secretary's determination and the relief provided as defined in § 685.401 on the basis of that claim.

(ii) The Secretary places a borrower's Direct Loans associated with a group borrower defense claim into forbearance until the Secretary discharges the loan obligations under § 685.212(k). If any balance remains on the Direct Loans not associated with the borrower defense claim, those loans will return to their status prior to the claim process. The Secretary resumes collection activities on those Direct Loans not associated with the borrower defense claim no earlier than 90 days from the date the Department official issues a written decision. No interest will be charged on the loans during the forbearance period.

(2) *Denial of a Borrower Defense Claim*—(i) *Denial, group.* If the Secretary denies the borrower defense claim, the written decision states the reasons for the denial, the evidence upon which the decision was based, and the loans that are due and payable to the Secretary. The Secretary informs the borrowers that for the Direct Loans associated with the group borrower defense claim, those loans will return to their status prior to the group claim process. The Secretary resumes collection activities on the Direct Loans associated with the group borrower defense claim no earlier than 90 days from the date the Secretary issues a written decision. The Secretary also informs individual borrowers from the group claim initially adjudicated under § 685.406(b)(1) of their option to file a new borrower defense application under an individual process in accordance with § 685.403.

(ii) *Denial, individual.* If the Secretary denies the borrower defense claim, the written decision states the reasons for the denial and the evidence upon which the decision was based. The Secretary informs the borrowers that their loans will return to their status prior to the claim process. The Secretary resumes collection activities on the loans under which a forbearance or stopped collection was granted during adjudication of the claim in accordance with §§ 685.403(d) and (e), no earlier than 90 days from the date the Secretary issues a written decision. The Secretary also informs the borrower of the opportunity to request reconsideration of the claim pursuant to § 685.407.

(3) *Copies of written decisions.* The Secretary provides copies of the written decision in this subsection to:

(i) An individual whose claim was adjudicated under § 685.406(c), as applicable;

(ii) The members of the group whose claims were adjudicated under § 685.406(b)(1), as applicable;

(iii) The school; and,

(iv) The third-party requestor who requested the group claims process, as applicable.

(g) *Adjudication, timelines.* (1) The Secretary will issue a decision on a group or individual borrower defense claim under the following timelines:

(i) For a group claim under § 685.402(c), within 1 year of the date the Department official notified the third-party requestor under § 685.402(c)(5).

(ii) For an individual claim under § 685.403, within the later of July 1, 2026 or 3 years after the date the Department determines the borrower submitted a materially complete application.

(2) The timelines in paragraph (g)(1) of this section will not apply for additional adjudications carried out as part of the reconsideration process in § 685.407.

(3) An individual claim under § 685.403 that is included in a group claim under § 685.402 will be subject to the adjudication timeline for that group under paragraph (g)(1)(i) of this section, and any timelines associated with

individual adjudication in paragraph (g)(1)(ii) of this section will be tolled until the Secretary renders a decision on the claim under § 685.402.

(4) The Department official will provide an interim update to the individual borrower submitting a claim under § 685.403, the third-party requestor requesting a group process under § 685.402, and the institution contacted for the institutional response under § 685.405 no later than 1 year after the dates in paragraph (g)(1) of this section. Such notification will—

(i) Indicate the Department official's progress in adjudicating the claim or claims; and,

(ii) Provide an expected timeline for rendering a decision on the claim.

(5) If the Secretary does not issue a written decision under paragraph (e) of this section on loans covered by certain claims by the dates identified in paragraph (g)(1) of this section, the loans, or portion of the loans in the case of a Direct Consolidation Loan, will not be enforceable by the Department against the borrower and the school will not be liable for the loan amount.

§ 685.407 Reconsideration.

(a) The decision of the Secretary is final as to the merits of the borrower defense and any discharge that may be granted on the claim. Notwithstanding the foregoing—

(1) If the borrower defense is denied, an individual may request that the Secretary reconsider their individual borrower defense claim on the following grounds:

(i) Administrative or technical errors;

(ii) Consideration under an otherwise applicable State law standard under § 685.401(c) but only for loans first disbursed before July 1, 2017; or,

(iii) Identification of evidence that was not previously provided by the borrower and that was not identified in the final decision as a basis for the Department official's determination;

(2)(i) If the borrower defense is denied for a group claim adjudicated under § 685.406(b)(1), any of the third-party requestors that requested to form a group under § 685.402(c) may request that the Secretary reconsider the borrower defense for the reasons provided under (a)(1)(i) through (iii) of this section. A third-party requestor's reconsideration request made in accordance with subparagraph (a)(1)(ii) of this section must provide:

(A) The applicable State law standard;

(B) Why the third-party requestor requests use of such State law standard;

(C) Why application of the State law standard would result in a different outcome for the group than adjudication under the Federal standard; and

(D) Why the applicable State law standard would lead to a borrower defense.

(ii) An individual borrower from a group claim initially adjudicated under § 685.406(b)(1) may not file a reconsideration request under this section.

(3) The borrower or third-party requestor that requested to form a group under § 685.402(c) must request reconsideration under this section no later than 90 days from the date of the Department official's written decision, for any decisions issued on or after the effective date of these regulations.

(4)(i) The Secretary will consider a reconsideration request under paragraph (a)(1) or (a)(2)(i) of this section in which the individual or third-party requestor—

(A) Submits an application under penalty of perjury to the Secretary, on a form approved by the Secretary; and,

(B) Provides additional supporting evidence for the reconsideration claims made in this paragraph (a)(4)(i), if any; and

(ii) The borrower or third-party requestor submitting the reconsideration request must provide any other information or supporting documentation reasonably requested by the Secretary regarding the reconsideration request.

(b) The Secretary designates a different Department official for the reconsideration process than the one who conducted the initial adjudication.

(c) If accepted for reconsideration by the Secretary, the Department official follows the procedures in § 685.405 to notify the institution of the claim and the basis for the group's borrower defense under § 685.402 or individual's borrower defense under § 685.403 for purposes of adjudicating reconsideration of the borrower defense claim and to request a response from the school to the reconsideration request.

(d) If accepted for reconsideration by the Secretary, the Secretary follows the procedures in § 685.403(d) for granting forbearance and § 685.403(e) for defaulted loans, as applicable.

(e) The Department official adjudicates the borrower's reconsideration request under § 685.406, makes a recommendation to the Secretary, and the Secretary provides notice of the final decision upon reconsideration in accordance with § 685.406(f).

(f)(1) The Secretary may reopen at any time a borrower defense application that was denied. If a borrower defense application is reopened by the Secretary, the Secretary follows the procedures in § 685.403(d) for granting forbearance and for § 685.403(e) for defaulted loans, as applicable.

(2) Upon reopening a borrower defense application under paragraph (f) of this section, the Department official adjudicates the claim under § 685.406, makes a recommendation to the Secretary, and the Secretary provides notice of the final decision on the reopened case in accordance with § 685.406(f).

§ 685.408 Discharge.

(a) The Secretary discharges the obligation of the borrower in accordance with the procedures described in subpart D of this part.

(b) Members of a group that received a written notice of an approved borrower defense claim in accordance with § 685.406(f)(1) may request to opt out of the discharge for the group.

§ 685.409 Recovery from institutions.

(a)(1) For loans first disbursed on or after July 1, 2023, the Secretary may collect from the school, or in the case of a closed school, a person affiliated with the school as described in § 668.174(b) of this chapter, any liability to the Secretary for any amounts discharged or reimbursed to borrowers for claims approved under § 685.406.

(2) Notwithstanding paragraph (a) of this section, the Secretary may choose not to collect from the school, or in the case of a closed school, a person affiliated with the school as described in § 668.174(b) of this chapter, any liability to the Secretary for any amounts discharged or reimbursed to borrowers under the discharge process described in § 685.408, under conditions such as:

(i) The cost of collecting would exceed the amounts received; or

(ii) The claims were approved outside of the limitations period in paragraph (c) of this section;

(b) The Secretary will not collect from the school any liability to the Secretary for any amounts discharged or reimbursed to borrowers for an approved claim under § 685.406 for loans first disbursed prior to July 1, 2023, unless:

(1) For loans first disbursed before July 1, 2017, the claim would have been approved under the standard in § 685.206(c)(1);

(2) For loans first disbursed on or after July 1, 2017, and before July 1, 2020, the claim would have been approved under the standard in §§ 685.222(b) through (d); or

(3) For loans first disbursed on or after July 1, 2020, and before July 1, 2023, the claim would have been approved under the standard in § 685.206(e)(2).

(c)(1) The Secretary will initiate a proceeding to collect from the school

the amount of discharge or reimbursement for the borrower resulting from a borrower defense under § 685.408 no later than 6 years after the borrower's last date of attendance at the institution;

(2) The limitations period described in paragraph (c)(1) of this section will not apply if at any time prior to the end of the limitations period—

(i) The Department official notifies the school of the borrower's claim in accordance with § 685.405(b);

(ii) A class that may include the borrower is certified in a case against the institution asserting relief that may form the basis of a claim in accordance with this subpart; or

(iii) The institution receives written notice, including a civil investigative demand or other written demand for information, from a Federal or State agency that has power to initiate an investigation into conduct of the school relating to specific programs, periods, or practices that may have affected the borrower, for underlying facts that may form the basis of a claim under this subpart.

(3) For a borrower defense under § 685.401(b)(5), the Secretary may initiate a proceeding to collect at any time.

(4) The tolling of the limitations period described in paragraph (c)(2) of this section will cease upon the issuance of a written decision denying an application under § 685.406(f)(2).

(d) In requiring an institution to repay funds to the Secretary based on successful borrower defense claims under this subpart, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

§ 685.410 Cooperation by the borrower.

To obtain a discharge under this subpart, a borrower must reasonably cooperate with the Secretary in any proceeding under this subpart.

§ 685.411 Transfer to the Secretary of the borrower's right of recovery against third parties.

(a) Upon the granting of any discharge under this subpart, the borrower is deemed to have assigned to, and relinquished in favor of, the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the contract for educational services for which the loan was received, against the school, its principals, its affiliates, and their successors, its sureties, and any private fund.

(b) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(c) Nothing in this section limits or forecloses the borrower's right to pursue legal and equitable relief against a party described in this section for recovery of any portion of a claim exceeding that assigned to the Secretary or any other claims arising from matters unrelated to the claim on which the loan is discharged.

§ 685.499 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

[FR Doc. 2022–23447 Filed 10–31–22; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 87, No. 210

Tuesday, November 1, 2022

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

65649–66074 1

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10482 65649

7 CFR

Proposed Rules:
1206 65683

10 CFR

429 (2 documents) 65651, 65856
431 (2 documents) 65651, 65856

Proposed Rules:
430 65687

12 CFR

1006 65668

14 CFR

39 65670
71 (6 documents) 65673, 65674, 65675, 65677, 65679, 65680

Proposed Rules:
39 65694

21 CFR

1271 65861

34 CFR

600 65904
668 65904
674 65904
682 65904
685 65904

38 CFR

Proposed Rules:
36 65700

40 CFR

Proposed Rules:
52 (2 documents) 65714, 65719
81 65719

42 CFR

Proposed Rules:
422 65723
423 65723
438 65723
498 65723

50 CFR

Proposed Rules:
679 65724
680 65724

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List October 20, 2022

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/__*layouts/PG/register.aspx.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 2022

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
November 1	Nov 16	Nov 22	Dec 1	Dec 6	Dec 16	Jan 3	Jan 30
November 2	Nov 17	Nov 23	Dec 2	Dec 7	Dec 19	Jan 3	Jan 31
November 3	Nov 18	Nov 25	Dec 5	Dec 8	Dec 19	Jan 3	Feb 1
November 4	Nov 21	Nov 25	Dec 5	Dec 9	Dec 19	Jan 3	Feb 2
November 7	Nov 22	Nov 28	Dec 7	Dec 12	Dec 22	Jan 6	Feb 6
November 8	Nov 23	Nov 29	Dec 8	Dec 13	Dec 23	Jan 9	Feb 6
November 9	Nov 25	Nov 30	Dec 9	Dec 14	Dec 27	Jan 9	Feb 7
November 10	Nov 25	Dec 1	Dec 12	Dec 15	Dec 27	Jan 9	Feb 8
November 14	Nov 29	Dec 5	Dec 14	Dec 19	Dec 29	Jan 13	Feb 13
November 15	Nov 30	Dec 6	Dec 15	Dec 20	Dec 30	Jan 17	Feb 13
November 16	Dec 1	Dec 7	Dec 16	Dec 21	Jan 3	Jan 17	Feb 14
November 17	Dec 2	Dec 8	Dec 19	Dec 22	Jan 3	Jan 17	Feb 15
November 18	Dec 5	Dec 9	Dec 19	Dec 23	Jan 3	Jan 17	Feb 16
November 21	Dec 6	Dec 12	Dec 21	Dec 27	Jan 5	Jan 20	Feb 21
November 22	Dec 7	Dec 13	Dec 22	Dec 27	Jan 6	Jan 23	Feb 21
November 23	Dec 8	Dec 14	Dec 23	Dec 28	Jan 9	Jan 23	Feb 21
November 25	Dec 12	Dec 16	Dec 27	Dec 30	Jan 9	Jan 24	Feb 23
November 28	Dec 13	Dec 19	Dec 28	Jan 3	Jan 12	Jan 27	Feb 27
November 29	Dec 14	Dec 20	Dec 29	Jan 3	Jan 13	Jan 30	Feb 27
November 30	Dec 15	Dec 21	Dec 30	Jan 4	Jan 17	Jan 30	Feb 28